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PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

SENATE—*Wednesday, September 5, 1979*

(Legislative day of Thursday, June 21, 1979)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by Hon. CARL M. LEVIN, a Senator from the State of Michigan.

PRAYER

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

O Thou who art from everlasting to everlasting, be to each of us our Guard and Guide as once more we undertake the work of this House. Grant us pure hearts, keen minds, and the spirit of servants.

And so many on this day pause to honor a fallen hero, so may we with hushed reverence and deep gratitude remember Thy servant Lord Louis Mountbatten—his royal presence, his brilliant mind, his personal bravery, his military prowess, his lofty statesmanship, his grace, and his goodness. May he rest in peace, honored by his countrymen and by all who were touched by his life.

And to Thee shall be the glory and the praise. 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 5, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CARL M. LEVIN, a Senator from the State of Michigan, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

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.

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, following the orders of the two leaders, there be a brief period for the transaction of routine morning business, that Senators may be permitted to speak up to 3 minutes therein, and that the period not extend beyond 15 minutes.

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

THE UNITED STATES-SOVIET MILITARY BALANCE

Mr. ROBERT C. BYRD. Mr. President, in the coming weeks, the Senate will be making some critical decisions with respect to our future national security.

The hearings which have been conducted on the SALT II Treaty by the Committee on Foreign Relations, the Committee on Armed Services, and the Intelligence Committee have been particularly valuable because not only have these committees examined the specific elements of the treaty, but the debates that have occurred in the Foreign Relations Committee and the Armed Services Committee have also focused national attention on the broader issue of the overall military and strategic balance.

During the month of August, I took the opportunity to review the record of the hearings conducted by the Armed Services Committee and the Foreign Relations Committee and also to discuss these national security issues with citizens in my State. My review of the hearings has served to heighten my concern about our national defense and the strategic balance in the years ahead.

The Senate committees will soon be concluding their hearings on SALT II and the treaty will be coming before the entire body. As I have repeatedly stated, I shall make my decision on the SALT II Treaty on the merits of the treaty and on the question as to whether or not it serves U.S. national security interests.

Today, it is not my intention to address the treaty itself. Rather, I want to speak to the significant questions involved in the broader issues of U.S. defense capability and the growth of Soviet military strength. The importance of these issues has been underlined by the hearings and our response to them is a matter of highest importance.

The United States continues to maintain a first-rate military capability. Today we have what is called rough or essential equivalence with the Soviet Union in conventional and strategic military power. What concerns me is not the situation at the moment, although there are some problems, but the growing imbalance, the trends that are clearly emerging. I am concerned about the momentum of the Soviet military buildup—in central strategic systems, in theater nuclear capability, and in conventional forces.

Up to the midsixties, this country maintained unquestioned military superiority in all major categories. Since that time the Soviet Union has steadily boosted its military capability. We have made some important strides of our own, and in some cases have maintained notable advantages—as in our nuclear submarine and submarine-launched ballistic missile forces. In other areas, however, the Soviets have attained rough equality or a potentially significant edge over the United States.

The Soviet Union has made these gains as a result of a major and sustained commitment to military spending over a 20-year period, becoming particularly marked from the midsixties on. While direct comparisons between Soviet and United States military spending are extremely difficult, there is no question that by any measure the Soviets are outspending us militarily; the only question is by how much and with what consequences.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

We face the 1980's with some very troubling prospects. There will be a period in which our land-based missile forces will be potentially vulnerable to a Soviet attack. I have supported full-scale development of a mobile MX as a means of countering this potential vulnerability and of assuring the viability of the land-based leg of our strategic triad.

Already, the Soviet Union possesses a significant conventional and theater nuclear capability in central Europe, with one-third more troops in the field, three times as many tanks as the NATO allies, and a distinct advantage in the theater nuclear systems. The Soviet "blue-water" navy will give the Soviets the capability to intervene in conflicts far removed from the Soviet Union's areas of historical concern. Clearly, Moscow is developing and deploying military capability far beyond the legitimate needs of its own territorial security.

The picture that emerges from these trends is one that causes serious concern for the future. But it is certainly not a hopeless situation, if we will take the needed action. I believe that the United States can respond positively to this growing trend through a prudent mix of negotiations with the Soviets that aim at restraining military competition and reducing political tensions worldwide, combined with the steady commitment to the modernization and qualitative improvement of our military capability.

We must assure that we retain essential equivalence in strategic capability. Regardless of the outcome of Senate consideration of SALT II, we will need to strengthen our conventional forces and strategic systems. Such efforts can be undertaken within the prescribed limits of the SALT II agreement, if the treaty is approved. And, if SALT II is ratified and we are able to progress to SALT III with the aim of achieving deep and significant reductions in strategic arms, we nonetheless must proceed in the meantime with the qualitative improvements we need in order to maintain our security and that of our allies, and in order to be in a position to bargain during the process of SALT III; in order to have some leverage, in order to be in a position to negotiate and to negotiate effectively.

We continue to have significant advantages over the Soviets—a more productive economy, a more technologically advanced and innovative society, a better informed and aware public. I believe that we shall have to do more than we have in the past to meet the challenges of the 1980's, including spending more money than we have in recent years on defense needs.

I do not advocate throwing money at the problem, but I do believe we can prudently and selectively develop those areas in which adequate funding should be forthcoming. I believe that the public will respond positively to this challenge because the American people are beginning to recognize the degree to which peace and our continued prosperity rest on the maintenance of a strong national defense. An unstable military balance is not in the interest of peace.

In conclusion, I want to emphasize that we should meet our defense needs in the most effective way possible. We need to apply our funding selectively and carefully, focusing on those programs that meet real needs and which will counter the trend toward strategic imbalance. This is where our emphasis must be. In the days and weeks ahead, the Congress and the Executive face the challenge of identifying our defense priorities and in moving to support them in a realistic but decisive manner.

AMENDMENT OF UNANIMOUS-CONSENT AGREEMENT—H.R. 4393

Mr. ROBERT C. BYRD. Mr. President, in relation to the Treasury and Postal Service appropriations bill, H.R. 4393, which will be before the Senate today, I make the following amendment, by way of unanimous-consent request; to the agreement: that on an amendment by Mr. JAVITS dealing with IRS regulations on racially discriminatory private schools, there be 2 hours equally divided in accordance with the usual form.

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

REMOVAL OF INJUNCTIONS OF SECRECY

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunctions of secrecy be removed from three treaties transmitted to the Senate by the President of the United States during the recess of the Senate on August 10, 1979. These treaties are an extradition treaty with Norway (Ex. CC, 96–1); a protocol, with annex, amending the 1953 convention with Canada for the preservation of the halibut fishery of the Northern Pacific Ocean and Bering Sea (Ex. DD, 96–1); and the 1978 convention on standards of training, certification and watchkeeping for seafarers, with annex (Ex. EE, 96–1).

I ask that the treaties be considered as having been read the first time, that they be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty of Extradition Between the United States of America and Norway signed at Oslo on June 9, 1977.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the treaty.

The treaty is one of a series of modern extradition treaties being negotiated by the United States. It expands the list of extraditable offenses to include aircraft hijacking and obstruction of justice, as well as other offenses not now covered by our existing treaty with Norway. Upon entry into force, it will terminate and supersede the existing Treaty of Extradition of 1893, the Amendatory Extradition Treaty of 1904, and the Supplementary Extradition Treaty of 1938.

This treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the treaty and give its advice and consent to ratification.

JIMMY CARTER.

THE WHITE HOUSE, *August 10, 1979.*

To the Senate of the United States:

I am pleased to transmit the Protocol, with Annex, Amending the 1953 Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea for Senate advice and consent to ratification. The Protocol was signed at Washington on March 29, 1979.

I also transmit for the information of the Senate the report of the Secretary of State with respect to this Protocol and an exchange of Notes, done on March 29, 1979, and an Agreed Minute, done on April 6, 1979.

This agreement was negotiated to bring the 1953 Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea into conformity with the terms and intent of the Fishery Conservation and Management Act of 1976, which extended U.S. exclusive fisheries jurisdiction to 200 miles off the U.S. coasts. It will allow continuation of the International Pacific Halibut Commission, and of the joint management of the halibut resource in the Pacific. The agreement contains provisions for an interim enforcement regime, to apply, pending final delimitation, to maritime boundary areas in which both Canada and the United States claim fisheries jurisdiction. It allows the uninterrupted continuation of the work of the International Pacific Halibut Commission, and provides for the continuation of recreational fishing by both countries in maritime areas in which each exercises exclusive fisheries jurisdiction. In general, it makes an important contribution to good fisheries relations between our two countries.

I believe that approval of this Protocol is in the best interests of the United States. I recommend that the Senate give early consideration to this Protocol and its advice and consent to its ratification.

JIMMY CARTER.

THE WHITE HOUSE, *August 10, 1979.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, with Annex, 1978 (the Convention), done at London, July 7, 1978. The report of the Department of State is enclosed for the information of the Senate in connection with its consideration of the Convention.

This Convention establishes improved and often new international requirements for training, certification and

watchkeeping for masters, officers and certain crewmembers of "seagoing" merchant ships. These requirements should provide more highly qualified personnel on board ships and thereby reduce maritime casualties and promote safety of life at sea and protection of the marine environment. Such international requirements are responsive to proposals which were made by the United States in March 1977, following a series of tanker accidents in or near United States waters. I recommend that the Senate give prompt consideration to this Convention and advice and consent to its ratification.

JIMMY CARTER.

THE WHITE HOUSE, *August 10, 1979.*

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Chair.

SALT II AND RUSSIANS IN CUBA

Mr. BAKER. Mr. President, I am happy to be back and to have the opportunity to stand here and participate in the opening ceremony after Labor Day, and to hear an outstanding presentation by the distinguished majority leader on the matter of national defense and the foreign policy of the United States. It is truly an important contribution to the national détente of this crucial subject.

No one in this Chamber, I believe, has a greater devotion to the requirement for absolute security and military strength of the United States than does the distinguished majority leader.

We often agree. We sometimes disagree on a range of subjects. But we do not disagree on that one.

In respect to the external threat to this country—and the manner in which the foreign policy and the national defense of the United States should meet that threat, there has arisen a new concern in the last few days: The confirmation of the presence of a Russian combat unit together with associated support equipment in Cuba.

Mr. President, the Senate is engaged in committee consideration of the proposed SALT II treaty. I fully expect that before long the full Senate will turn its attention to the SALT Treaty, for I anticipate that the Foreign Relations Committee will report that treaty, with or without amendments, for the further consideration of the Senate.

Mr. President, the Russian troop situation in Cuba is important to the SALT Treaty only to the extent—in my judgment, only to the extent—that it represents a determined effort by the Soviet Union to thumb its nose at the United States.

I do not presently perceive that the Russian troops in Cuba are an immediate threat to the territorial integrity of this country. I do not rule out the possibility that, directly or indirectly, they might support the export of Russian influence from Cuba to other Latin American countries. But I am firmly convinced that the Soviet Union is engaged in a testing of the will and the resolve and the determination of the United States by this commitment, this direct commitment, of Soviet troops to the territory of that island country.

Early in the consideration of the SALT treaty we were advised by the administration—by the President, by the Secretary of State, and by others—that the treaty should be considered in isolation and free of any linkage, that it was too important to consider except on the basis of the language contained within the four corners of the document.

I indicated my disagreement with that view at the time, and I reiterate it now. I believe that this confirmation of Russian armed personnel in Cuba is a confirmation of the wisdom of that decision. I believe that we should consider the SALT Treaty in light of the presence of Cubans in Africa and now Russians in Cuba.

It is my view, as I have often stated before, that the proposed SALT II Treaty is inequitable, that it creates a significant and substantial strategic advantage for the Soviet Union, and that while I supported SALT I and the Vladivostok agreement, and while I would like to support SALT II, I do not plan to support SALT II in disregard of the real world as we find it. I do not intend to support just any treaty, particularly a treaty that provides a significant strategic superiority or advantage for the Soviet Union.

So, Mr. President, I state that my concern for a Russian combat brigade, complete with tanks, armament, and support facilities, in Cuba is disquieting, and it calls to mind what reactions there might have been at an earlier time, just a decade or so ago, by the United States.

But that is not the limit of my concern. I am far more concerned with the general testing that the Soviet Union is now undertaking in terms of an adventurist foreign policy. I am concerned about provocating Soviet efforts in the Middle East and the Yemens; their adventures in Africa through their surrogates, the Cubans; their involvement in Ethiopia, in Angola; their unbridled military buildup of conventional and strategic forces; and now their commitment of a combat brigade to Cuba.

I do not know whether this violates the agreement reached by Premier Khrushchev and President Kennedy or not. I wish the President would order the release of that agreement and all of its ramifications. But I do know to my own satisfaction that the presence of Soviet troops in Cuba at least violates the spirit and the intent of that agreement, and depreciates the national strength and will brought to bear by the late President John F. Kennedy when he stood down the Russians in the 1960's at the height of the missile crisis.

The Russians are thumbing their noses at us, Mr. President.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BAKER. I will.

Mr. ROBERT C. BYRD. Mr. President, I do not respond by way of challenging the statement made by the distinguished Senator from Tennessee, the minority leader, or by way of arguing with him. He has expressed a sincere viewpoint, one that is held by many persons.

But I would like to state for the record my own viewpoint in this regard and, in so stating, indicate that I prefer to await further information in connection with the Soviet brigade in Cuba before I arrive at conclusions regarding the SALT II Treaty.

The Foreign Relations Committee is at this moment conducting a hearing in executive session, with Admiral Turner making a presentation there. I had the opportunity earlier today to attend that hearing for a brief period.

It is my understanding that in 1963 the Soviets had something like 20,000 armored personnel in Cuba. There is no clear indication that all of those personnel were ever removed from Cuba. There is indication that 1,500 to 2,000 were retained there for advisory purposes, and so on. But there is no indication that this brigade, or at least the personnel, the Soviet troops, have been there all along, and, at the same time, no clear indication that they have not been there during the intervening years.

So I think it would be well to await the development of as much information as is possible before reaching hasty conclusions regarding the treaty.

I am concerned about it. I do not know what the mission of the Soviet brigade may be. I hope we can find out more about that. Secretary Vance will be discussing this subject with Mr. Dobrynin and presumably with Mr. Gromyko very soon, and we will be able to get further information here in the Senate.

However, as to the treaty, the committees will have ample time to explore this matter before the treaty comes before the Senate. For my part, I prefer to make my decision—other Senators may do as they wish, of course; they have that right—I prefer to make my own decision on the treaty, on the basis of the merits of the treaty itself.

Of course, there are peripheral issues. I do not like what the Soviets have been doing in Africa. I do not like their adventurism elsewhere.

But I am going to reach my personal opinion on the treaty—others may do as they see fit—on the basis of whether this country will be better off with the treaty or without it—whether the treaty is in the security interests of our country. I hope the Senate will approach the matter from that standpoint.

It is impossible to erase completely from view or from our consideration some of the other matters that we do not like and that do cause us concern. But I think we should keep an eye closely on that treaty and weigh it on the basis of whether or not it is in the security interests of this country to ratify that treaty. We have ample time to explore the other issues. I hope we will at least await until we have access to all the information that can be produced, and it may be limited, before we make final judgments on the treaty.

It is very difficult to determine whether an individual wearing a Cuban uniform

is a Russian or a Cuban. In some respects, it is far more difficult to secure adequate intelligence from Cuba, although it is only 90 miles from our own shore, than it is to secure information regarding activities in other countries.

I share the concern of the distinguished minority leader; but I want to await further knowledge in regard to this overall subject, as I know we all do, before I make up my mind, especially with respect to the treaty.

On that basis, I am going to judge the treaty on the evidence and on the facts as I see them, after having read all the transcripts carefully, which I have done to date. I will make that decision shortly.

I hope we can determine what the intentions of the Soviets are. Again I say that we do not know how long the Soviet Brigade personnel have been there. We do not know that they have only been there since 1976. They may have been there since 1974, 1970, the late 1960's. I hope we can determine this as time goes on, and also their purpose in being there, and what the future prospects are.

I thank the minority leader for yielding this time.

I ask unanimous consent that he may have an additional 3 minutes, if he wishes.

Mr. BAKER. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes.

Mr. BAKER. Mr. President, I need to yield 5 minutes to the Senator from Indiana. Could we extend the time for 1 more minute?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the minority leader may have the additional time needed, so that he may respond to what I have said, if he wishes.

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

Mr. BAKER. I will take a minute, and then I want to yield to the Senator from Indiana for a statement that will be received with regret and sorrow, I am sure, by all of us.

Mr. President, I do not know how long we have to know Russian troops have been in Cuba. It is true, as the majority leader says, that they may have been there a long time. But if they have been there a long time, then that raises another question: How good is our intelligence? How capable are we at verifying the presence of Russians 80 miles away, let alone the presence of missiles in Russia?

Let me say again I would like to support a SALT II treaty, but I am not going to support just any old SALT II treaty. I would like to support a treaty that gives us at least parity with the Soviet Union in terms of strategic weaponry. I do not believe this treaty does.

Therefore, I consider Russian adventurist foreign policy, particularly in the Middle East and in Africa, the submission of a treaty that puts us at a strategic disadvantage, and now the commitment of Russian military forces to Cuba, as a single continuum: the Russians are testing the United States. They are thumbing their nose at us.

Mr. President, I yield the remainder of my time to the Senator from Indiana.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. Mr. President, I believe every Senator in this body can say the same as the distinguished minority leader has said, namely, that just any old treaty will not do. I do not intend to support just any old treaty.

In any event, I am taking my time in reaching a decision on the treaty. I indicated in the beginning that I was going to approach the matter, in a comprehensive, thorough, and systematic way. I am attempting to do that. I do not intend to support just any old treaty, but I have not written this one off, and I have not written it on. At this point, I have not made a decision.

As a matter of fact, I have asked my staff to prepare for me a speech for the treaty and a speech against the treaty.

So I am in the process of reaching my decision systematically, methodically, and carefully. I may reach the wrong decision; but if I reach a decision to support that treaty, it will be because I think that treaty—modest though it may be and not ideal, as I would like it written—is a treaty that is in the best interests of the United States. If I reach the opposite conclusion, I will be prepared to so state and why.

Mr. BAKER. Mr. President, I conclude by saying that I accept at face value what the majority leader says. I would not suggest, for one moment, that he will do anything other than give this treaty and any proposed amendments to this treaty the most careful consideration and base his judgment on that.

It is often asked, "Would we be better off with this treaty or with no treaty?" I accept that formulation. It is also sometimes said, "Think of the consequences if we reject the treaty." However, I often think of the consequences if we ratify a bad treaty and what that will signal to the Soviet Union.

I hope this treaty can be amended so that I can support it—on a basis such as a limitation on the Soviet Backfire bomber, and revisions of certain other provisions of the treaty.

But this is not the time to debate the treaty on the floor. I hope we can do that thoroughly and at some length. I would like to see it have the maximum public exposure and participation of the American people, because it is that important.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator still have the full 5 minutes to yield to the Senator from Indiana.

Mr. BAKER. The majority leader is very kind, and I thank him.

I yield to the Senator from Indiana.

DEATH OF FORMER SENATOR HOMER E. CAPEHART OF INDIANA

Mr. LUGAR. Mr. President, the late Senator Homer Capehart of Indiana would have gloried in the debate we have heard this morning, because he was in every sense a patriot, deeply interested in the United States of America and deeply interested in its international relationships.

Indeed, in his final days of service in 1962, on the floor of the Senate, he warned about the difficulties that were then obvious to him and others with respect to Cuba. Those warnings formed a part of the senatorial debate of 1962 in Indiana, in which Senator Capehart, after 18 years of distinguished service, yielded to my colleague Senator BIRCH BAYH of Indiana, who has served subsequently.

Homer Capehart's life, in my judgment, had four distinct parts to it—almost equal quarters of his four score and 2 years.

He was born in Pike County, the son of a tenant farmer. He farmed the land with his father, moved to Daviess County, worked his way through high school, and that ended his formal education.

He was the first in Davies County to volunteer for the U.S. Army in World War I, and he advanced to the rank of sergeant before his discharge. He was always active in military and patriotic affairs in the State of Indiana.

From that time he moved into free enterprise. In fact, he was heavily involved in the formation of a very successful firm, the Packard Co., that made phonographs, and as a distributor for Wurlitzer juke boxes he was one of the outstanding salesmen of this country and made a private fortune which gave him a base for poltical leadership in our State.

Clearly the end of the second quarter of his life, as I judge it, came with his sponsorship of the cornfield conference in Indiana in 1938 which brought together tens of thousands of people from throughout the State of Indiana and throughout America at a time when it was a low point for the Republican Party at the grass roots and brought a revival. Six years later Senator Homer Capehart was in fact nominated at the colosseum in Indianapolis for his first term and he won successful elections in 1944, 1950, and 1956.

During that period of time I was privileged to be a part of conversations during the visits by Senator Capehart to our diningroom table.

He had been a close associate of my father, Marvin L. Lugar, in the Indianapolis Rotary Club. Indeed, he had asked my dad to appraise cattle on the Capehart farm in Daviess County and had brought his cattle up through the commission companies there in the Indianapolis stockyard.

He was a devoted farmer, but his interests expanded to international relationships and especially into banking and housing affairs, and after the election of President Eisenhower in 1952 for the next session of Congress he, in fact, became chairman of the Banking and Housing Committee where he is still remembered by many who served on the staff at that time.

Senator Capehart continued to advocate vigorous world trade communities for the United States of America and was very active in boosting foreign aid but suggested the orientation of that foreign aid should come more through private business. He was the

leader of many foreign trade groups, particularly in Latin America as a focus of his activity.

In 1962, following his defeat in that November election, Homer Capehart blamed the defeat on no one other than himself and was a gracious loser as he had been a gracious winner. He continued to have the affection of all Hoosiers, and during the past 17 years has indeed been a counselor to all of us who knew him as young people and who have revered his counsel as well as his advice in the years that have lied just behind us.

It was my personal privilege to visit with Homer Capehart at the celebration of the Indiana Republican Editorial Association just a year ago. Although in ill health he came out for that rally and celebration as he had come out faithfully for so many others in the past. He retained his optimism about this country, his encouragement of young people in politics, and his general enthusiasm for the Republican Party, not in a tremendously partisan sense but because he revered the two-party system and revered the system of Government that he loved and served so well.

The Indianapolis Star in an editorial published in Indianapolis this morning says:

> Behind the image of the cigar-smoking, suspendered rustic was a man of enormous energy, a man with business acumen, organizing ability and a sound knowledge of human nature. He parlayed these attributes into successful careers of salesman, advertising agency head, manufacturing executive and a major power in the Indiana Republican Party.

Finally, the Star concludes:

> There was no question in Mr. Capehart's mind that the United States was the greatest, freest country on earth with the best political and economic systems and that Indiana was the finest state in the Union.
>
> An affable, decent man, he was a credit to the state he represented.

He died on September 3 in Methodist Hospital in Indianapolis at the age of 82. All Hoosiers will miss him and his memory will always be revered.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. LUGAR. I am happy to yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to commend the able Senator from Indiana for the outstanding tribute he has made this morning in the Chamber to Senator Capehart.

When I came to the Senate in December 1954, but actually reached here in January 1955, I had the pleasure of meeting Senator Capehart and serving with him.

Senator Capehart impressed me as a pioneering type of man, a man of great substance, a man of stability, a man of capacity, and a man of unquestioned character and integrity.

I was deeply impressed with him as a fellow Senator. I enjoyed my service with him, and I regretted to see him leave the Senate. In my opinion, he served his country well, and I hope that the remarks of the able Senator from Indiana this morning will be sent to his family and the people of Indiana will have the opportunity to read them.

I appreciate the personal friendship of Senator Capehart and wish to extend my deepest sympathy to his family in his passing.

Mr. LUGAR. Mr. President, I thank the distinguished Senator from South Carolina.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of routine morning business for a period not to exceed 15 minutes, with statements permitted up to 3 minutes in length.

Is there morning business?

THE IMPORTANCE OF SOUTHERN AFRICA, THE "PERSIAN GULF OF MINERALS," TO THE UNITED STATES

Mr. THURMOND. Mr. President, no American these days needs to look farther than the line at his neighborhood gasoline station to be reminded just how dependent this Nation has become on imported raw materials. In the years ahead, as our home-produced resources sources for strategic minerals. To an increases for vital raw materials, we will be forced to turn more and more to foreign sources for strategic minerals. To an inceasing extent, the continent to which we must look for these materials is Africa.

That portion of Africa known as the plateau of southern Africa, stretching from South Africa's Transvaal Province northward through Rhodesia and into Angola and Zaire, has been called the Persian Gulf of Minerals, and South Africa its "Saudi Arabia." With all its natural wealth, this is a region in the throes of political struggle. A bitter guerrilla war and a trade embargo by the United Nations have all but paralyzed the economy of Rhodesia. South Africa arms itself against its black neighbors and struggles to keep the pace of change within its society under white control. What all these nations share, South Africa, Rhodesia, and the emerging black republics, is a need to trade with the rest of the world, just as the outside world needs their raw materials. They all need foreign investment to find and mine their resources and they need the revenue from production to develop their economies and raise their standards of living.

Mr. President, in 1974, an interagency Government task force reporting to the National Security Council studied the U.S. needs for strategic minerals and drew up a list of 18 whose supply is particularly vital for national defense and for the economy. Of those 18 strategic materials, 13 are supplied from Africa. Those with significant sources in Africa are: Aluminum, chrome, platinum and its related metals, iron ore, manganese, cobalt, mercury, columbium, fluorspar, copper, titanium, phosphates, and vanadium. Of the four judged most critical—chromium, manganese, the platinum group, and aluminum—Africa is the world's most important source of all except aluminum, and the United States draws some of its supplies of even that metal from Guinea.

Mr. President, in this brief review that I provide today of the United States' past and future strategic requirements, it is a little ironic to note that for 15 years, this country has enforced an arms embargo against the country that is one of its most important suppliers of strategic metals. More recently, the embargo was expanded to include a ban on supplies for South Africa's police forces, as well as its national armed forces. Last year, legislation was passed to bar the Export-Import Bank from providing loan guarantees and insurance for U.S. businesses operating in South Africa.

While future developments in technology may reduce the U.S. dependence upon the Middle East for energy, we have fewer such options in the case of strategic metals. The geology of the planet Earth has placed an extremely high proportion of the world's vital industrial raw materials on the continent of Africa, and particularly in its southern third.

Mr. President, I feel that it is extremely important for the United States to participate in the development and protection of these sources of supply. The alternative is to risk a weakening of our economy and impairment of our ability to defend ourselves. This matter must be given adequate attention by us now and in the future.

During the years when Saudi Arabia was emerging as the world's richest source of oil, the United States through the investment of private capital and the careful cultivation of diplomatic relations, managed to establish and maintain a close relationship with that desert kingdom. A realization of shared interest served both nations well, and helped to preserve free and open communications, even when national views diverged, as in the recent Mideast negotiations. A combination of diplomacy and economic interest may be equally useful in the nations of Africa in the years ahead.

In one respect, the parallels between oil and the strategic metals do not apply. With enormous difficulty and at great expense we could in the long term find substitutes for foreign oil. We can apply rigorous conservation, drill our remaining reserves of oil and gas, develop the potential of oil shales and tar sands, mine our coal, and expand the use of solar and wind power. But we have no known substitute at any price for chrome or for manganese in the manufacture of high strength and specialty steels, and our domestic supplies of those alloys are meager. Some experts believe that in 20 years, southern Africa may have a total world monopoly on minable deposits of chrome.

Chrome is an essential component for the kinds of steel used in jet engines, in nuclear reactors and in many kinds of armament. About 25 percent of U.S. supplies of chrome originate in the Republic of South Africa. The Philippines have been supplying about 18 percent of U.S. needs, but the Philippine ores are nearing depletion. So long as the Byrd

amendment provided this Nation with a legal loophole to the U.S.-inspired trade embargo with Rhodesia, we were getting about 12 percent of our chrome from that country, but the repeal of the Byrd amendment in 1977 closed off the Rhodesian supply and led to an increase in imports from the Soviet Union. Some experts, American and foreign, are convinced that the Soviets, in violation of the U.S. trade sanctions that the United States continued to honor, purchased quantities of chrome from Rhodesia and resold it to the United States as Soviet chrome, at an appropriate markup.

Our dependence on South Africa is likely to increase, in part because South African deposits of chrome are large and easily mined, in contrast to the smaller lodes worked in other countries. Assuming an eventual end to the trade embargo in Rhodesia, that country may again become a major supplier of chrome to the United States and its allies.

Manganese is another essential element for the production of quality steel, and is also used in the production of aluminum and cast iron and in the manufacture of dry-cell batteries. There is no satisfactory substitute for manganese in steel production and unlike chrome, it cannot be recycled. Gabon and South Africa are significant suppliers of manganese to the United States along with Brazil, Australia, and France.

Manganese is one of the minerals, along with nickel, copper, and cobalt, that is believed to be recoverable from the ocean floor. However, delays in writing an acceptable Law of the Sea Convention have postponed well into the future the time when the legal structure and technical advances will permit recovery of important quantities of manganese from the seabed.

Meanwhile, South Africa, with an estimated 78 percent of the world's known reserves of manganese, has been stepping up its production at a compounded rate of 11 percent a year for the past decade, and announces that it is ready to meet all foreseeable future market demands.

Vanadium is the third leg of this triangle of strategic metals required in the steelmaking process. It is also used in the manufacture of iron and aluminum and in petroleum refining. There are also indications that it can serve as a less toxic substitute for lead as an anti-knock ingredient in gasoline. It is less critical than chrome or manganese, since the United States and Canada have significant supplies, and there are a number of substitutes for vanadium, and South Africa estimates that its reserves amount to 49 percent of the world's known reserves of vanadium.

The platinum group of metals—platinum, palladium, iridium, osmium, rhodium, ruthenium—flund their major industrial uses as chemical catalysts in the refining and chemical industries, and in the manufacture of emission control devices for automobiles. Fortune magazine quotes a General Motors executive as saying:

> Without South African platinum for catalytic converters, the U.S. government would have to call off the entire emission-control program.

In fact, the United States depends on imports for 92 percent of its platinum group needs and draws 42 percent of its requirements from South Africa. The U.S.S.R. is the second major supplier.

In 1978, the price of platinum on world markets almost doubled, due to the removal from world markets of about half of the 600,000 ounces that the Soviet Union normally supplies. Reason for this shortfall was not entirely clear. The Soviet Union is believed to have built up its stockpile in anticipation of minting an issue of platinum-based Olympic coins for 1980, while increasing consumption of the metal in its chemical and refining industries. Whatever the explanation, the disappearance of only 15 percent of the normal supply rocketed the price of platinum from $186 an ounce at the start of 1978 to $350 an ounce at year's end, and illustrated the explosive effect of even a small shortage of a critical material.

This experience carries a warning of possible similar price moves whenever shortages develop in an essential material. South Africa says that its platinum group ore reserves are 75 percent of the world's total known deposits, and are "considered adequate to meet world demand for the foreseeable future." Rhodesia also has extensive undeveloped platinum reserves.

Beyond the supercritical metals that we have just mentioned lies a longer list of still vital minerals important for certain industries and for national security. Because the list is based on essentiality rather than scarcity, aluminum and iron ore are prominently mentioned. The African nation of Guinea supplies about 20 percent of the aluminum that we import as bauxite, and Liberia and Mauretania are providers of iron ore.

Much rarer is cobalt, an essential alloy for steels used in the turbine blades of jet engines and pumps, and for electronic equipment. Domestic mining of cobalt ended in 1971, making the United States entirely dependent on imports for this metal, except for a minor amount recovered from scrap. Last year, Zaire met 42 percent of our needs for cobalt, and Zambia provided another 7 percent. The fragility of our supply was demonstrated last year when insurgents disrupted cobalt mining in the Kolwezi area of Shaba province in Zaire. A Pan-Africa force was created to maintain security and mining was resumed. But the scare disrupted the market, sent prices up to three times the level of $6.40 a pound prevailing at the start of the year, and some spot sales were made at $40 a pound. This points up the importance of developing alternate sources of this vital metal. It is also worth noting that Morocco and Botswana have modest reserves and some production of cobalt.

Copper has long been abundant in the Western States and in the Western Hemisphere, but U.S. production has reached a plateau, and imports have been rising, to 19 percent of our needs. Zambia was this nation's largest supplier of copper from outside the Western Hemisphere. Zaire is also a significant producer of copper and could be a future supplier.

Mercury, a necessary component in many electrical products, in some chemicals and paints, is also in dwindling supply in the United States Domestic production now is limited to one surviving mine in Nevada, plus some mercury recovered from scrap. Algeria is our largest foreign supplier, providing about 13 percent of our national requirement.

Columbium is one of the lesser known metals which is still regarded as a strategic material because of its uses in steelmaking and aerospace applications. Brazil is the principal supplier to the United States, Nigeria and Zaire with small reserves are potential sources.

Titanium with its light weight and great strength is finding increasing demand in aircraft construction. New discoveries of titanium in South Africa make that country a potentially important supplier of this space-age metal.

Fluorspar, a strategic mineral used mainly in the production of steel, is another of the minerals with which South Africa is well endowed, with an estimated 35 percent of the world's known reserves. There is also some production in Kenya, though that nation is not a significant supplier to the United States.

Phosphate rock, despite its abundance from sources in Florida, is still classified as a strategic material, because of its importance as a fertilizer and animal feed supplement. The deposits in North Africa, Senegal, and South Africa serve the world market and to some extent, the U.S. market as well.

In a time when the United States continues to require great numbers and large amounts of strategic materials from foreign producers, it is important to plan ahead to insure a supply of the minerals we will need. Dr. Fred Collender, a British mining engineer and expert on natural resources, estimates that 70 percent of the strategic materials that this country requires are available in Africa, and mainly in southern Africa.

Along with the minerals that we now classify as strategic, there are others that will become increasingly important because of new discoveries and developments. Antimony will be in increasing demand for its value in flame-proofing fabrics. Lithium, a metal so light that it floats on water, will be needed for the manufacture of lightweight batteries, an essential component of any successful battery-driven automobile. Both minerals are found in South Africa and in other countries of the great southern plateau.

While the U.S. Government's list of key strategic materials does not include industrial diamonds or uranium, both have their significance. Industrial diamonds are so essential for high-performance drills and cutting tools that no substitute is entirely satisfactory. South Africa is a major producer of industrial as well as gem diamonds, and markets the output of its own mines as well as those of Zaire, Ghana, and Botswana.

The history of U.S. nuclear power is closely linked with uranium ore from Zaire. All of the uranium used to produce the first United States-made atomic bombs, including the two dropped on Japan, was mined in what was then the

Belgian Congo and smuggled to New York by cooperative Belgian mining officials.

The United States is now relatively self-sufficient in uranium and accounts for an estimated 40 percent of total world production. Both Zaire and South Africa have important uranium reserves whose size is not officially disclosed, and provide radioactive elements for the nuclear power generation programs of U.S. allies in Europe. South Africa may soon overtake Canada as the world's leading exporter of uranium.

Recently, the new Prime Minister of South Africa, P. W. Botha, complained to the London Daily Express of the "illogic" of such measures, given the West's admitted need for South Africa's strategic materials. He said that he would not hesitate to use his country's mineral resources as a strategic weapon, and would not rule out the possibility of entering into a minerals-marketing pact with the Soviet Union. The carrying out of such a threat would be very bad news for the United States and the Western alliance.

In published statistical analyses, the South Africans sometimes lump their own mineral resources with those of the Soviet Union, ostensibly to show the degree of control that the Soviet block would exert over world supplies of raw materials should a pro-Soviet regime gain political power in South Africa. The prime minister's threat gives a new dimension to such statistical analysis. According to the South Africans, the combined holdings of South Africa and the Soviet Union represent 84 percent of the world's known reserves of chrome, 94 percent of its manganese, 90 percent of its platinum group metals, 95 percent of its vanadium, 42 percent of its iron ore, 39 percent of its fluorspar, and a proportion of its uranium that is described only as "large."

Two South African writers, W. C. J. van Rensburg and D. A. Pretorius, have discussed some strategic factors facing the West in their book "South African Strategic Mineral: Pieces on a Continental Chessboard." They write:

> Control over South African resources would place the USSR in a completely dominant position with regard to the major precious metals and minerals, gold, gem diamonds, and the platinum group metals. Control over the Cape sea route and the ability to disrupt any oil supplies via the Suez Canal or pipe lines constructed in the Middle East, would enable the Soviet Union to disrupt vital supplies from Europe's and North America's most important sources of energy . . . The USA and Western Europe should realize the vital importance of South Africa's mineral resources and the Cape sea route to their future security. They should protect this interest by maintaining a meaningful dialogue with South Africa, and even by offering financial assistance to bring about adequate social, economic, and political reform in South Africa.

It is interesting to note that these are South African voices calling for positive help rather than punitive measures to help their country achieve internal reform.

In their emergence from a colonial past, several of the African nations have created Marxist and left-leaning regimes, ideologically closer to the Soviet Union than to the West. But ideology and rhetoric have not always been the final determinants of their actions. The west African nation of Guinea continued to sell bauxite to the United States even when its political orientation was more Eastern than Western. The United States has no formal relations with the leftist regime of postcolonial Angola, yet a number of American companies have continued to do business there. A U.S. expert on African economic affairs said:

> I don't know of any African head of state who isn't anxious to try to develop his country. Most Africans are basically African nationalists.

Perhaps our best course is to pursue a careful, pragmatic policy based on mutual self interest with the emerging countries. The United States can provide capital, technology, know-how, food, and markets. As long as these are proffered in a way that does not offend the sensitivities of the emerging nations, they may offer keys to productive and relatively stable future trade relations.

Perhaps it is time to remember that Rhodesia—or Zimbabwe—may well be considered one of the emerging black nations. Its recent national election, while boycotted by the more radical guerrilla movements, produced a voter turnout that was impressive even by Western standards and chose a government headed by a black prime minister. The Senate has recently acted to make known its views in favor of lifting restrictions on Rhodesia, an action long overdue.

The newly elected Conservative government in Britain has also signaled its intention to review British policy toward Rhodesia. It is possible that London may postpone any final decision until after a Commonwealth conference which both the new prime minister and her Queen plan to attend in Lusaka, Zambia in August.

The United States and British Governments have already begun consultations on the Rhodesian question. If the two Governments decide to end sanctions, these decisions will open the doors for a restoration of a trade that is important to all the Western World. Some Western-owned mining companies have continued to function under control of the Rhodesian Government, and presumably are prepared to step up their production of strategic metals when the major world markets open to them. The end of the sanctions, whether sooner or later, can also signal a new surge of exploration for the vital ores that lie beneath the hills in this great global treasure house.

TRIBUTE TO SOUTH CAROLINA STATE SENATOR FRANK L. RODDEY

Mr. THURMOND. Mr. President, South Carolina State Senator Frank L. Roddey, one of the outstanding legislators in my State died recently, ending a long career of public service. Senator Roddey was a tireless and devoted Senate leader who worked for the best interest of all South Carolinians, and his contributions to his State will long be remembered.

All of his life Senator Roddey was a dedicated, conscientious man with a keen sense of public duty. He was a prominent member of various civic organizations and, in 1956, was named "Young Man of the Year" by the South Carolina Jaycees.

Frank Roddey was an able businessman who built a fine insurance agency in his hometown of Lancaster, S.C. Despite the many duties required of him by his business, his strong desire to help his community led him to serve with distinction on the Lancaster City Council for 8 years.

Senator Roddey was elected to the South Carolina Senate in 1962. During his tenure he served the people of South Carolina honorably and always did his utmost for the State he loved so well.

In the Senate, Senator Roddey served as chairman of the senate labor, commerce and industry committee; chairman of the joint bond review committee; chairman of the election laws study committee; and chairman of the tourism and trade study committee.

I knew Frank Roddey to be a good friend and an able public servant who worked both diligently and well for the common good of the people. His service in the South Carolina State Senate during the last 17 years was marked by a devotion to good government and effective representation.

Known as "Son" by his friends, he had the respect of all who knew and worked with him. He was a tough fighter for the causes in which he believed, but even those who sometimes opposed his views could depend upon his fairness, honesty, and friendly manner.

Senator Roddey made many contributions throughout his life of public service, and because of him the State of South Carolina is a better place. His dedication and service were invaluable. People from all walks of life mourn his passing and the large crowd which gathered for his funeral attested to the esteem and regard in which he was held. Although we shall miss "Son" Roddey, we can be thankful for the years of association which we had with him.

My deepest sympathy is extended to his lovely wife Ophelia Melbrae and his three devoted daughters, Sunni R. Parker, Glendora R. Small, and Jan R. Westmoreland.

Mr. President, numerous articles and editorials concerning Senator Roddey's death have appeared in newspapers throughout South Carolina. In order to share these with my colleagues, I ask unanimous consent that they be printed in the RECORD.

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

[From the Rock Hill (S.C.) Evening Herald, Aug. 20, 1979]

SENATOR FRANK RODDEY, 52, DIES

(By Kathy Doherty)

LANCASTER.—Funeral services for state Sen. Frank "Son" Roddey, 52, D-Lancaster, who died Sunday in New Orleans, will be 3 p.m. Tuesday at the First Baptist Church in Lancaster.

Roddey died at the Ochsner Clinic in New Orleans of complications following surgery

to remove his spleen. He had been in bad health for a year.

After the Aug. 10 operation, Roddey began hemorrhaging and was placed in intensive care. His life hung in the balance for a week before he died Sunday at 3:20 a.m.

Last week, following an appeal in both houses of the Legislature, large groups from the House and Senate gave blood to replace that used by Roddey.

"He provided good leadership," Gov. Dick Riley said of Roddey. "He was independent-minded but a very effective leader."

Roddey, sixth in seniority in the South Carolina Senate, was chairman of the Senate Labor, Commerce and Industry Committee, and a member of the Banking and Insurance, Corrections and Penology, Finance, and Medical Affairs committees.

He was praised by his colleagues from York County as a legislator who could get things done.

"He was the man to talk to," said Rep. Herbert Kirsh, D-Clover. "He was a great man for York County."

Kirsh said Roddey helped to pass the recent bonds allocating $75,000 to Floyd D. Johnson Vocational Center in York, and $6.6 million for the Winthrop College field house.

"He has been a fine and able senator," said Rep. Robert McFadden, D-Rock Hill," "and as one of the senators from this area, he's been a real friend for York County."

Rep. Palmer Freeman, D-Fort Hill, said Roddey was "very effective and well respected" in the General Assembly, and Sen. Coleman Poag, D-Rock Hill, characterized him as a capable man who was very popular.

Roddey ran unsuccessfully for the Democratic nomination for the Fifth District Congressional seat in 1974. He was beaten in a runoff by Congressman Ken Holland.

Born February 3, 1927, in Lancaster, Roddey attended Davidson College in Davidson, N.C. and the University of South Carolina.

He was owner of Frank L. Roddey Insurance Co. in Lancaster.

Roddey served on the Lancaster City Council from 1952–1959; was president of the Lancaster Jaycees in 1956; and was voted "Young Man of the Year" in 1956.

He was a member of the board of directors of the Chamber of Commerce and the United Fund; chairman of the United Fund in 1961; a Mason in the Jackson Lodge No. 53; and a member of the Shriner Hejaz Temple.

Roddey is survived by his wife, the former Ophelia Melbrae Taylor, whom he married in 1947, and their three daughters, Sunni R. Parker, Glendora R. Small and Jan R. Westmoreland.

Also surviving are his parents, Mr. and Mrs. Elliot B. Roddey; two sisters, Mrs. Charles R. Love Jr. of Lancaster and Libb Roddey Woodruff of Rock Hill; and three grandchildren.

Burial will be in Lancaster Memorial Park.

Mahaffey Funeral Home is in charge.

[From the Sumter (S.C.) Daily Item Aug. 20, 1979]

SEN. FRANK RODDEY DIES

COLUMBIA, S.C.—Almost until the last days of his life, Frank Roddey was working.

The South Carolina Legislature was in recess, and Gov. Dick Riley was contemplating some vetoes of a bill for capital improvement bonds. The governor was vacationing on Hilton Head Island, and Roddey, chairman of the Joint Legislative Bond Committee, was at Garden City on the Grand Island.

Riley said Sunday he called the 52-year-old Lancaster County senator and "went through the whole bill line by line for 2½ hours. Then I called back the next day for another 30 minutes."

Riley told Roddey of the 15 vetoes he proposed for the legislation "and he agreed with virtually everything I did. It was a comfort to me to know that his leadership was involved in that measure."

It was just before Roddey was to leave for the Ochsner Clinic in New Orleans to have his spleen surgically removed. After the operation, Roddey began hemorrhaging and was placed in intensive care. His life hung in the balance for a week before he died Sunday at 3:20 a.m. EST.

But before the operation, the ailing senator got on the telephone "to House members from New Orleans and from the beach asking them to support my vetoes," the governor said.

"He provided good leadership," Riley added, speaking generally of Roddey's service in the Legislature. "He was independent minded but a very effective leader."

The Lancaster Democrat also served as chairman of the Senate Labor, Commerce and Industry Committee, the Election Laws Study Committee and the Joint Legislative Nursing Home Study Committee.

A senator since 1963, he ranked No. 6 in the Senate's all-important seniority system. He was best known for his work on election laws and bonds.

Sen. L. Marion Gressette, senior member and president pro tempore of the Senate, said, "It's going to be hard to replace him in the Senate.

"He was very capable and able in his processing of legislation. . . . He kept a very good relationship and the lines of communication open between labor, management and government," Gressette, D-Calhoun, said.

"It's hard to accept. We just have to do the best we can," he said.

House Speaker Rex Carter, D-Greenville, said, "South Carolina is going to sorely miss his services. He was always working out compromises, getting legislation through the process.

"He kept the same friendly approach to all people. Everyone who knew him loved him," Carter said.

He was born in Lancaster on Feb. 3, 1927 to Elliott and Beulah Mae Roddey. He returned there to go into the insurance business in 1948 after attending Davidson College and the University of South Carolina.

Always active in politics, Sen. Roddey ran for the Democratic nomination for Congress in 1974 when then-Rep. Tom Gettys decided to step down. He was defeated in that race by Kenneth L. Holland, who has held the seat since.

He was a Mason and a member of the board of directors of the Lancaster Chamber of Commerce and the United Fund.

Survivors are his widow, Ophelia Melbrae Taylor; his parents; three daughters, Sunni R. Parker, of Spartanburg; Glendora R. Small, of Lancaster and Jan R. Westmoreland, of Columbia; three grandchildren and two sisters, Mrs. Charles R. Love Jr. of Lancaster and Mrs. Libb Roddey Woodruff of Rock Hill.

Services will be 3 p.m. Tuesday at First Baptist Church in Lancaster. Burial will be in Lancaster Memorial Park.

[From the Lancaster (S.C.) News, Aug. 20, 1979]

SON RODDEY WAS A FIGHTER

Senator Frank L. Roddey was always a fighter, up until the early hours Sunday morning in New Orleans.

But "Son" Roddey had been a fighter since I had known him, and that goes back to when he was 6 years old. He was a fighter when he played football and basketball for the old Blue Hurricane teams at Lancaster High School. He put all of his 125 pounds into the games. He took some hard shots and sometimes it was probably difficult to get up after being tackled by a 200-pounder, but "Son" got up and ran again.

City Councilman Frank L. Roddey was a fighter for what he believed to be the best for the City of Lancaster. He didn't win every round, but he gave it all he had each time. He put up a game fight when he ran for the mayor's office, and he was a gentleman in defeat.

I remember just like it was yesterday, although it has been more than 17 years ago now. I was mailing a letter at the box located near the old J.F. Mackey Drug Co. on Main Street. It was less than an hour before the deadline for candidates to file for office in the 1962 Democratic primary.

"Son" walked up to the mail box. "I'm going to run for the Senate, Lester, I've made up my mind," he said puffing a cigarette. "What do you think my chances are?," he asked. W. Bruce Williams, the 16-year incumbent had long since filed to seek re-election. The late Mr. Williams was the most powerful figure in Lancaster County politics in 1962 and for many years previously.

"He'll beat the daylights out of you," was the only reply that I could think of at the time. If "Son" had thought about running before the deadline, he must have kept it to himself. At least, it came as a big surprise to me.

He puffed a pack of cigarettes during the next 55 minutes. I was in a second floor room of the County Office Building, which was used at that time for candidates to file, when "Son" came in. He looked around, spoke to everyone there, including Senator Williams, calling them by their first names. Immediately after paying his filing fee, he walked over to Senator Williams and remarked: "Bruce, I'm running against you and I'll run a clean race. Good luck." That was "Son" Roddey.

In 1962 there were a lot more stump meetings than now. I believe there were 14 that year. At any rate, they started slow but began to heat up as they progressed. "Son" was given little chance of winning during talk I could hear before and after the first half of these speakings.

But "Son" saw an opening. "Elect 'Son' Roddey as your senator and he'll bring new industry to Lancaster County. That's my promise," he said on the stump. At that time, Springs Mills was the only industry of any consequence here.

In his reply to this Roddey statement, Sen. Williams made the first of his two big blunders in the campaign. "Lancaster County is already over-industrialized, we don't need any more industry," he said. Williams told me at the next meeting that he didn't make the statement. I showed him my notes. Then he gave me one of the best compliments I have received since I've been reporting for The News. "If it's in there, I said it. You've never been for me but you've always treated me fairly in the paper," he said.

Bruce Williams was a master when it came to stump speaking. Somehow, he managed to come up with a nick-name for all his opponents.

But the Senator made the second blunder, the biggest, when he said on the stump that the only time he had ever seen his opponent was when he was dressed up like a clown in Lancaster parades. "And I think he made a good clown," Williams added.

At the next stump meeting, in the old Kershaw High School building, "Son" spoke first, and he jumped on the clown remark with the knockout punch. "Sure, I've been a clown," he said. "And I'll put a red ball on my nose, makeup on my face and get out the clown suit again if it takes that to help a little girl who has cancer." A 13-year-old girl from the Kershaw area had recently died of cancer and Lancaster Jaycees collected funds to defray hospital expenses. Some of the Jaycees dressed as clowns to draw attention while selling candy suckers. "Son" was among them.

Williams apologized for the clown statement as soon as it came his time to speak. But the damage had been done. He never recovered. And Roddey won the election, one of the biggest political upsets in Lancaster County history.

Senator Roddey has continued to be a fighter, from the time of his early filibuster against the grain elevator in Charleston to

just this year when he and Rep. Tom Mangum inserted $750,000 for the USC-L physical education facility in the bond bill, one of the few items that Gov. Richard Riley saw fit not to veto.

He did bring new industry to Lancaster County. In less than a year after he took office, Clark Control was under construction at the old Cunningham peach orchard site off Highway 9. Lehigh Structural Steel moved in later, followed by Southern Screen Engraving. "Son" had kept his promise.

"Son" faced his biggest battle in New Orleans and he had thousands of people in his corner to cheer him on and he deserved every one of them. His loss is their loss.

[From the Lancaster (S.C.) News, Aug. 20, 1979]

FRANK L. RODDEY, 1927–1979

(By Charles C. Moore)

Funeral services for State Senator Frank L. "Son" Roddey will be held at 3 p.m. Tuesday at Lancaster's First Baptist Church.

Burial will follow in Lancaster Memorial Park.

The family has asked friends to send contributions to the Frank L. Roddey Scholarship Fund for the University of South Carolina at Lancaster in lieu of flowers. The fund is being handled by the First Citizens Bank & Trust Co.

Roddey, who served as Senator for 17 consecutive years and was that body's sixth most senior member, died at 2:30 a.m., Sunday following surgery Aug. 10 for removal of an overactive spleen.

Roddey died at the 520-bed Ochsner Foundation Hospital in New Orleans, the facility where he had surgery. The hospital, according to New Orleans sources, is a highly respected private research and treatment institution that specializes in cardiopulmonary diseases.

An Ochsner spokesman said Roddey's family was with him when he died. Roddey apparently died of complications from his surgery, the spokesman said.

The hospital would not specify the actual cause of death.

Initially, doctors thought Roddey had a heart condition, but tests indicated the problem was his spleen. The spleen is an abdominal organ that acts as a filter for blood.

Roddey was placed in the Ochsner intensive care unit the day after his operation.

On Aug. 15, members of the South Carolina General Assembly donated several gallons of blood to help replace the nearly 100 pints used by doctors to treat Roddey.

While expressing sorrow at the senator's death, state leaders praised the legacy he left behind, especially his fondness for detail and his willingness to work hard on matters important to his state and county.

"I'm just sick to hear it," said Gov. Dick Riley, who served eight years in the Senate with Roddey. "He was a friend of mine and I will miss him a great deal."

Riley said Roddey had become "one of the leading senators" in recent years.

"He was a strong person, and when he took hold of a situation you could depend on his careful attention to it," Riley said.

"He stayed with his principles."

Sen. L. Marion Gressette, D-Calhoun, said the Senate would set up "a suitable memorial" for Roddey, who was known to his friends as "Son."

"Son did not mind going the extra mile in carrying his part of the work in the Senate," Gressette said. "I think he went beyond the call of duty and the state has lost a very dedicated public servant."

[From the Lancaster (S.C.) News, Aug. 20, 1979]

FRANK L. RODDEY: A LIFETIME OF SERVICE

The impact that Senator Frank L. Roddey had on Lancaster County and South Carolina will be felt more many years to come. No one was more loyal to his state. No one loved Lancaster and Lancaster County more than "Son" Roddey.

Where do you begin to tell the good that this man wrought on the community he served so well? It could go back a quarter of century and more when he worked as a pharmacist apprenctice at a downtown drug store and would leave his home at any hour to fill a medical prescription to relieve the pain and sickness of a fellow human being.

As president of the Lancaster Jaycees in the 1950's, "Son" Roddey formed, shaped and worked on numerous projects—all for the benefit of the community. He was also a prominent figure in the South Carolina and national Junior Chamber of Commerce. In 1956, the Jaycees honored him with their highest award, "Young Man of the Year."

Frank Roddey served with distinction on Lancaster City Council for eight years. He was defeated in his race for mayor, but he never displayed any bitterness. He faced the defeat with a familiar trademark, the "Son" Roddey smile.

Few people in Lancaster County, even his closest friends, gave him little chance of winning a seat in the South Carolina Senate in his first attempt in 1962. Mr. Roddey had to face one of the most powerful members of that body, one with top seniority and political clout. "I will be happy to serve my people in the Senate, no matter if it be on the back row in the outfield," he said once from the stump during that now famous campaign.

Senator Roddey's tenure in the South Carolina Senate was one of honorable service and distinction. He had promised in his first race that he would seek and bring new industry to Lancaster County. In less than a year after he took office, ground was broken off S.C. Highway 9 for an industry moving to Lancaster County from Ohio. Two more smaller, but sound, industries were to follow. And Sen. Roddey assisted in bringing three others to Lancaster County.

Senator Roddey was chairman of the Labor, Commerce and Industry Committee of the Senate and was a ranking member of that body's powerful Finance Committee.

He was not idle either while serving as chairman of the Joint Bond Review Committee. Just this past spring, he along with committee member Rep. Tom Mangum of Lancaster, wrote a $750,000 appropriation to be applied to the construction of the physical education complex at the University of South Carolina at Lancaster. This appropriation was among the few that Governor Riley did not veto.

Senator Roddey was a candidate for Congress in 1974, but was defeated in a second race by now Congressman Ken Holland. A close friend of the Senator was overheard to remark yesterday: "'Son' really didn't want to go to Congress. He wanted to stay where he was. There, he was closer to his family and his county."

The family that he held so dearly has requested that in lieu of flowers a memorial scholarship fund be started at the University of South Carolina at Lancaster (USC-L), another of Sen. Roddey's loves. The Frank L. Roddey Memorial Scholarship Fund is deserving to be perpetual, something that will help deserving young men and women for years and years to come.

Senator Roddey's successor will have the proverbial "big shoes to fill." "Son" served us so well for so many years that it is really hard to believe that he is gone.

[From the Columbia (S.C.) The State, Aug. 20, 1979]

LEADERS MOURN RODDEY'S DEATH

(By the Associated Press)

The death of state Sen. Frank L. Roddey, D-Lancaster, Sunday was mourned by leaders of the South Carolina Legislature as the loss of a capable, hardworking legislator.

"All of us will miss him in the Senate," said Sen. L. Marion Gressette, president pro tem of the upper chamber. "We were very fond of him. He was a capable debator. We were able to gain more information where he controlled (legislation) than where we had other persons handling it.

"I deeply sympathize with his family in their great loss," he added. It's hard to accept. We just have to do the best we can."

Gov. Dick Riley, who served in the Senate with Roddey, said, "I will cherish the personal relationship I had with him as a fellow senator, and certainly as governor.

"I know I speak for many people who share my sorrow when I say we will miss him a great deal," Riley said. "Through hard work, strong leadership and devotion to high personal principles, Sen. Roddey had become one of our state's genuine leaders," he said.

Roddey, 52, died early Sunday at the Ochsner Clinic in New Orleans, where he underwent surgery Aug. 10 to have his spleen removed.

Clinic spokeswomen said he suffered complications after surgery and had remained in the clinic's intensive care unit for more than a week before his death.

"South Carolina is going to sorely miss his services," House Speaker Rex Carter, D-Greenville, said.

Carter said, "I think we all knew him as one of the friendliest people in both houses, and he carried that with him into discussions of legislation."

Both Gressette and Carter characterized Roddey as a hard worker, especially in his committee work.

"He was always working out compromises, getting legislation through the process. He kept that same friendly approach to all people. Everyone who knew him loved him," Carter said.

Gressette cited Roddey's chairmanship of the Senate Committee on Labor, Commerce and Industry as perhaps the senator's greatest contribution to South Carolina and its economy.

Regrets at Roddey's passing were shared by Jerry Beasley, executive vice president of the South Carolina Textile Manufacturers Association, who said, "The people of South Carolina and the industry in this state have lost a great leader.

"The man was respected both personally and professionally as a person of highest integrity, a man you always knew where he stood and one who applied common sense to every decision," Beasley said.

Roddey was a leader in legislation that contributed to the growth of South Carolina, and state textile leaders will miss him personally and professionally, Beasley said.

Gressette said Roddey "was an exceptionally good senator in that he was not afraid of work. . . . He kept a very good relationship and the lines of communication open between labor, management and government."

Rather than being known for work on one or two pieces of legislation, Carter said, Roddey "took an interest in all legislation. He was well read; he did his homework and research."

[From the Lancaster News (S.C.) Aug. 22, 1979]

HUNDREDS PAY LAST RESPECTS TO SENATOR FRANK L. RODDEY

(By Charles C. Moore)

People from all over South Carolina converged on Lacaster's First Baptist Church Tuesday afternoon to pay homage to Senator Frank L. "Son" Roddey.

Roddey, 62, died early Sunday morning in a New Orleans hospital from complica-

tions following surgery to remove his spleen Aug. 10.

At 1:30 p.m. there was a sprinkling of people in the church. By 2 p.m. it was half-filled. When the funeral began at 3 p.m. the church was packed, overflowing the 700 seat sanctuary, the 144 seat balcony and spilling into the vestibule and churchyard.

Law enforcement estimates of the crowd ran as high as 2,000.

At least 90 members of the State General Assembly—serving as honorary pallbearers—as well as a host of judges and former legislators attended the service.

Gov. Dick Riley and Lt. Gov. Nancy Stevenson were there, as well as former governors Robert McNair and James Edwards.

U.S. Senator Strom Thurmond and U.S. Congressman Ken Holland also attended.

Virtually every community of Lancaster County was represented, including political leaders, doctors, lawyers, factory workers, ministers, elementary and high school teachers and college professors.

"Today we can feel the heartbeat of the community," Rev. Robert Cuttino, one of three officiating ministers, said. "Today we came to pay homage."

Cuttino, First Baptist minister and Roddey's family pastor, characterized Roddey as a man "who lived in the 'crossroads of life'" and lauded the late Senator as a man who tried to make life better for everyone.

Cuttino said Roddey tried to make time for everyone and said it was not unusual for the late Senator to "stand in front of the post office and talk to you for 45 minutes."

Referring to Roddey as a man "who had not reached the peak of his life," Cuttino said, "There was a common thought among us, that it was just not time for Frank Roddey to die."

"There is a special place in Heaven for those who want to get involved," Cuttino said.

Rev. Darrell Galintz, pastor of By the Sea Lutheran Church in Garden City, called Roddey a man who worked hard "and was not afraid."

"He knew how to love," Galintz said. "He loved his work. He loved the people associated with him. He loved his church and even more he loved his Lord."

Roddey often attended By The Sea while at his second home at Garden City.

State Senate Chaplain Dr. George Meetze said Roddey "had fought the good fight, finished the race, and kept the faith."

"But that was no surprise to us in the Senate," Meetze said. "We all knew 'Son' Roddey was a fighter."

Several hundred people followed the hearse and steel gray casket the five miles to Lancaster Memorial Park and weathered the 96 degree heat in order to attend Roddey's burial.

Most statewide meetings were canceled Monday and Lancaster County offices closed at noon to allow friends to attend the services.

[From the Columbia (S.C.) State, Aug. 22, 1979]

POLITICIANS PAY HOMAGE TO RODDEY AT SERVICES

(By Merle Kellerhals)

LANCASTER.—Scores of politicians gathered in Lancaster Tuesday to pay homage to Sen. Frank L. "Son" Roddey, a 16-year Senate veteran who died Sunday.

More than 100 of the state's most prominent politicians served as honorary pallbearers for Roddey, who died at the age of 52 in New Orleans from complications following Aug. 10 surgery to remove his spleen.

The funeral, held in the spacious red-brick First Baptist Church of Lancaster was overflowing with friends and colleagues, some of whom were forced to stand outside in the sunny, 90 degree heat.

The Rev. Robert E. Cuttino, Roddey's family pastor, said the Lancaster lawmaker's death was "premature," calling Roddey "a man who had not reached the peak of his life."

"Frank 'Son' Roddey did more than live beside the road," Cuttino said. "He lived in the crossroads of life."

The flower-draped steel gray casket was carried into and out of the church by friends and associates. Burial was in Lancaster Memorial Park.

Cuttino said there is a "special place in heaven for those who want to get involved."

"The community and the state have paused to pay empathetic sorrow and grief for the passing of Son Roddey," Cuttino said.

Cuttino said there was a "common thought among us, that it was just not time for Frank Roddey to die."

The Rev. George Meetze of Columbia chaplain of the Senate where Roddey served as chairman of the Labor, Commerce, and Industry Committee, said Roddey's doctors at the Ochsner Foundation Hospital in New Orleans said they had never seen a patient fight so hard to live.

"That was no surprise to us," Meetze said. "We knew Son Roddey was a fighter."

"Our ranks will be fewer with his passing."

Roddey is survived by his wife, the former Ophelia Melbrae Taylor; and three children, Sunni R. Parker, Glendora R. Small, and Jan R. Westmoreland.

Flags were flown at halfmast at the State House in Columbia, and Roddey's desk in the Senate chamber was covered in black and draped with flowers. Most statewide meetings were cancelled so officials could attend the Roddey funeral.

On Aug. 15, members of the General Assembly flocked to donate gallons of blood for Roddey, who remained in the intensive care unit at the hospital until he died.

[From the Columbia (S.C.) State, Aug. 22, 1979]

A SUNNY SENATOR

Most politicians make a lot of friends and a lot of enemies. Sen. Frank L. Roddey of Lancaster made a lot more friends than enemies.

None of his closer buddies in the State House and the press corps called him Frank or Senator Roddey in personal conversations. They called him by his nickname "Son." It fit. Son was a casual fellow, sort of a hail-fella-well-met, with a happy disposition and a fine sense of humor. An easy guy to know and to like, just like his legislative running mate, Rep. William Green DesChamps of Lee County.

But Son Roddey was anything but a legislative lightweight. As he gained seniority—eventually rising to sixth—he headed important committees, working diligently on issues in a number of fields. He was respected as capable and honest even by those who opposed his positions.

Within the past year, Senator Roddey's friends have been talking of him in concerned tones. He didn't look well. He was in an out of hospitals during the 1979 session, and doctors seemed to have trouble spotting the problem.

Finally he checked into a New Orleans hospital and his spleen was removed. But complications set in and he needed gallons of blood. His colleagues in the General Assembly anxiously gave it and saw that it was rushed to New Orleans.

But Son Roddey, only 52, didn't make it. The high praise of his legislative service from Gov. Dick Riley, Senate President Pro Tempore L. Marion Gressette and others was not just verbal flowers. They meant it. South Carolina will miss a dedicated public servant who was happily free of pretensions.

THE SALT II TREATY—SURVIVAL OR SURRENDER

Mr. HATCH. Mr. President, a bright young college student has graced my office this summer. This student has done a rather complex analysis on his own of the SALT II Treaty.

I find his analysis definitive and thought provoking. It is an example of the depth of thinking of which our young people are capable and suggests to me that this Nation may yet find the strength it needs in that generation which is now coming upon the scene. I commend his analysis to your attention.

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

THE SALT II TREATY—SURVIVAL OR SURRENDER

(By Mark Cannon)

The SALT II Treaty has recently been the subject of much controversy. In examination of the treaty we must ask ourselves, "would ratification of the treaty in its present form be in our national best interest?" Or more specifically, under the provisions of SALT II, would the U.S. and U.S.S.R. each, cut nuclear arms production and expenditures, decrease the threatening arms already in existence, and reduce the chance of war. This should be the purpose of SALT. In this paper I will examine the important issues involved in our negotiations with the Soviets and explain some of the problems in the SALT II Treaty.

THE AGREEMENT IN BRIEF

The lengthy treaty contains much technical material, but the basic agreement can be laid out as follows:

Weapon type	Current strategic arsenal		Total arms allowed to United States and U.S.S.R. by 1981
	United States	U.S.S.R.	
All strategic nuclear delivery systems	2,060	2,500	2,250
All types of MIRV's	1,046	795	1,320
MIRVed SLBM's and ICBM's	1,046	725	1,200
MIRVed ICBM's	550	600	820
Modern heavy MIRVed	0	380	(1)

[1] Frozen at existing levels.

Acronyms: MIRV (Multiple Independently-Targeted Re-Entry Vehicles), SLBM (Submarine-Launched Ballistic Missile), ICBM (Inter-Continental Ballistic Missile).

DOES THE TREATY CONTAIN MEANINGFUL ARMS REDUCTIONS?

Through examination of the figures it is apparent that the only cutbacks would be in 250 Russian strategic nuclear delivery systems. The Carter Administration explained in the SALT II Reference Guide, that the Soviets would have to divest themselves of 250 "nuclear delivery systems". This is not quite correct. It will force the Soviets to give up 250 nuclear delivery vehicle launchers. In this case there is an important fundamental difference. A launcher is a device from which a strategic delivery vehicle is fired. Thus an ICBM launcher is a missile silo, not the missile fired from a silo. Therefore the Soviets must get rid of 320 silos—or bombers or submarine ballistic missile tubes—but not the missiles fired from those launchers. Many of the launchers to be disposed of are obsolete and would have to have been disposed of anyway. The older systems are unnecessary because the newer ICBMs can be launched from reload silos. By reloading these silos the Soviets could fire just as many missiles as they could without silo reduction. A quick glance at the figures shows that this is the only major cut-back and it is not particularly advantageous to the U.S.

WILL ARMS PRODUCTION GREATLY INCREASE WITHOUT SALT?

Many proponents of the SALT argue that if the treaty is not ratified the Soviet's weapon production will increase radically. I believe there is adequate evidence to refute this argument, because the U.S.S.R. is already at, or very near their maximum level of armament development deployment. Here in the U.S. we spend five percent of our Gross National Product on defense. That comes to 23 percent of our federal budget. The Russians, on the other hand, spend 15 percent of their Gross National Product on defense. That comes to 50 billion dollars more per year than is spent in the United States. Through their overbearing emphasis on weapons production, the Russians have neglected some of the needs of their economic system. If they were to try to step up arms production, they would risk doing intolerable damage to their already weak economy.

CIA estimates confirm that no element of the SALT II Treaty will slow down the Russian effort. The Soviets have been driving for a war-winning supremacy over the U.S. for years. In light of this information we can see that SALT II is not effective in either cutting production or decreasing existing, threatening arms of the U.S.S.R.

IS THE SALT II TREATY EQUITABLE?

Our goals as a nation are to allow the people of the world to have the freedom to choose the type of government that is best for them. We should be aware that the Soviet goals are not the same. They are expansionists whose main efforts are directed towards spreading the Communist sphere of influence as far as possible. In order to do this, they need a protective umbrella of nuclear forces. They see SALT as a means of promoting their goals of military superiority by diminishing U.S. military programs. When we look at the Carter Administration and see the cancelation of the B-1 Bomber and Neutron Bomb, and the delayed development of our cruise missiles, we can see that the Soviet plan is working. By neglecting our defenses in this way we have given up many of our bargaining chips, which limited our bargaining power at the negotiating table. This has resulted in an inequitable treaty in which the Russians have been granted special advantages, for which no similar advantages have been granted the U.S. For example, the Soviets may have 308 heavy missiles whereas the U.S. is allowed none. These heavy missiles have six times the explosive power of our Minuteman III, which is our most advanced ICBM. These heavy missiles are capable of obliterating our land-based ICBMs. Our land-based ICBMs are crucial because they have the most accurate and have the greatest potency. In a war we would count on these to destroy the enemy's land-based attack systems. Under the threat of the Russian's heavy missiles we would not be able to assure the survivability of our land-based ICBM's which leaves our national defense system terribly vulnerable.

Furthermore, the Soviets have the Backfire Bomber, a long-range bomber which is capable of refueling in the air. The U.S.S.R. will be allowed to maintain their present supply of Backfire Bombers and continue to produce them with no ceiling. They now have 100 Backfires and will be allowed to continue to produce them at a rate of 30 per year. On the other hand, the U.S. long-range bombers (the FB-111) are all required to be included in the U.S. strategic delivery system ceiling. This will give them a total of at least 350 to 400 more long-range bombers than we have and the CIA estimates that they could have up to 700 more for which we are given no further compensation. The administration's justification for this is that if the Backfire bomber were included in the treaty we would have to include our European-based FB-111s. It should be noted, however, that we have only 80 while the Soviets could have up to 700 Backfires. In addition to the Backfire the U.S.S.R. will be allowed 800 to 1,000 strategic missiles of intermediate range which will not be included in SALT II. These intermediate missiles would be especially threatening to our European allies. Another important fact is that the Backfires would have to penetrate our weak air defense system while our FB-111s would have to penetrate the stronger Soviet system. The consequences of the asymmetries in the treaty are of great importance and must be reconciled if we are going to have a productive agreement with the U.S.S.R.

CAN SOVIET COMPLIANCE WITH THE AGREEMENT BE VERIFIED?

Another important issue is verification. Will we be able to detect Soviet cheating. The loss of our monitoring stations in Iran has undoubtedly limited our ability to check up on Soviet activities. We can no longer monitor the crucial first stage of missile test flights. The Russians have the ability to encrypt or encode the telemetry (send out false data) from missiles during tests, thereby denying us the knowledge of cruise missile range. Also, there is no way for us to tell from pictures what is going on inside buildings or how many warheads a Soviet missile contains. Verification used to mean the ability to detect Soviet cheating. Unfortunately the term "verifiable" has since been changed to "adequately verifiable". This means that if the Soviets cheat so much that it poses a "military risk", we will be able to detect it in time to respond to offset the threat. Soviet cheating will, however, be undetectable to a large extent. What constitutes a military threat is somewhat vague and it is rather frightening to think that we have so little information about Soviet compliance.

If the United States is to expect full cooperation on the part of the Soviets, we will simply have to trust them, and the Soviets so far have not been worthy of much trust. Former Secretary of Defense Melvin Laird has characterized the Soviets as flagrant violators of SALT I. He revealed what he felt was a deliberate pattern of violations and misleading information by the Soviets in an article in Readers Digest. The U.S.S.R. conducted more than fifty test flights of an air defense interceptor and associated radars in an anti-ballistic mode in violation of the Anti-Ballistic Missile Treaty of 1972. Negotiations on this subject proceeded for more than a year before the Soviets ceased their test program. It is probable that they finished their test program rather than that they felt a duty to cooperate with the U.S.

WOULD AMENDING THE TREATY HAVE A CATASTROPHIC AFFECT ON THE SOVIET-AMERICAN RELATIONS?

Carter and Brezhnev have both warned the Senate that any changes in the SALT Treaty would have a disastrous effect on Soviet-American relations.

In 1971, a treaty was signed between the Soviet Union and the Federal Republic of Germany. It was negotiated by the Social Democrat Free Liberal Coalition, which is still in power. Willy Brandt, the Chancellor, and Egou Bahr, the negotiator of the treaty, both threatened disaster if the German Parliament amended the treaty. The German Parliament went ahead and amended the treaty and Moscow readily accepted it, despite the Kremlin's previous warnings.

We do not want to upset Soviet-American relations, but the Russians' overwhelming desire to have a treaty and this example would tend to indicate that we can make a more equitable treaty without causing contention.

CONCLUSION

In summation, I would like to say that it was said of SALT I that it is not perfect but it is a start and perhaps SALT II will compensate. SALT I turned out to be an undisputable disaster, allowing Soviets a military buildup. Now it is said that SALT II is not perfect, but we believe that SALT III will make up for it. We cannot accept this belief, and we cannot allow ourselves to make the same mistakes we made last time. SALT II is not significantly limiting production of nuclear arms or disposing of the threatening arms already in existence. There are many fallacies in our monitoring systems. The Soviets have been granted special privileges, and we have no assurance that Carter will make up for these failures by developing and improving Minute Man III, the B-1, the Neutron Bomb, or our Cruise Missiles. For these reasons, I believe SALT II will seriously undermine the security of the U.S. and other Western European democracies by providing the U.S.S.R. with unilateral advantages. I feel, therefore, that it is my duty to oppose ratification of the SALT II Treaty unless it can be satisfactorily amended.

LOU BROCK: BASEBALL HERO

Mr. EAGLETON. Mr. President, for 15 years, it has been axiomatic in St. Louis baseball circles that as goes Lou Brock, so go the St. Louis Cardinals. When Brock is hot, so are the Cardinals, and when Brock goes cold, the team suffers.

Thus, when the Cardinals suffered through the worst season in their history in 1978, it was a sad reflection of what appeared to be the end of Lou Brock's career. The once-mighty left-fielder's batting average dropped to .221 in 1978 and many people were counting him out at the age of 39.

But in the words of Bing Devine, the former Cardinal general manager who brought Brock to St. Louis in 1964, "A superstar is never through until he hangs up his uniform. The truth of the matter is that somewhere they have a hidden source of ability that even they can't really explain." Those words describe no man better than Lou Brock.

Thus, it came as no surprise to learn that Lou Brock was coming back for 1 more year. Even at the age of 40, Brock simply had too much pride and too much talent to let his career fizzle to an end.

"I refused to let anybody deny me my final moment of glory," is the way Brock recently put it. "This is the fight within me. Last year, there came a time when everything I had done could have been tarnished. I refused to be denied."

So Brock came back for 1 more year and, fittingly, it has been one of the finest years of his stellar career. Throughout most of the 1979 season, Brock has maintained an average above the .300 mark, and has consistently ranked in the top 10 batters in the National League. He has led the Cardinals' dramatic surge back into pennant contention and, on a team resplendent with awesome hitters, he delivered the season's most awesome hit.

Prior to this season, only 13 men in the entire history of major league baseball had recorded 3,000 career hits. On August 13, 1979, Lou Brock joined that select society, ironically rapping his historic safety against the Chicago Cubs, the team that had traded him to St. Louis in 1964. It was Brock's second hit of the evening, in a thrilling game eventually

won by the Cardinals by a score of 3 to 2. The game was interrupted for 16 minutes of noisy celebration, as Brock accepted the congratulations of friends, teammates, club officials, and the Cardinals' only other 3,000 hit player, Hall of Famer Stan Musial.

On September 9, Mr. President, St. Louis and baseball will honor Lou Brock on "Lou Brock Day" at Busch Memorial Stadium. It will be a day of well-deserved tribute for a man who, in addition to earning membership in the 3,000 hit club, has captured almost every major league base-stealing record, including most career stolen bases and most stolen bases in a single season; who ranks second in career World Series batting average and fifth in career World Series slugging average; who has maintained a career batting average of more than .290; who has sparked his team to three National League pennants and two World Championships; and who is a sure bet for admission to Baseball's Hall of Fame.

In honor of Lou Brock's outstanding achievements on and off the baseball diamond, I, on behalf of myself and Senator DANFORTH, have introduced Senate Resolution 227. I request that the clerk read the resolution, and the resolution be brought up for immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 227) to commend Lou Brock for his outstanding contributions to major league baseball.

Mr. EAGLETON. Mr. President, I should note this matter has been cleared on both sides of the aisle.

Mr. THURMOND. Mr. President, that is correct. It has been cleared on our side.

The resolution was agreed to.

The preamble was agreed to.

The resolution (S. Res. 227) together with its preamble is as follows:

Whereas September 9, 1979 has been designated as "Lou Brock Day" in Saint Louis, Missouri;

Whereas Lou Brock got his 3000th major league hit on August 13, 1979, thus becoming only the fourteenth player to reach that milestone;

Whereas Lou Brock holds almost every major league record for stolen bases, including most stolen bases in one season and most career stolen bases;

Whereas Lou Brock has made numerous and significant contributions to the nation outside of his endeavors on the baseball field, especially to the nation's youth; and

Whereas Lou Brock will retire from baseball at the end of the 1979 season, at the age of 40, after 19 years in the major leagues, 15 of which were spent with the Saint Louis Cardinals: Now, therefore, be it

Resolved, That the Senate wishes to honor and pay tribute to Louis Clark Brock for his outstanding achievements in a long and distinguished career in major league baseball, and for his civic and social contributions to the nation.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Lou Brock.

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

The ACTING PRESIDENT pro tempore. Is there further morning business?

Mr. SCHMITT. 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. CHILES. 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.

CONCLUSION ON MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

TREASURY-POSTAL SERVICE APPROPRIATIONS, 1980

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of H.R. 4393, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4393) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1980, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations with amendments.

Mr. CHILES. Mr. President, I am pleased to bring to the Senate today for consideration the appropriations bill for Treasury, Postal Service, and General Government. The amount of the bill before the Senate today totals $8,846,104,-100. In round terms, the bill is $508 million below the appropriations provided in fiscal year 1979; it is $174 million under the requests from the various agencies included in the jurisdiction of this appropriations bill; and it is $454 million below the allocation from the first concurrent resolution. While we are now under the first concurrent resolution ceiling, it should be pointed out that approximately $440 million, or 97 percent, of the current underage will be needed to fund the October pay raises.

The Senate was able to consider a number of funding proposals that arrived too late for consideration in the House. Several of these proposals and a few items of significant priority were added to the bill as recommended by the House. These several additions to the House bill result in the Senate bill being $56.4 million over the amount recommended by the House.

Mr. President, we have a fine and well balanced bill that reflects the priorities established by the authorizing committees and by the members of the Appropriations Committee. This bill represents the product of 11 days of hearings and a fully attended subcommittee markup session. This bill was carefully considered by well attended full committee markup sessions which were convened on 3 different days over a period of 2 weeks. In order to have a fully complete legislative history on the full committee process, I ask unanimous consent to have printed in the RECORD at this point a listing and description of the 10 rollcall votes that were taken during full committee consideration of the bill.

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

ROLLCALL VOTES IN COMMITTEE

By a vote of 10 yeas to 9 nays the committee agreed to a motion to strike Section 202 intended to prohibit the Postal Service from procuring its own electronic message system and from owning or operating its own electronic message system.

By a vote of 11 yeas to 4 nays the Committee agreed to a compromise motion intended to prohibit the Postal Service from procuring its own electronic message system and from owning or operating its own electronic message system.

By a vote of 4 yeas to 2 nays the Committee agreed to an amendment to increase the appropriation for the U.S. Postal Service by $4,000,000 in fiscal year 1980 for political committtee mailings.

By a vote of 10 yeas to 11 nays the Committee rejected a motion intended to prevent the initiation of a pilot program at IRS to use tax refunds to offset amounts owed the Government.

By a vote of 9 yeas to 13 nays the Committee rejected an amendment to strike Section 103 (Ashbrook) and Section 615 (Dornan) to be replaced with report language.

By a vote of 10 yeas to 12 nays the Committee rejected an amendment to strike Section 103 (Ashbrook) and Section 615 (Dornan), the sections dealing with IRS rulings on the question of tax exemption for private schools.

By a vote of 6 yeas to 15 nays the Committee rejected an amendment to strike Section 103 (Ashbrook) and to amend Section 615 (Dornan) by adding the following phrase to the amendment: "Without the prior approval of the appropriate congressional committees as designated by the Speaker of the House and the President of the Senate."

By a vote of 12 yeas to 11 nays the Committee accepted an amendment to strike Section 103 (Ashbrook).

By a vote of 11 yeas to 12 nays the Committee rejected an amendment to strike Section 615 (Dornan).

By a vote of 7 yeas to 18 nays the Committee rejected an amendment to strike Section 614 intended to prohibit IRS from disallowing tax exemptions for general purpose contributions made to religious organizations for educational purposes.

Mr. CHILES. Mr. President, the report to accompany this bill has been available since August 2, or for more than than a month, and is now before each Member at his desk. Pages 66 through 71 summarize the recommendations included in the bill. While I will not go over each and every item at this time, I would like to highlight a number of significant items in the bill.

Last week the Treasury Department released a study of the subterranean economy. The study shows that unreported and underreported income is now estimated to approach $135 billion annually, which results in a $19 to $25 billion loss of revenue to the Treasury each year.

I am competing here, Mr. President. I will be delighted to yield.

Mr. FORD. Mr. President, I apologize to the distinguished Senator. I was just

trying to work out his legislation without any problems.

Mr. CHILES. My colleague learned to whisper in a sawmill.

Mr. FORD. That is all right; I did not have to walk to get there.

Mr. CHILES. In the process of the subcommittee hearings on the Internal Revenue Service budget, proposal, I discussed the declining trends of voluntary compliance with the U.S. tax laws with the Commissioner. In spite of these declining trends, IRS had proposed to reduce audit coverage from 2.24 percent in fiscal year 1979 to 2.11 percent in fiscal year 1980. In order to permit the Internal Revenue Service to maintain its audit coverage at 2.24 percent and in order to help reduce the declining trends of voluntary compliance with the U.S. tax laws, the committee has added $29 million and 1,500 positions to the Internal Revenue Service budget. This action will also generate an additional $145 million in tax revenue in fiscal year 1980 and subsequent years. The importance of this initiative is reinforced by the subterranean economy study released last week by the Department.

Mr. President, I am sure all the Members have received mail and heard expressions of concern regarding the Adminisration's proposal to reduce the U.S. Customs Service budget by eliminating in excess of 300 inspector positions. These positions are used at our many ports of entry around the country to expedite the processing of incoming passengers and cargo. In view of the 6-percent growth each year in both passengers and cargo tonnage that enters the United States, the committee did not agree with the administration's proposal to reduce the number of inspectors at our ports of entry. We have, therefore, added full funding for 200 inspector positions to the U.S. Customs Service budget over the number proposed by the agency.

Over the years the number of customs employees who earn excessive amounts of overtime pay has grown to the point where now over 275 customs employees are earning in excess of $20,000 a year in overtime pay each year. The subcommittee discussed this situation with the Commissioner of the U.S. Customs Service, Mr. Chasen, and are pleased that he is moving to initiate needed reforms in this area. In order to assist in this regard, the committee has recommended a $20,000 pay cap on the amount of overtime pay any one employee may earn in a given year. Our proposal is also to reduce this pay cap to $15,000 in the appropriations bill next year. To reduce the pay cap any more in 1980 would result in many of our ports of entry not being staffed in the last months of the year due to the fact that Customs has become dependent on overtime work in order to move cargo and process passengers.

Mr. President, as the Members know, the legislation to implement the Multilateral Trade Negotiations passed the Senate on July 26, 1979. This legislation imposed limitations on the amount of time that the Treasury Department may use to consider countervailing duty and antidumping cases. Where the Department of the Treasury has had the responsibility to implement these countervailing duty and antidumping programs for a number of years, their effectiveness has been limited and the backlog of cases now approaches 3½ years. In order to permit the Department to develop a more credible program in this area and to meet the time restrictions included in the implementing legislation for the Multilateral Trade Negotiations, the committee has provided an additional $1.3 million and 130 positions. The Department has also proposed to unify these programs under a new Assistant Commissioner.

Mr. President, after a great deal of debate the committee decided to adopt two spending limitations to be imposed on the Internal Revenue Service that have also been recommended by the House. The first of these is included in section 614 of the bill and has the purpose of prohibiting the Internal Revenue Service from issuing rulings that would deny taxpayers deductions for general purpose contributions to religious organizations which are used for educational purposes. The committee also agreed to adopt a provision included in section 615 of the bill which would prohibit the Internal Revenue Service from carrying out their proposed revenue procedures relating to the tax exempt status of private schools. These revenue procedures were intended to provide guidance to taxpayers and Internal Revenue Service agents in making determinations on the question of whether or not a particular private school is racially nondiscriminatory and therefore eligible for tax exempt status. I and a majority of the members of the committee felt these revenue procedures should not be issued until approved by the appropriate authorizing committees, therefore, this section will give the authorizing committee time to complete their review before IRS issues them.

The committee has recommended $2.3 million for the Volunteer Income Tax Assistance Program, which is $500,000 more than requested. It is the committee's intention that these additional funds will be used entirely to assist the elderly in their preparation of tax returns and other matters of this nature.

The committee has recommended $1,379,000 and 51 positions for the cigarette anti-bootlegging program. This program is intended to curtail and eliminate the contraband cigarette racketeering which results in a loss of State tax revenues estimated to be approximately $390 million a year.

Mr. President, with regard to the Postal Service, the committee recommends a spending prohibition intended to prevent the Postal Service from entering directly into the electronic communications market. The committee's view is that as the private sector is already in this market, has the capability to serve it, and can provide adequate services, there is little demonstrated need for the Postal Service to directly compete with the private sector. The committee has also added $4,000,000 for fiscal year 1980 to permit the Postal Service to begin subsidizing the mailings of qualified political committees. This will permit National, State, or congressional committees of major and minor parties to enjoy the same subsidized mailing rates as do the various nonprofit public interest and lobbying groups that are also an important part of the political process in this country.

There are several items included in the bill as recommended to the Senate which should substantially assist our efforts to curtail fraud and abuse in the Federal Government. In this regard, the committee has recommended $18,874,000, or $6,561,000 more than requested by the administration, for the Office of Inspector General at the General Services Administration. All the Members I am sure are well aware of the series of scandals that have been occurring at GSA and have been unfolding in press stories over the last 18 months.

This funding will help establish, pursuant to authorizing legislation, an independent office within the General Services Administration with responsibility for investigating and prosecuting fraudulent activities by Government employees within the agency. Also recommended in the bill is $665,000 of additional funding for the Federal Law Enforcement Training Center. These additional funds are required to expand the white collar crime course at the center in order to train the investigators being hired by the Inspector General at GSA and investigators being hired by the other Inspector General offices being established in the various Federal agencies.

Mr. President, as the Members will recall, the Civil Service Reform Act that the Congress passed last year established the Merit Systems Protection Board and the Federal Labor Relations Authority. In order to permit the Merit Systems Protection Board to successfully accomplish all the responsibilities assigned to it, the bill before the Members provides $1,575,000 more than recommended by the House for the programs of the Merit Systems Protection Board. This will provide a funding level of $12,075,000 for the Board in 1980, which is the full amount requested by the Board and the amount recommended to us by the General Accounting Office. Upon completion of my statement, I intend to offer an amendment to add an additional $1,542,000 and 63 positions to the amount recommended by the Committee for the Federal Labor Relations Authority. This additional funding was requested after the full committee completed its actions and has been recommended by the administration and the General Accounting Office. This is the additional amount needed for the authority to carry out its expanded functions under the Civil Service Reform Act of 1978.

Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and that the bill as thus amended be regarded for the purpose of amendment as original text, providing that no point of order shall be raised by reason of agreement to this request.

The PRESIDING OFFICER. (Mr. PRYOR). Is there objection?

Mr. SCHMITT. Mr. President, reserv-

ing the right to object, and I will not object, if the chairman will yield for a moment I would like to suggest the absence of a quorum to work out a minor problem.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SCHMITT. 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. CHILES. Mr. President, I withdraw the unanimous-consent request I had proposed.

Mr. President, at this time I would like to thank the distinguished Senator from New Mexico, Senator SCHMITT, and his committee staff, Mr. Burkett Van Kirk, for their very able advice and assistance to me in the process of developing this bill. Senator SCHMITT's contribution was indeed large and we are grateful to him. If he would care to make any comments at this time, I am prepared to yield to him.

Mr. President, I yield to the Senator from New Mexico.

Mr. SCHMITT. Mr. President, as the ranking minority member of the subcommittee which considered H.R. 4393, the appropriations bill for fiscal year 1980 for the Department of Treasury, Postal Service, and General Government, I want to associate myself first of all with the remarks of the distinguished chairman of the subcommittee, the Senator from Florida. I also want to cite the chairman's leadership and perseverance in reporting this somewhat controversial bill to the Senate. Those of my colleagues who did not participate in the subcommittee, and more particularly in the full committee markup, may not be aware of the time bombs that exist in a bill of this kind. So far we have wound our way through that particular mine field.

The subcommittee held extensive hearings with officers and officials of the executive branch to provide a thorough review of the administration's budget request. Our recommendation of $8,816,305,100 should provide adequate resources for the agencies under the subcommittee's jurisdiction. The amount recommended to the Senate as indicated by the Senator from Florida is $508,272,900 below what was appropriated last year and $173,063,900 below the administration's request for fiscal year 1980.

This bill contains a number of issues with which the subcommittee and even the full committee have wrestled for some time. I think the final legislation as reported represents a general consensus of all the members of the Appropriations Committee except, unfortunately, for my concern about having the IRS collect debts by setoff. This position is well illustrated by minority views in the committee report and will be the subject of a subsequent amendment offered by the Senator from New Mexico.

With respect to the Bureau of Alcohol, Tobacco, and Firearms, we have provided $1.550 million for explosives detection tagging research. Congress has always been strongly supportive of the Bureau's efforts to suppress arson and illegal explosives activity. We have been particularly interested in the explosives tagging program in spite of controversy which it has engendered. Therefore, we have authorized more funds for research in this area but specifically admonished the Bureau to take no steps, and I repeat no steps, toward implementation of the tagging program until the Office of Technology Assessment has reviewed the viability of the program and the committee gives its specific approval to proceed further.

Of course, my colleagues are aware that the controversy surrounding tagging has to do with the use of tagged explosives in firearms for private and legitimate purposes.

We have provided Customs with additional inspectors who are vitally needed at our gateway ports of entry. We have attempted to improve Customs air interdiction capabilities. Hopefully, we have moved to eliminate the abuses regarding overtime pay to U.S. Customs Service employees. During the course of the hearings, the committee received evidence that approximately $70 million or 15 percent of the total Customs' budget of $447 million would be spent on overtime pay. Such an expenditure is patently ridiculous and the committee has taken positive action to prevent what would otherwise be a clear misuse of taxpayer funds.

Our colleagues ought to be aware of another important provision in this bill. Without a shred of statutory authority, IRS has announced it intended to issue proposed regulations that would not approve deductibility status for nonprofit educational institutions that failed to meet racial admission standards. In other words, the IRS would hold private schools guilty of discrimination until they established their innocence. Such a proposal would be a virtual death sentence for hundreds of private schools, particularly those of a religious nature. This bill, by funding limitations, prevents the bureaucracy, in this case the IRS, from seizing substantive legislative power in the name of social engineering.

Mr. President, I want to emphasize that this is a decision that the IRS should not make; that it is the Congress that should determine the tax status of nonprofit educational institutions.

Another area of concern relates to IRS policies in the use of law enforcement personnel. IRS is a tax collection agency and not a law enforcement agency. The excessive use of criminal investigators and overabundance of agents authorized to carry firearms is inexplicable. The Service has been put on notice that we intend to thoroughly look into this matter next year and will make every effort to pare and reduce the number of law enforcement personnel employed by the agency commensurate with their responsibilities.

For the U.S. Postal Service, we have approved limited funding for revenue forgone for committee political mailings. This concept of reduced rate mailings for political committee mailings is similar to the postal benefits accorded scientific, educational, charitable, and other public service organizations.

It is hoped that with the new proposed rate schedules of the Postal Service, over a period of years all or most of the discrimination that exists now in various mail rates will disappear.

Also with respect to the Postal Service, the committee has taken the position that electronic communications which have traditionally been in the hands of private companies such as Western Union, the Bell Telephone System, IBM, and others should remain in the private sector. Thus, the committee has determined that, for at least the coming fiscal year, Uncle Sam will not compete with private firms to control the electronic mail industry. This prohibition will not affect—I repeat, will not affect—research and development activity nor the delivery of hardcopy messages such as Mailgram. The provision will provide Congress time to study the issue and to formulate a policy outlining the role of the Postal Service in electronic communications vis-a-vis that of the private sector in electronic communications.

During the course of our hearings and deliberations, we became well aware of numerous complaints regarding the manner in which the Council on Wage and Price Stability amended its program of voluntary price and wage guidelines. There is no doubt that the Council has been changing its standards on a piecemeal basis without adequate notice and making new standards effective retroactively. The Council should be aware that we in the legislative branch are watching.

Next year, if necessary, we will do more than issue an admonishment that due process be accorded the private sector as that sector is affected by the Council's program. Every one of us realizes the threat to this Nation caused by excessive Government spending with resultant spiraling inflation. However, we are at this time supposed to have a voluntary wage/price program and excessive arm twisting or jaw-boning of targeted industries by high administrative officials should be avoided. At the same time, excessive wage and price increases are obviously not in the national interest.

Finally, Mr. President, let me call my colleagues' attention to the situation at the Federal Elections Commission. At the time of our hearings, not one single certified public accountant was on its auditing staff. Staff turnover was running at least 25 percent annually. Most disturbingly, there have been allegations that, in the Office of General Counsel of the FEC, we may have individuals closely connected to the current administration. The Commissioners must make sure that all of their employees treat all of the various candidates and all the political parties with nonpartisan equality and equity.

In closing, Mr. President, I once again want to extend my appreciation to the chairman of our subcommittee for his handling of this legislation. Likewise, I wish to call to the Senate's attention the outstanding service performed for our subcommittee by the clerk on this bill, Mr. Michael Hall, and Mr. Burkett Van Kirk of the minority staff.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR NO ROLLCALLS PRIOR TO 2:30 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be no rollcalls, excluding possible rollcalls to get a quorum—and I do not expect that—prior to 2:30 p.m. today.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, during House consideration of the Treasury and Postal appropriation bill currently before us, two very important amendments were adopted intended to bar implementation of proposed IRS racial discrimination guidelines for many tax exempt schools and academies throughout the Nation. The IRS proposed regulations involved have been criticized by church, synagogue, and civil libertarian organizations; by parents, educators, and those most directly involved in the educational process. The two amendments already in the bill before us would help these people. They would bar the IRS from using money to implement what has become one of the more unpopular and controversial schemes to emanate from Washington in many years.

The two amendments are a package. Introduced by Congressman DORNAN of California, the first amendment, approved on July 16 in the House, specifically prevents the Internal Revenue Service from using any appropriated money to cause the loss of tax exempt status by the agency's regulations proposed on August 22 of last year and February 13 of this year. The second Dornan amendment, also a part of the appropriation bill before us, bars the use of IRS funds from denying a charitable deduction for general purpose contributions, examples of such contributions being the moneys used for educational purposes by tax exempt religious organizations.

Earlier this year, I introduced two bills intended to accomplish the same purpose, S. 449, the Save our Schools Act, and S. 103, the Charitable Organizations Preservation Act. The 20 of my colleagues who cosponsored my two bills, as well as the many Senators who have personally said that they share the spirit and purpose of the letter of my legislation recognize the central principle at stake. They recognize that we face a separation of powers problem, and an affront to the civil liberties of educators and a threat to the quality of the teaching they are expected to do.

Parochial schools have been organized in our country during the past 2 years at the rate of 3 per day throughout the United States. It is estimated that if this pace continues, by 1992, the number of private and alternative schools in our country will equal the number of public schools. They will continue to complement the important role and preserve the quality of public schools, and parochial school development is in the long-run interests of both educational systems.

If the proposed IRS procedures are implemented, we not only retard this increase in the number and diversity of our elementary and secondary schools. We also allow to slip into regulatory hands powers that are granted to Congress. We allow over 3,500 private schools and academies in our country to be victimized by potential agency harassment, leading to the intimidation of present and potential contributors to these educational institutions.

In the final analysis, it would be the taxpayer, the parent and the child who would pay for the IRS prerogatives their newly proposed regulations would institutionalize.

This is primarily why I believe so strongly that the House amendments to the pending appropriation bill must be retained. It is why I urge my colleagues, especially those who have not yet come to a decision, to vote to retain these very important amendments.

And it is why, Mr. President, at the appropriate time following the substance of the impending debate on these IRS amendments in question, I hope one of my colleagues will move to table a motion for their deletion.

WHY THESE IRS AMENDMENTS OUGHT TO BE ADDED TO AN APPROPRIATIONS BILL

The proposed regulations the IRS wishes to promulgate are scheduled to go into effect in January of 1980. In the House, there are more than 120 Members who have cosponsored more than 20 bills to delete or set back the regulations in question. Hearings were held, though the bills—like those I have introduced in the Senate—are destined never to reach the full committee stage in time to have any real effect on the controversial regulations in question. If we do not act now; if we do not amend the appropriations bill in the manner the House has suggested, there will be no practical recourse for the many schools involved which are fighting for their existences in the face of the IRS threat.

WHY THE IRS ALREADY HAS SUFFICIENT AUTHORITY TO REVIEW SCHOOL EXEMPTIONS (THAT IS, AND THE PROPOSED REGULATIONS WOULD GIVE IRS EXCESSIVE AUTHORITY)

Current IRS regulation No. 7450 already gives the IRS sufficient authority to review schools according to a case by case process which they have been using up to August 22 of 1978. This is proper authority within the scope the IRS was originally granted. Giving the IRS a form of "class action" power to remove the tax exemptions of the many private schools in question is a much broader, and a substantive as opposed to procedural authority which Congress ought not and has not granted to the IRS.

WHY THE IRS REGULATIONS IN QUESTION VIOLATE CIVIL LIBERTIES

The August 22, 1978 proposed IRS regulations changes the burden of proof from the IRS having to prove that a particular school is in fact discriminating to the private school having to prove to the IRS satisfaction that it is not. In other words, "guilty until proven innocent" is the standard to be institutionalized on a class basis. There is nothing in past court decisions nor in any interpretation of the 14th amendment to justify such a rendering.

WHY THE IRS REGULATIONS VIOLATE SEPARATION OF POWERS

The proposed IRS action is a serious infringement by the executive branch of the Government on the constitutional provision making the Congress the sole legislative body, specifically in the powers delineated in article I. To date, the Congress has not legislated or in any way acted to give the IRS the policy authority it claims to have been granted by us.

Only Congress has the right to legislate a new tax status for traditionally exempt charitable institutions. Nowhere has Congress given the IRS the authority to regulate educational policies or enforce these proposed guidelines. The Green against Connally court case (1971) cited in a colleague letter sent to all of us this morning by Senator JAVITS, a case upon which Senator JAVITS' case rests, relies solely on segregated academies with no open admission policies in the State of Mississippi. In the Supreme Court case, Bob Jones University against Simon (1976), the Court ruled that the Green against Connally case was not a true adversary proceeding and therefore could not serve as a legal precedent.

So I cite that to my colleagues in advance of the debate on these two amendments because, literally, if we decide to take out these amendments, we are decreasing the power of Congress in favor of increasing the power of regulatory bodies, and that is a bad precedent for us to follow.

Mr. CHILES. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, with the exception of section 102, and that the bill as thus amended be regarded for the purpose of amendment as original text, provided that no point of order shall be raised by reason of agreement to this request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

On page 2, line 12, strike "$30,850,000" and insert "$30,550,000";

On page 2, line 23, strike "$60,000" and insert "$80,000";

On page 3, line 1, strike "$22,700,000" and insert "$22,752,000";

On page 3, line 11, strike "$12,670,000" and insert "$13,335,000";

On page 3, line 15, strike "$191,115,000" and insert "$190,361,000";

On page 4, line 4, strike "$139,000,000" and insert "$138,482,600";

On page 4, line 13, beginning with the colon, strike through and including "1979" in line 20;

On page 5, line 4, strike "$446,857,000" and insert "$447,457,000";

On page 5, line 8, after "expended" insert "and of which $3,300,000 shall be available for the Antidumping and Countervailing Duty Program";

On page 5, line 13, strike "the annual base salary of that employee" and insert "$20,000";

On page 5, line 18, strike "$50,580,000" and insert "$53,347,000: *Provided*, That $5,700,000 of the unobligated balances in the construction account shall also be made available for salaries and expenses";

On page 6, line 16, strike "$773,160,000" and insert "$774,660,000";

On page 6, line 23, strike "$784,000,000" and insert "$818,711,000";

On page 7, line 10, strike "$475,000,000" and insert "$476,711,000";

On page 8, line 3, beginning with "$157,-000,000" strike through and including the word "Act" in line 12;

On page 8, line 12, after "*Provided*," insert the following:

"That $5,600,000 previously appropriated for payment to State and local governments for protection of permanent and observer foreign diplomatic missions, pursuant to Public Law 94–196, shall be made available during fiscal year 1980 for salaries and expenses: *Provided further*,"

On page 8, line 19, beginning with "and" strike through and including the word "candidate" in line 23;

On page 9, beginning with line 1, strike through and including line 6;

On page 10, line 21, after "That" insert "for the fiscal year ending September 30, 1980,";

On page 11, line 2, after "amended" insert a colon and the following:

Provided further, For an additional amount for payment to the Postal Service Fund for the fiscal year ending September 30, 1979, pursuant to Public Law 95–593 and 39 U.S.C. 2004, $2,000,000.

On page 11, beginning with line 7, insert the following:

GENERAL PROVISIONS—UNITED STATES POSTAL SERVICE

SEC. 201. Appropriations in this Act to the Postal Service Fund shall not be available for the payment of the salary of any postmaster appointed after the date of the enactment of this title unless such postmaster is selected under a procedure which provides a priority for otherwise qualified applicants for the positions of postmaster who reside in the area which is served by the post office for which such position is to be filled.

On page 11, beginning with line 17, insert the following:

SEC. 202. No funds appropriated under this Act shall be available to the Postal Service if the Postal Service: procures its own electronic message system; owns or operates electronic transmission capacity or facilities, including switching devices, which may be used to send electronic messages; markets directly to the public electronic message services; without congressional approval. Nothing in this section shall be construed to affect the ability of the Postal Service to undertake research and development and testing of electronic message technology applications on an experimental basis or to affect contracts in existence on the date of enactment of this Act.

On page 12, line 11, beginning with the colon, strike through and including the word "Code" in line 15;

On page 12, line 19, strike "$11,000,000" and insert "$7,628,000";

On page 13, line 23, strike "$40,000" and insert "$60,000";

On page 14, line 21, strike "$7,500,000" and insert "$8,483,000";

On page 15, line 8, strike "$2,600,000" and insert "$2,650,000";

On page 15, line 20, strike "$27,600,000" and insert "$32,486,000";

On page 15, line 25, after "$3,000,000" insert a colon and the following:

"*Provided*, That there shall be transferred from the Department of Defense to the Office of Federal Procurement Policy the functions performed by the Federal Acquisition Institute, including personnel."

On page 17, beginning with line 18, insert the following:

"FEDERAL ELECTION COMMISSION

"SALARIES AND EXPENSES

"For expenses necessary to carry out the provisions of the Federal Election Campaign Act Amendments of 1976, $8,646,000, of which $750,000 shall be available only for activities, including contract support, of the National Clearinghouse of the Federal Election Commission."

On page 19, line 1, strike "$1,423,622,000" and insert "$1,421,985,000";

On page 19, line 2, strike "$18,787,000" and insert "$29,280,000";

On page 19, line 11, strike "$2,500,000" and insert "$21,573,000";

On page 19, line 12, strike in its entirety;

On page 19, beginning with line 15, strike through and including line 17;

On page 19, beginning with line 20, strike through and including the word "and" in line 21;

On page 19, line 25, after "per centum" insert a colon and the following:

"*Provided further*, That all appropriations for direct construction projects shall expire on September 30, 1981, except appropriations for projects as to which funds have been obligated in whole or in part prior to such date."

On page 20, line 5, strike "$180,000,000" and insert "$144,570,000";

On page 20, line 6, after "repairs" insert a colon and the following:

"*Provided*, That appropriations made to the Federal Buildings Fund for Alterations and Major Repairs shall, for prospectus projects be limited to the amount by project shown in the budget justification therefor, except each project may be increased by an amount not to exceed 10 per centum to the extent that savings are effected in other such projects but by not to exceed 10 per centum for each project: *Provided further*, That all appropriations for alterations and major repair prospectus projects shall expire on September 30, 1981, except appropriations for projects as to which funds have been obligated in whole or in part prior to such date"

On page 20, line 19, strike "$554,600,000" and insert "$577,900,000";

On page 22, line 3, strike "$1,423,622,000" and insert "$1,421,985,000";

On page 20, line 6, after the comma, insert the following:

"That for additional expenses necessary to reimburse the fund established pursuant to Section 210 of the Federal Property and Administrative Services Act of 1949, as amended, for expenditures made under 210(j) of said Act, $115,000 to be deposited to said funds"

On page 20, beginning with line 11, strike through and including "1949" in line 17;

On page 23, line 18, strike "$3,255,000" and insert "$2,855,000";

On page 23, line 25, strike "$8,900,000" and insert "$9,222,000";

On page 26, line 5, insert "(INCLUDING TRANSFER OF FUNDS)";

On page 26, line 7, strike "of" and insert "including administrative and staff support services for";

On page 26, line 9, after "Administration" insert "not otherwise provided for";

On page 26, line 9, strike "$18,988,000" and insert "$104,758,000";

On page 26, line 11, after "expenses" insert a colon and the following:

"*Provided further*, That this appropriation shall be available, subject to the reimbursement by the applicable agency, for services performed for other agencies pursuant to section 601 of the Economy Act of 1932, as amended (31 U.S.C. 696)"

On page 26, beginning with line 16, insert the following:

"OFFICE OF INSPECTOR

"For the necessary expenses of the Office of Inspector General, $18,874,000: *Provided*, That not to exceed $10,000 shall be available for payment of information and detection of fraud against the government, including payment for stolen government property."

On page 27, line 7, strike "$798,000" and insert "$759,500";

On page 27, line 10, after the period, strike through and including line 13;

On page 27, beginning with line 14, strike through and including line 23;

On page 28, line 5, strike "$6,600,000" and insert "$6,669,000";

On page 30, line 1, strike "$114,139,000" and insert "$113,939,000";

On page 31, line 23, strike "$10,500,000" and insert "$12,075,000";

On page 32, line 10, strike "$3,250,000" and insert "$4,516,000";

On page 32, line 17, after "including" insert "services as authorized by 5 U.S.C. 3109, including hire of experts and consultants,";

On page 37, line 3, after "vehicles" insert "purchased for demonstration under the provisions of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976";

On page 38, line 11, strike "Israel,";

On page 43, beginning with line 15, insert the following:

SEC. 613. (a) No part of any of the funds appropriated for the fiscal year ending September 30, 1980, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1979, by more than the overall average percentage increase in the General Schedule rates of basic pay, as a result of any adjustments which take effect during such fiscal year (1) under section 5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a)(A) of that title); or (2) any negotiated agreement pertaining to Government prevailing rate employees to whom section 9(b) of Public Law 92–392 applies.

(b) The limitations on the availability of funds imposed by this section shall not restrict the payment of any rate of basic pay which does not exceed $4.22 per hour, if such rate of basic pay would be payable were it not for this section.

(c) For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or any other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

On page 44, line 17, strike "613" and insert "614";

On page 44, line 24, strike "614" and insert "615".

Mr. McCLURE. Mr. President, I think the procedure that has been adopted now leaves in section 102 of the bill as passed by the House. I assume that the managers of the bill will make a motion to strike that section, pursuant to the committee action that was taken. It

will be my intention to resist the motion to strike section 102.

Does the Senator from Florida agree that that will be the procedure?

Mr. CHILES. The Senator is correct. If he wishes, I will make that motion now, so that we can proceed with the debate.

Mr. McCLURE. That is fine. I yield to the Senator for that purpose.

Mr. CHILES. On behalf of the committee, Mr. President, I move to strike section 102 of the original text, and I will send that amendment to the desk.

Mr. President, the subcommittee, in looking at the House proposal, noted that an amendment was proposed on the floor of the House that was contained in section 102, which stated:

> None of the funds appropriated by this title shall be used in connection with the collection of any underpayment of any tax imposed by the Internal Revenue Code of 1954 unless the conduct of officers and employees of the Internal Revenue Service in connection with such collection complies with subsection (a) of section 805 (relating to communication in connection with debt collection), and section 806 (relating to harassment or abuse), of the Fair Debt Collection Practices Act (15 U.S.C. 1692).

No hearings were held on this provision. There was no real guidance that the subcommittee could find as to why this proposal was included or what the effect of the proposal would be. So the subcommittee felt that it would be more appropriate for us not to consent to this but to take this section to conference with the House and then, at the conference, try to determine what the effect of this would be, whether the Fair Debt Collection Practices Act should apply to the Internal Revenue Service.

It appeared that it was not designed to cover IRS, to start with, but to cover private collection agencies, and that it would be better to take this to conference than for us to say that we would take the amendment. The full committee agreed with that proposition.

As my memory serves me, we never had a vote in either the subcommittee or the full committee, nor did we really debate the proposal in either of those committees, other than to say that we would just take the matter to conference and see what the rationale was when the amendment was adopted on the floor of the House.

That was the action taken by the subcommittee and the full committee, and that sort of set the stage for this debate.

It was my feeling then, and it is my feeling now, that with an amendment such as this, where there have been no hearings, where there really has not been any consideration, the Senate would be better off not to go along with the amendment and to let us take it to conference, where it would be an issue, and determine what the rationale was in the House in proposing the amendment.

Mr. SCHMITT. Mr. President, the recollection of the Senator from Florida coincides with mine, with respect to subcommittee and committee action and as to the decision to refer this matter to the conference.

I think it is an issue on which, at first blush, I would find myself in sympathy with the Senator from Idaho. However, I do not believe we have before us the basis on which to make a considered judgment as to what purposes would be served by the use of the Fair Debt Collection Practices Act provisions as restrictions on the IRS.

I suspect that they may need that, but I do not understand the issue well enough to be supportive at this point. I have worked very hard in the Banking Committee to defeat that bill, and I think I understand how the bill does affect the private sector. I do not at this point claim to understand how it would affect the IRS.

Mr. McCLURE. Mr. President, I oppose the motion of the Senator from Florida to strike this language in section 102 of the bill as sent to us from the House, and I shall state very briefly for the RECORD my reasons for opposing it.

First of all, it has been said there was no debate in the subcommittee or in the full committee, no discussion, and no vote. As a matter of fact, there was some discussion. It was somewhat limited, because the committee had not held hearings on this specific language. It being a House amendment rather than a Senate subcommittee or committee amendment, there was no reason for the Senate to hold hearings on this specific amendment. But the Treasury-Post Office Subcommittee of the Appropriations Committee has held hearings in the past on the collection abuses by IRS. Anyone who has been around here more than a year or two will recognize that every Member of Congress in this body or in the other has a horror file about the abuses by IRS of the rights of individual citizens in this country.

There is no one who is more concerned than I about the Federal Government collecting the amount of taxes that is due from any taxpayer. I think it goes without saying that this amendment is not intended in any way to inhibit the legitimate enforcement of the law against taxpayers who owe taxes and will not or do not pay them.

But we know, every one of us, whether we have held formal hearings in this subcommittee on the particular amendment, or whether we have had hearings in the past on other similar proposals or just abuses in general, that IRS agents have harassed and abused the taxpayers in the country.

I am always amazed at the ability of this Congress to set up rules for everyone else but exempt the Federal Government from them. We have all kinds of rules and regulations dealing with individual conduct or private business conduct, but most of them exempt the Federal Government from the same restrictions. Why? And why even more so in an area as critically sensitive as a voluntary tax collection system based upon the support of the American people to voluntarily fill out their tax form and to voluntarily submit a check that they say, "This is what I think I owe the Government?" Then to turn around, on the other hand, and say that the Government then can step forward and harass and abuse the taxpayer and then to say that we cannot accept an amendment because we do not know what it means strikes me as being a little anomalous for, as a matter of fact, we know what IRS has been doing. We know that the majority of their agents act responsibly. We know that in many instances there are taxpayers who have approached us who claim abuses who really owe the tax. And I am sure the Senator from Florida and the Senator from New Mexico would have to confess that in our files we have letters where we have taken the case for a constituent who felt abused and found that the constituent was wrong, but I think we would also have to confess that there are dozens upon dozens of cases in the files of every Member of Congress where an IRS agent or the agency as a whole has used its coercive power to collect or to attempt to collect taxes that were not due or taxes upon which there was a reasonable argument on a legal basis as to whether or not they were actually due and collectible.

I remember the instance of the taxpayer, a small businessman in a small northern Idaho community, who wrote me that he just had his bank account seized by the IRS because he had not paid the withholding tax or he had not submitted the tax that he had withheld from his employees and had not sent it in. He produced the canceled check payable to the IRS in the exact amount claimed that matched with the return that he had filed. They said: "We don't have any record of it." He produced the check that showed that they not only had received the check but had deposited the check and it had been returned to him and charged against his account. They still refused to release his bank account because they did not have a record of it.

Here was a small businessman who was about to be put out of business because the bureaucratic agency could not make up its mind whether or not they had adequate information as to the payment of the tax.

I think we know some of the old stories, and these do not come from my own personal recollection, of IRS agents who come in to a place of business and embarrass the taxpayer before all of his employees and his customers by threatening to put a padlock on the door to collect the taxes due when there was a legitimate argument about whether the taxes were due and when there were other means by which they could settle whether or not the taxes claimed by the IRS were due.

We know of the case when an IRS agent struck a pregnant woman in her own home, knocked her down, and caused a miscarriage because of his excess in the desire to collect taxes because they get a percentage of what they collect on old taxes. That is another system that I think maybe we should look at. They have an incentive system. The more you can extort from people, the more money you get. We call it a reward system.

Mr. CHILES. The IRS agent gets it?

Mr. McCLURE. Yes, the IRS agents gets a portion. He gets paid for collecting more taxes, and those lead to abuses that we sought to correct in the passage of the Debt Collections Act. It does not seem to me at all reasonable to expect that the Federal Government agents can

use means which we have prohibited to be used in the collection of debts in the private sector.

This amendment which the committee seeks to strike that was added in the House of Representatives simply says:

None of the funds appropriated by this title shall be used in connection with the collection of any underpayment of any tax imposed by the Internal Revenue Code of 1954 unless the conduct of officers and employees of the Internal Revenue Service in connection with such collection complies with subsection (a) of section 805 (relating to communication in connection with debt collection), and section 806 (relating to harassment or abuse), of the Fair Debt Collection Practices Act (15 U.S.C. 1692).

Mr. President, is the Senate now about to go on record saying that IRS agents can harass and abuse taxpayers?

It seems to me that is the necessary implication of a vote to strike language that says they cannot.

I do not know how other Senators may feel, but I agree with the action taken in the other body. When this amendment was offered on the floor of the House of Representatives, it passed by a vote of 299 to 69.

I have communicated with the Commissioner of the Internal Revenue Service who says, "Well, we can't really tell what this would do."

They had appeared in opposition when this bill was in markup before the subcommittee, and they said they were opposed to the bill, opposed to this section, and they wanted it stricken.

We asked why. They said: "Well, we can't really tell you why except we don't think it fits very well with our operations."

Are their operations based upon harassment and abuse?

Following the hearing and the action by the subcommittee and the full committee, I wrote to the Commissioner of Internal Revenue Service and asked him to comment, and about all they said in reply was: "We don't really know what it means; therefore, we are opposed to it. We don't know quite how it would fit; therefore, we are opposed to it. Besides that, we already comply with the spirit of that act."

Well, if they are complying with the spirit of the act why do they object to the language being added? It would not change anything apparently. But they do not want to have to change their methods. If, as a matter of fact, what we have required of private business and private collection agencies in terms of the rights of the debtor is correct, they do not want to have that same protection applied where it is a taxpayer who is being harassed or threatened by the IRS or it is the Federal Government that is trying to collect the tax.

Mr. President, let us have no misunderstanding about who will be benefited or who will be hurt by this amendment. It is not an amendment to help big business because there are batteries of accountants and tax lawyers and there are tens of thousands of dollars involved in the collection, and there is a specific exemption in the Fair Debt Collection Practices Act.

This is a measure intended to and designed to deal only with the relationship of the ordinary citizen, the natural person, as defined by the statute.

This is intended to allow them to know that we in the Congress of the United States are concerned as to whether or not their Government can use unfair practices, and harass and abuse taxpayers without notice to them, with intimidation in their place of business or in their homes.

It seems to me if we in the Congress have felt it was necessary to do that with respect to private businesses and to private debt collection services, we ought to be equally and, perhaps, even more, concerned about how the Federal Government itself goes about collecting the amount of money the Government claims is due.

For that reason, Mr. President, I oppose the motion to strike section 102.

I thank the Senator from Florida and the Senator from New Mexico for helping to arrange and agree upon the procedure by which we come to the point of a motion to strike, thus preserving the House language unless the Senate agrees to strike the language. I just have a feeling that deep down the Senator from Florida and the Senator from New Mexico do not disagree with the Senator from Idaho. I hope the Senate will agree with the action taken in the other body since this is a limitation on an appropriation measure, and its life is coincident with the extent of the period during which that money will be expended. During that period of time I hope the appropriate legislative committees will take a look at how it is operated, will take a look at the protections that are necessary, and that we can then, before the expiration of that period, have enacted permanent legislation that will protect the rights of individual taxpayers.

In the meantime, I hope the Senate will agree to the maintenance of this amendment added by the other body, and that the taxpayers of this country at least will have that much breathing space, without irreparable injury to the Government.

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

Mr. McCLURE. I would be happy to yield to my friend.

Mr. HELMS. Mr. President, I certainly agree with the distinguished Senator from Idaho (Mr. McCLURE). This amendment must stay in this bill if the taxpayers are to have any equity whatsoever in their dealings with the Internal Revenue Service.

About 10 days ago I went over to the western part of my State to visit with a distinguished group of Americans who are the survivors of the Bataan-Corregidor death march. One of the men attending that function handed me a thick file on a dispute he is now having with the Internal Revenue Service.

I do not suggest that Commissioner Kurtz even knows about this matter, or that he condones it. It gets down, however, to the point of who is running the store.

This man, who survived the Bataan-Corregidor death march, showed me, as I said earlier, a thick file of correspondence with an Internal Revenue Service representative. The IRS refused to answer any of the man's questions, they refused to accede to any request, so he said, "Well, all right, I will stand pat."

Whereupon, the IRS sent a bill for $134,000 in taxes. He said, "I do not know where they got that figure. They would not explain it. They said, in effect, 'We will take you to court.' "

This man does not have the funds to fight the IRS in court. He would have to compete with the salaried attorneys of the Federal Government at his own expense.

Now, if I have any advice at all for Commissioner Kurtz it is that he immediately implement a plan to monitor what his people are doing. Maybe there will be some reconciling of the attitude by some IRS people.

So I agree with the Senator from Idaho that this amendment should stand, it should not be stricken, and I do hope my friends from Florida and New Mexico will not resist the retention of the amendment.

I thank the Senator for yielding to me.

Mr. McCLURE. Mr. President, it is my understanding that there will be no rollcall votes prior to 2:30 this afternoon, by unanimous-consent agreement; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Mr. President, it will be my intention to ask for a rollcall vote on the motion to strike.

Let me conclude my remarks at this point by making reference to one other portion of the amendment that has not heretofore been discussed in detail.

The amendment would prohibit employees of the Internal Revenue Service from communicating with a third party unless that party was the attorney for the individual taxpayer concerned. In other words, the IRS agents, as any other debt collection agent, would no longer be allowed to question a taxpayer's neighbors, friends, or relatives as to his lifestyle or various other assorted unethical questions.

The Commissioner of Internal Revenue Service has indicated in his letter to me that he finds that objectionable, and apparently it is his intention to continue the practice of IRS agents going around and questioning all of the friends, neighbors, and relatives of a taxpayer in order to try to find the evidence to sustain the case before they have even made the allegation.

As every Member of this body knows, that has had a very bad effect upon the reputation of a number of people who were not guilty of any wrongdoing, who owed no tax at all, and it was exactly that kind of abuse we attempted to eliminate when this body passed the Fair Debt Collection Practices Act on August 5, 1977.

Now, only a little better than 2 years later, we are trying to extend the benefits of the protection of that law to those the Government claims owe them or owe it some money.

The PRESIDING OFFICER. Who yields time?

Mr. SCHMITT. Mr. President, I yield myself such time as I require. For the purposes of the Senator from Idaho's understanding, I want to say that the time was an hour-and-a-half on my time, and I am yielding the Senator such time as he requires for this consideration.

Mr. McCLURE. I thank the Senator.

Mr. SCHMITT. Mr. President, I find myself in a very awkward position because I agree completely with the concerns of the Senator from Idaho with respect to many of what are commonly called abuses of the IRS in their collection activities.

The tax system of this country must be a voluntary system, and one of the best ways to get it to cease to be a voluntary system, other than overtaxation, which we are doing very well also, is to put the taxpayer in fear of or at odds with the tax collector.

My concern, having dealt with the Fair Debt Collection Act in the Banking Committee, is that there was just no consideration, although there should have been, because of jurisdictional problems, of the IRS question. The question of the IRS abuses goes far beyond those that have been considered in the total consideration of this act in the Banking Committee. As a matter of fact, the reason I opposed this act in the Banking Committee is that it blanketed the entire industry with a massive new set of regulations in order to correct very specific abuses that could have been corrected by enforcing existing law. But, no, we added another regulatory blanket to an already overburdened society, and in particular we again hurt those people, the small business people and minority business people, who can least afford to be hurt in this particular economic situation, or in any economic situation.

What I would hope that we could do, and obviously this will be an issue before the conference no matter what we do today——

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

Mr. SCHMITT. Happy to.

Mr. McCLURE. It will not be before the conference if the motion to strike fails. The issue will have been resolved.

Mr. SCHMITT. The Senator is entirely correct, and I stand corrected. However, the issue is far broader than what the Senator proposes to do. Several of the abuses you have already outlined would not be covered by this. It is not even clear how the language of section 805 would be interpreted by a court in dealing with the IRS. I certainly am not an expert in that kind of interpretation. I would hope it would be possible for the House and the Senate to agree, and for the Senator from Idaho to agree, that the House and the Senate must address the issue, and must address it in this session, and that before any other appropriations are made available to the IRS, their debt collection practices are resolved, particularly those that have to do with due process. The situation the Senator described about his constituent's bank account being attached, I think, is the IRS acting without due process. They can do that. Again, I am not a constitutional expert, but I think it is clear that Congress should take action in that area as well as several others.

So, although I will have to oppose the Senator, I do commit to him that I will do everything I can within my committee jurisdiction and my other abilities to see that this issue is addressed, and addressed fully. I am afraid that what can be pulled out in section 805, part A, and section 806 of Public Law 95–109 is not going to get to the core of the problem; it is sort of a transition treatment. It is a statement by Congress that we do not like what is going on, but we really are not going to be able to do much about it with respect to these two sections.

So whatever we may decide today on the floor of the Senate, I will certainly be working with them to make sure that the entire issue is addressed and addressed properly and completely by the Congress.

(Mr. BAUCUS assumed the chair.)

Mr. CHILES. Mr. President, the Debt Collection Practices Act was passed to cover abuses of private collection agencies that are set up purely for profit, purely as a means of earning a profit, and to go out and collect other people's debts that these private collection agencies had taken on, at a percentage or a profit, to collect.

There were extensive hearings held on that. It covered a number of situations. There was a great deal of debate on it, and particularly how it covers these private agencies.

I cannot tell you whether it is working or not. I do not know whether any oversight hearings were held. But now we are going to take sections of that act and make it apply to the IRS.

I do not condone violations of people's individual rights by the IRS. I have been on this subcommittee for a long period of time prior to the time I was chairman. I participated in hearings held by the previous chairman of the subcommittee into abuses by IRS agents, and into debt collection practices; and if specific instances were brought before the subcommittee now, and particular abuses, we would go into that in the subcommittee. I do not condone that at all, and to say the subcommittee is condoning it puts us in an intolerable situation.

But at the same time, to see us say we are going to take an amendment passed on the floor of the House, late at night, dealing with private collection agencies, and say the IRS has to comply with exactly the same things that private collection agencies, working for a profit, who are taking the debts of other parties and going out and collecting them does not seem appropriate and I do not think makes very good sense. To say this is the approach which must be taken I do not think is correct. Every time a tax bill comes to this floor, it would be proper to put an amendment on that tax bill, as we can on this floor, saying the IRS should take certain steps or not take certain steps, and see that they are designed to the situation of the IRS. We can do that; but to take this entire bill, of many pages, including a preamble setting forth reasons for the bill which certainly does not apply to IRS, which uses language which does not apply to IRS and make it do is not right. When it talks about the consumer that really does not apply to a taxpayer, and to say that those sections will apply to the IRS does not make sense.

I started, at the initiation of the debate, to bring up the subterranean economy report, which shows that $135 billion now escapes taxation in this country. We need to talk a little bit about that. I am concerned that the IRS is not collecting the $19 billion to $25 billion in taxes on that $135 billion that is not being taxed. That $25 billion is enough to balance the deficit we have in the Federal budget. My distinguished friend from North Carolina has raised situations where there have been abuses, and certainly there have, and we do not condone them. But to handicap IRS in doing the job we charge them with doing, collecting the taxes with which we run this Government, including defense and every other phase of the Government, I am not sure how much sense that makes.

What about the people in this Government? What about the citizens who have not done the right thing and are not going to do the right thing and pay their taxes, and who have not been paying their taxes? We have a $135 billion subterranean economy, and that does not mention the ones who are not part of the subterranean economy, but also those we know who attempt to cheat on their taxes. What kind of rights are we going to give them under this amendment, by prohibiting that collection

If we have some problem with the IRS, if we have some cases, let us design something that covers the IRS, and put it on a tax bill. Let us not pick a piece of legislation designed to cover private debt collection agencies designed to collect debts for third parties, and say it exactly applies to the IRS. The IRS is an agency created by the Congress designed to collect the taxes with which we run our country. To say we are going to put them under the exact language we set up to cover some private debt collection agencies acting on behalf of third parties is not appropriate. I do not think that kind of thing makes sense, and I think when you read through the language, when you look at the terms, when you look at what the IRS would have to do to comply with all of those terms—you will agree. For example, to search out if a person has an attorney, find that out before you can communicate with him, search out and find out whether he has an attorney; my gosh, does that mean that before the IRS can write to me and state, "Lawton, it looks like you owe us a little money, and you better get that in"—they have had to do that before. I usually get that money in the fastest way I can. I am afraid of the IRS.

But the fact that I am afraid of them is one of the reasons that I am a taxpayer and that I try to get my money in on time. I do not know what it would do to our debt collection system of trying to

collect if I knew I could tell them, "Go dance, boys, you are just like any private debt collection agency now. Notify my attorney. Get hold of him. Do not notify me anymore. Do not come to my business, do not tell me anything, do not touch anything. I am covered. You cannot touch me anymore."

I think hearings should be held on that. If we are talking about abuses, design something that covers the IRS. Do not take something that just covers private debt collection agencies collecting for profit and say this makes all kinds of sense for IRS.

We talk about abusers in IRS. I regret that. I wish we could find all of them and get them kicked out. But we also have a lot who are really doing a good public service, really trying to do a job that Congress told them to do, to collect the money that we tell them to so that we can run our country.

If we turn around now and say we are going to treat them like they are private debt collectors, each one of them, that they are under the same kinds of provisions and we are going to put them under those kinds of provisions, I do not think that is the way to legislate.

When we were coming up with this private debt collection service, why did we not put the IRS in it at that time if they should have been covered? Why did we not design it to cover the IRS?

I do not read anything in the preamble talking about the Government being the problem. It talks about the use of deceptive and unfair debt collecting practices by many debt collectors.

I do not see any listing of the Federal Government. But if that is what it was designed to do, we should put them under there. If we were talking about putting them under, we would not have put in some of these provisions. We would have made specific provisions for them.

As I say, if there are people here who have a beef with the way they are doing it, and there may well be, let us design something that covers the IRS. Let us not say that you can make apples and oranges because the IRS is not the same as a private debt collection agency out collecting a debt from third parties for a profit. It is an arm of the Federal Government, created by the Congress to do a job that we have given it to do. If we do not think it is doing that job properly, let us prune that arm, let us put some limitations on it. But let us not call it a private debt collection agency.

Mr. SCHMITT. Mr. President, I think the Senator from Florida makes a number of good points. Whether he and I will agree or disagree on what limitations should be attached to IRS debt collection only time will tell. I do think the essential point is we ought to do this with proper legislation and proper consideration of the total issue rather than on a reasonably ad hoc basis of taking a portion of the law designed for another purpose completely and attaching it as legislation to the appropriations bill.

I yield to the Senator from Idaho.

If the Senator will permit me, I would like to allow him to ask for the yeas and nays at this point.

Mr. McCLURE. Mr. President, I do ask for the yeas and nays on the motion to strike.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. McCLURE. Mr. President, it is my understanding there will be no rollcall votes until 2:30. I ask unanimous consent that it be in order to ask for the yeas and nays on this motion to strike at 2:30 or at any time prior to that when a sufficient number of Senators are in the Chamber.

Mr. CHILES. Or prior to the time of the first rollcall.

Mr. McCLURE. Or prior to the time of the first rollcall.

Mr. CHILES. Let us try again. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE. Mr. President, I thank the Senator from Florida and I thank the Senator from New Mexico for yielding to me. I will not prolong the debate.

It seems to me if I hear correctly and understand correctly the arguments against the language as adopted by the other body, the Senator from New Mexico says, "Let us not pass this now because it only addresses part of the problem."

I do not see anything wrong with solving a part of the problem rather than solving none of it.

The Senator from Florida says, "Not now. Let us do it some other time on some other bill." He says we ought to have hearings to determine what the effect may be.

There have been hearings, hearings by the subcommittee which the Senator from Florida now chairs. That subcommittee and those hearings uncovered evidence of abuse across this land. As I recall, the hearings were held in every IRS district. The citizens came forward at those hearings and recited the abuses in collection. In spite of those hearings, in spite of that evidence, no legislation was forthcoming.

Now we have legislation which the Senator from New Mexico says is not enough and, therefore, we should not pass it. The Senator from Florida says let us have hearings. The hearings in the past have produced no legislation.

It seems to me that we ought to at least hold onto one little bit of protection that the public has a right to expect, and that we have already required of private debt collection services, and say that the IRS can live by the same rules we have made applicable to others.

Mr. President, I do not know what the Senator from Florida means when he says it might handicap the IRS efforts to collect taxes. Certainly he does not mean that IRS collects by harassment and intimidation. I do not think that would be the intention. Yet, if that is not his intention, then how does this handicap the IRS?

There is no one able to show any legitimate reason why IRS cannot live with the provisions of a law that we have made applicable to others. It seems to me that we ought to vote against the motion to table and I will urge my colleagues to do that when we get to that rollcall.

Mr. CHILES. Mr. President, I ask unanimous consent that the vote on the motion to strike come immediately after the first rollcall which is taken on this bill today, which will not occur before 2:30.

Mr. McCLURE. Will the Senator include temporarily setting this aside?

Mr. CHILES. And that this matter be temporarily set aside until that point.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT NO. 514

Mr. CHILES. Mr. President, I move that the amount of $10,590,000 on line 21 of page 32 of the bill be stricken and, in lieu thereof, the amount of $12,132,000 be inserted.

The purpose of this amendment is to provide the Federal Labor Relations Authority with an additional $1,542,000 and 63 positions for fiscal year 1980, needed to permit the Federal Labor Relations Authority to carry out the additional responsibilities assigned to it by the Civil Service Reform Act of 1978. The administration's request in this regard was not received by the committee until August 20, 1979, or after the consideration of the bill by the full committee.

The original funding level proposed for the authority was a sufficient level of resources to carry out the program as it operated under Executive Order 11491 prior to the passage of the Civil Service Reform Act of 1978. This level of resources is not adequate to carry out the new responsibilities. This fact has been confirmed to us by a General Accounting Office letter report that was recently submitted to Senator RIBICOFF, chairman of the Committee on Governmental Affairs.

Filings of unfair labor practice charges under Title VII of the Civil Service Reform Act of 1978, the work unit requiring the greatest resource commitment, have far exceeded projections. The annualized rate of filings of unfair labor practice charges is approximately 2,700 compared to 1,168 filings originally projected for fiscal year 1980.

A second category of cases which will require additional personnel in fiscal year 1980 is negotiability appeals which come directly to the authority for resolution. These cases involve disputes between labor organizations and agencies over the scope of negotiations. Negotiability cases are being received at a rate three times greater than such cases filed under the Executive order program.

Mr. SCHMITT. Mr. President, I concur in the remarks by the distinguished Senator from Florida. I think this amendment should be accepted.

Mr. CHILES. I move the adoption of the amendment.

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

The amendment (UP amendment No. 514) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I hope that Senators who have amendments will come to the floor and offer them. Otherwise, I am going to express the hope that the Chair will put the question, sending the bill to third reading. At the moment, I will not do that.

We have been in a quorum call now for 20 or 30 minutes. The Senate has a great deal of work to do. Thanksgiving is coming on. It will be here too soon. I hope the Senate will not be in session past Thanksgiving, but we have work to do before we adjourn sine die, and every day counts.

So I will suggest the absence of a quorum; and if Senators do not come to the floor, I will make it live.

The manager of the bill, Mr. CHILES, is here, patiently awaiting Senators to come to the floor. The ranking minority member, Mr. SCHMITT, is here. They are at their posts of duty, and they want some amendments so that we can dispose of this matter. I express thanks to both of them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. 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. MUSKIE. Mr. President, this seemed to be an opportune time to present the Budget Committee's statement on the pending measure. Perhaps it will create the impression in the offices, if they are tuned in, that action on the bill is underway, and we might be able to get things moving.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. I yield the Senator from Maine such time as he may need.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, the Senate has before it H.R. 4393, which provides fiscal year 1980 appropriations for the Treasury Department, Postal Service, Executive Office, and Independent Agencies. I want to take a few moments to comment on the relationship of this bill to the first budget resolution. Before I do, however, let me say that I support the bill. I congratulate the chairman of the subcommittee, Senator CHILES, and the ranking minority member, Senator SCHMITT, as well as the full Appropriations Committee, for reporting this fiscally responsible legislation.

Mr. President, the bill as reported provides $8.8 billion in new budget authority. Outlays associated with the bill total $8.4 billion.

Under section 302(b) of the Budget Act, the Appropriations Committee divides among its subcommittees the total budget authority and outlays allocated to the committee under the first budget resolution. The Appropriations Committee has allocated $9.3 billion in budget authority and $9.2 billion in outlays to the Treasury/Postal Service Subcommittee.

The funds provided by H.R. 4393 as reported, plus action already completed, put the subcommittee $0.5 billion under its 302(b) budget authority and $0.4 billion under its outlay allocations. But I would call your attention to the fact that possible later requirements known at this time are expected to boost the subcommittee above its present allocation by $0.1 billion in budget authority and outlays.

I ask unanimous consent that a table showing the relationship of this bill and possible later requirements to the subcommittee allocation be printed in the RECORD.

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

H.R. 4393—TREASURY-POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATION BILL, 1980 (RELATIONSHIP TO SUBCOMMITTEE'S SECTION 320(b) ALLOCATION)

	Budget authority	Outlays
Subcommittee sec. 302(b) allocation	9.3	9.2
Action completed		.3
H.R. 4393, as reported	8.8	8.4
Amount over (+) or under (−) subcommittee allocation	−.5	−.4
Possible later requirements:		
Strategic stockpile acquisitions	.2	.2
October 1979 pay raise	.1	.1
Payment to civil service retirement and disability fund	.3	.3
Total	.6	.6
Possible amount over (+) or under (−) subcommittee allocation	+.1	+.1

Mr. MUSKIE. Mr. President, I think it is important to remind the Senate of the point I have made on previous fiscal 1980 appropriations bills that have been before us. It appears that the full Appropriations Committee may exceed the amount allocated to it under the first budget resolution when all the regular appropriation bills and expected supplemental requirements are taken into account.

These appropriations excesses could increase the fiscal 1980 deficit, and, in fact, combined with the apparent economic slowdown threaten to drive the fiscal 1980 deficit higher than fiscal 1979. The reconciliation recommendation contained in the second resolution is the Budget Committee's solution to this threat of a higher deficit.

As reported, the second resolution compares to this subcommittee bill in exactly the same fashion, and considerable restraint will be necessary for the Senate to stay within the Budget Committee's recommendation. The further effect on this subcommittee of the reconciliation recommendation is still uncertain.

Senator CHILES has been one of the strongest supporters of the budget process, and voted in support of the committee's recommendations for the second resolution. I am confident that he will continue that support.

I congratulate the Senator on his foresight in staying under the section 302(b) allocation to provide room for possible later requirements. However, I am concerned that reductions in the possible later requirements associated with this bill will be difficult to achieve. I am aware that possible later requirements include funding for the pay raise, the payment to the civil service retirement and disability fund, and the purchase of materials for the strategic stockpile, the authorization for which has not yet been reported by the Armed Services Committee. At this time, it is also not forseeable what the effect of the reconciliation recommendation of the second concurrent resolution will be on this subcommittee, because the Appropriations Committee's own allocation of the savings assumed has yet to be made. Consequently, there does appear to be some flexibility and uncertainty regarding further actions.

Therefore, I ask the Senator from Florida if he can be more specific as to how his subcommittee intends to stay within its section 302(b) allocation.

Mr. CHILES. I thank the distinguished Senator for his kind remarks and attempt to respond to his question.

The bill as reported is more than $450 million under the allocation from both the first and second concurrent resolutions. This should be an adequate amount to cover the pay raise which is the one mandatory item for the remainder of fiscal year 1980 for this bill. Other possible funding items are neither certain at this time nor would they be mandatory in any case. It is fair to say, however, that any additional supplementals for this bill, other than the pay raise, will have very slim chances and would almost certainly have to be accompanied by offsetting reductions, as I intend to recommend and advance all actions that I possibly can to stay within our allocations.

The point that the Senator made in regard to the reconciliation is the one thing that at this stage of the game, not knowing what the allocations are going to be from the savings by the full committee, I cannot entirely answer other than to say that the subcommittee is going to try to see that any share that is given to us of those savings we try to meet those savings from the best means at our disposal.

Mr. MUSKIE. Mr. President, I appreciate that reply which comes as no surprise. I have come to expect that kind of fiscal restraint from the distinguished floor manager of the bill and it is because he is in charge, so to speak, that I am willing to support the bill in its present form and in its present form I reemphasize what both of us have said; that it is around $450 million below the 302(b) allocation in budget authority and around $0.4 billion below in outlays.

I thank the Senator.

Mr. SCHMITT. Mr. President, I yield to the distinguished Senator from Ohio.

Mr. GLENN. I thank the distinguished Senator.

Mr. President, I rise for a question concerning the committee amendment, section 202 of the bill as reported, which pertains to the use of electronic transmissions by the Postal Service.

As chairman of the subcommittee with postal jurisdiction, I was inclined to object to the committee amendment as being beyond the proper jurisdiction of the Appropriations Committee. It appeared to establish basic policy, and it goes beyond the normal limitation on the use of appropriated funds by proposing to deny all appropriations to the Postal Service if it takes certain actions involved with the use of electronics.

Mr. SCHMITT. The Senator, I am sure, understands that such a limitation on the use of appropriated funds is not very useful when dealing with the Postal Service because it derives most of its funding directly from revenues and has the ability to borrow off-budget.

Mr. GLENN. I understand the Senator's point. And I understand the point that the amendment is intended to limit the further expansion of Postal Service operations into the electronic era without congressional approval. On that point, let me ask a couple questions.

Is it the intention of the committee and of the sponsors of this amendment to establish a policy either favoring or opposing Postal Service use of electronic transmission beyond September 30, 1980, the last day of the fiscal year to which this bill applies?

Mr. SCHMITT. We do not so intend. The limitations the amendment would impose would expire with the end of fiscal Year 1980, it being our intention only to maintain the status quo pending the determination of the future course of the Postal Service by Congress.

Mr. GLENN. Do I understand correctly that there is no presumption that the language of this amendment will automatically appear in next year's appropriations bill?

Mr. SCHMITT. That is correct.

Mr. GLENN. The status quo involves, basically, three ongoing Postal Service projects. The first of these is E-Com, which stands for electronic computer originated mail. It is a service that would permit Postal Service customers who generate large volumes of mail to link up directly with computers leased by the Postal Service and have their letters, bills, or whatever, transmitted over lines leased from a common carrier to a post officer nearer the point of delivery. There they would be printed on paper for the first time, enveloped, and dispatched for normal delivery by a letter carrier. It is similar to a mailgram.

Mr. SCHMITT. It is certainly similar in concept, but fundamentally different in that the service would be marketed by a Government establishment, the Postal Service, rather than by a private sector company contracting with the Postal Service for the final physical delivery as is the case today.

Mr. GLENN. The Senator is correct. That is the key difference. But is it the intention of the committee amendment to prevent E-Com, even if approved by the pertinent regulatory bodies, from entering service during fiscal year 1980?

Mr. SCHMITT. Yes, as a permanent service, and I emphasize the word "permanent." It is our intention that such service not be permanently fixed in place without congressional approval.

Mr. GLENN. It is not the intention of the committee amendment to bar E-Com from being put into service on a test or experimental basis?

Mr. SCHMITT. The Senator is correct. The wording of the amendment specifically exempts research and development, the testing of electronic message technology applications on an experimental basis, and guarantees against abrogation of any contracts in existence.

Mr. GLENN. The second Postal Service project now pending is called Intelpost. Developed under contract with Comsat, this project involves the transmission of mail matter to and from seven foreign countries from a selected few post offices in the United States. Bids were sought on this system and awarded to two U.S.-based international record carriers, who have not yet obtained tariffs from the Federal Communications Commission. The mail involved originates and ends as hard copy.

Would the committee amendment prevent Intelpost from being put into service during fiscal year 1980?

Mr. SCHMITT. I say that the situation is the same as that pertaining to E-Com. The amendment would be intended to hinder Intelpost from being publicly offered as a permanent service. It would not hinder its use to test electronic message technology on an experimental basis.

Mr. GLENN. The last Postal Service project is a longer term research and development project called EMSS, which stands for Electronic Message Service System. Can we safely assume that the wording of the amendment, excluding from its limitations the ability of the Postal Service to undertake research and development, means that the pending R. & D. work, which is being conducted under contract with private industry, would be unaffected?

Mr. SCHMITT. That is correct.

Mr. GLENN. I want to thank the Senator. With these clarifications, I will not object to the committee amendment. I agree that the basic public policy decision on how the Postal Service will utilize electronics in the years ahead should be made by the Congress, operating through the legislative committees with appropriate jurisdictions over postal affairs and telecommunications. Two years ago the Postal Service was under criticism for not being forward-looking and aggressive enough in this area. Now they have come under some criticism for being too aggressive. While I agree that the basic public policy decisions should be made by the Congress, I do not want to stifle the spirit of innovation at the Postal Service.

I thank the Senator for yielding.

Mr. SCHMITT. I thank the Senator for working with us on this matter.

I might make one additional comment on the colloquy. The Senator had at some point asked about what is intended by "testing on an experimental basis." To qualify, it would be necessary that such service be implemented in such a way as to be implemented in scope or duration and not be implemented in such a way as to imply they are permanent fixtures of the Postal Service. I think that clarifies that issue also.

Mr. GLENN. It does, and I think it clarifies the situation.

Mr. SCHMITT. I yield to the distinguished chairman of the Commerce, Science, and Transportation Committee for some comments he wishes to make.

Mr. CANNON. I thank the Senator for yielding.

While I am not a member of the Appropriations Committee, my committee has studied the matter of Postal Service involvement in electronic communications in the context of our revisions to the Communications Act.

I may say Senator Hollings had intended to be here for this matter today but, unfortunately, because of the hurricane in that area his flight was canceled and he is not able to get back and, therefore, I am speaking, in part, in his behalf as well.

I think it is imperative that we make a policy statement. Postal Service seems to take contrary positions—on the one hand they say they do not intend to become a carrier; yet they oppose language to preclude their direct involvement. The Presidential policy statement is unclear on this matter, yet we understand they do not intend the Postal Service to compete with electronic carriers. The Commerce Committee has clearly stated its opposition to direct Postal Service involvement as a carrier, and Senator Glenn now voices his general support for our position. I particularly appreciate the cooperation on this issue that our committee has received from Senator GLENN, the chairman of the subcommittee which deals with Postal Service matters, on this amendment, and I look forward to working with him to resolve the jurisdictional and policy questions in this debate in a timely manner.

I understand the point has been informally raised that this would constitute legislation on an appropriation bill. I think in light of the colloquy we have had and to clarify the intent it would be appropriate, therefore, to strike section 202 from this bill, particularly in light of what now appears to be a general agreement on the importance of these issues and the need for a congressional determination prior to any Postal Service action. Clearly the Postal Service is on notice that it should not move in this area without a clear policy statement by the Congress.

So, Mr. President, I move to strike section 202 of the bill.

Mr. SCHMITT. Mr. President, I think the Senator from Nevada makes an excellent suggestion. I know the distinguished Senator from North Dakota (Mr. BURDICK) might like to speak on this subject. He has expressed the same opinion.

With this colloquy and with the growing understanding between the two committees of jurisdiction as to not only what their roles are on this issue but the fact that those roles must be exercised, that we must give the Postal Service as well as the private sector policy guidance on this issue, I think we can proceed without doing violence by legislating on an appropriation bill.

I yield to the Senator from North Dakota at this point.

The PRESIDING OFFICER (Mr. ZORINSKY). The Senator from North Dakota.

Mr. BURDICK. I want to thank the Senator from New Mexico.

Mr. President, I had intended to raise a point of order with respect to the Schmitt electronic mail amendment, section 202 of H.R. 4393 as adopted by the Appropriations Committee.

The question that lies before this body is whether the Senate Appropriations Committee can or should take legislative action. I voted against this language in committee and intended to raise a point of order for I strongly feel that the postal appropriations bill is not the place for the Senate to state its policy on the role of the Postal Service in electronic transfer of messages.

When the old Senate Post Office and Civil Service Committee was disbanded by the 95th Congress, Postal Service oversight and authorization responsibility was delegated to the appropriate subcommittee in the Governmental Affairs Committee. That is where questions of postal policy must be resolved. The subject of telecommunications is within the domain of the Commerce Committee. Neither committee has taken action on this issue. Only by following the hearing process, indeed the entire legislative process, can the Senate know that all questions have been examined and a clear-cut rational policy be developed.

The role of the U.S. Postal Service in the transfer of communications finds its roots in the articles of the U.S. Constitution. Article I, clause 7 states:

The Congress shall have power to establish Post Offices and Post Roads.

A series of court decisions has served to extend this to mean that the postal powers of Congress embrace all measures necessary to insure the safe and speedy transit and prompt delivery of the mails. I can only ask: Where does the electronic transfer of mail fit in with this constitutional responsibility? Without the benefit of the proper legislative channels we cannot reach a reliable conclusion.

Back in 1970 the Postal Reorganization Act became law. As we all know, this established the Postal Service as a unique, separate entity with the authority to make decisions such as those involving the use of telecommunications. I am not here to pass judgment on the Postal Reorganization Act of 1970, but I must question the propriety of eroding the impact of this act through language attached to an appropriations bill without any action on the issue by the Governmental Affairs Committee. Furthermore, this law states:

The Postal Service shall have as its basic function the obligation to provide postal services to bind the nation together through the personal, educational, literary and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.

Again I ask: Where does the electronic transfer of mail fit in with these legislated responsibilities? And, again, I come to the conclusion that without the benefit of the proper legislative channels, this important question cannot be answered.

The President has put forth eight conditions for the use of electronic transfer by the Postal Service. Postmaster General Bolger has agreed to the conditions. A quick glance at the President's eight conditions reveals that the Postal Service will continue to enter this field in a deliberate manner. The conditions clearly preclude any wholesale takeover of telecommunications by the Federal Government.

I feel that two other issues that go to the heart of the matter must not be left unsaid. The Postal Service must be able to react to technological developments. Just as the transfer of mail has evolved from the Pony Express to trains to airplanes, the Postal Service should not be denied access to electronic mail.

Everyone in this body knows well my overriding concern for the development and well-being of the vast natural areas that stretch across America. It is very clear to me that the U.S. Postal Service is the only structure that is truly nationwide, serving both urban and rural areas, that can potentially provide electronic mail services to all Americans. I can only wonder how long Hettinger, Tioga, Pembina, or other small communities in North Dakota would have to wait for access to private services.

Mr. President, the issue of the role of the Postal Service in electronic communications is too large and important to be decided upon without action from the authorizing committees. Therefore, Mr. President, I join in the motion to strike, as offered by Senator Cannon, section 202 of H.R. 4393.

Mr. President, I ask unanimous consent that the President's eight conditions previously referred to be made a part of the RECORD.

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

CONDITIONS

President Carter's Conditions for use of Electronic Transfer by the Postal Service as accepted by Postmaster Bolger:

(1) The Administration opposes any legislative or regulatory efforts to restrict competition or entry in the electronic message field. In particular, it opposes any extension of the private express statutes beyond letter mail to cover electronic transmission.

(2) The USPS electronic service should not be subsidized by tax money or by revenues from other USPS services.

(3) The USPS electronic service should be established as a separate entity for accounting and ratemaking purposes to ensure that it is operated in a competitive fashion and to avoid the cross-subsidization of electronic service by regular mail services.

(4) The USPS should make its delivery services available to all electronic carriers at the same rates as those it charges itself.

(5) The USPS electronic service will be reviewed within the next five years, before the major investment is made, to evaluate its competitive impact and its potential to improve postal services and to ensure that no cross-subsidies or other anticompetitive actions are involved.

(6) The USPS should purchase electronic transmission services from carriers rather than building a transmission network.

(7) To ensure that interconnection with the mail delivery system is available to all companies, technical interconnection standards should be developed through a cooperative effort by the American National Standards Institute, the USPS, the private carriers, and an impartial arbiter, if needed.

(8) The existing regulatory system should be used to regulate the prices of the new services; i.e., the Federal Communications Comm. should regulate the pricing of the electronic transmission portion of the electronic message service and the Postal Rate Comm. should regulate the pricing of mail delivery. This regulatory system should be re-examined after five years to determine whether any statutory change is needed.

UP AMENDMENT NO. 515

(Purpose: To strike provision relative to electronic mail)

Mr. BURDICK. Mr. President, I send an amendment to the desk, if Mr. CANNON has not already done so.

The PRESIDING OFFICER. Is the Senator from North Dakota sending the amendment to the desk?

Mr. SCHMITT. Mr. President, I ask unanimous consent that this amendment be considered as a joint amendment by the Senator from Nevada and the Senator from North Dakota.

The PRESIDING OFFICER. Do the Senators wish consideration at this time?

Mr. SCHMITT. We wish consideration of this amendment at this time.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota (Mr. BURDICK), for himself and Mr. CANNON, proposes an unprinted amendment numbered 515:

On page 11 strike line 17 through page 12, line 3.

Mr. SCHMITT. Mr. President, I want to thank all parties concerned.

The PRESIDING OFFICER. The Chair will ask the Senator from New Mexico if this amendment is the 3-hour amendment under the unanimous-consent agreement which is contemplated therein?

Mr. SCHMITT. I believe it is under the original agreement with the Senator from Ohio that he would offer such an amendment. I ask unanimous consent that it be considered as the amendment for which there was a 3-hour time agreement.

The PRESIDING OFFICER. The man-

agers have the prerogative to so designate the amendment.

Mr. SCHMITT. The managers then so designate.

The PRESIDING OFFICER. I thank the Senator from New Mexico.

Mr. SCHMITT. Mr. President, the Senators involved in this issue have, I think, begun the process toward reaching not only a consensus of the instant matter but also the process of beginning authorizing and eventually appropriations hearings, if necessary, that will give guidance to the Postal Service on the matter of not only electronic mail but the general issue of the application of technology to communications, written or printed communications.

Mr. President, I cannot remember who it was, but somebody recently has said, and I think it very apropos, that the technology in communications is removing the tyranny of distance, and in the development of this great country of ours the tyranny of distance has played a tremendous role in not only the limitations on that development but on communications among our citizens.

But with the advance of satellite communications and microwave communications and many other new innovative techniques for one person communicating with another or groups of persons communicating with other groups, we are entering into a new era. I share the concern of the Senator from North Dakota about our rural communities. His State as well as mine is composed primarily of rural communities and individuals living rural settings. But we are very rapidly seeing new alternatives develop by which these individuals can communicate among themselves as well as the outside world, satellite communication being one of the principal elements of that new era of communication.

So I would hope that we all will keep an open mind on what is possible and what is economically feasible and desirable as we enter the hearings that hopefully will take place in the not-to-distant future. I do believe we must be very careful and not substitute a Federal service where a private service can more economically and in a technically superior way serve the people of this country, both rural and otherwise. But with this agreement, and with the amendment and the colloquy preceding it, I believe we have taken a giant step, if I may use that expression, toward a policy decision by Congress in this very important and potentially extremely fruitful area of electronic communication.

Mr. BURDICK. Mr. President, I am ready to vote. I yield back any time that I have.

Mr. SCHMITT. Mr. President, in behalf of the committee, I yield back the committee's time on this amendment. We will have to wait until 2:30, if I remember correctly, for a vote.

The PRESIDING OFFICER. The Senator is correct.

Mr. SCHMITT. So I ask unanimous consent that the vote be temporarily postponed until that time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. Is all remaining time yielded back?

Mr. BURDICK. Yes.

The PRESIDING OFFICER. All remaining time has been yielded back. Do Senators seek the yeas and nays?

Mr. BURDICK. No.

Mr. SCHMITT. I misunderstood the Senator from North Dakota. There is no need for a rollcall on the part of the committee. Therefore we can proceed with that vote at this time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from North Dakota (Mr. BURDICK).

The amendment (UP No. 515) was agreed to.

Mr. SCHMITT. Mr. President, I believe the Senator from Arkansas (Mr. PRYOR) has an amendment to offer at this time.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 397

(Purpose: To express the sense of the Congress with respect to the sale by former President Richard M. Nixon of the estate known as Casa Pacifica, located in San Clemente, California)

Mr. PRYOR. Mr. President, I call up an amendment which I have at the desk, and I ask for its consideration at this time.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. PRYOR) proposes an amendment numbered 397.

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

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

The amendment is as follows:

At the end of the bill insert the following:

SEC. 616. It is the sense of the Congress that, upon the sale of the estate known as Casa Pacifica located in San Clemente, California, former President Richard M. Nixon, should reimburse the United States for the original cost of any item of property procured by the Administrator of General Services which the Comptroller General of the United States determines to have a nonprotective benefit.

Mr. PRYOR. Mr. President, the amendment to H.R. 4393 that I am today proposing is an amendment that expresses the sense of Congress that upon the sale by former President Nixon of the estate known as Casa Pacifica, located in San Clemente, Calif., the U.S. Government shall be reimbursed the original cost of those items of property procured by the General Services Administration and determined by the Comptroller General of the United States as having a nonprotective benefit.

Based on reports by the General Accounting Office in 1973, the Joint Committee on Internal Revenue Taxation in 1974, and the House Government Operations Committee in 1974, it is apparent to me, and I think to many others, that hundreds of thousands of dollars in Federal funds were spent on the San Clemente property. Among those expenditures were payments for items having a nonprotective benefit to the owner of the property. It is the cost of such items that should be reimbursed to the Federal Government.

In the past I have referred to this as the unjust enrichment of a former President.

At one time press reports indicated that former President Nixon had promised the Federal Government the deed to San Clemente. Even the 1973 GAO report cited the announcement that his interest in the estate would be a gift to the American people. Former President Nixon's decision to sell the San Clemente property to a private concern, however, has now brought this issue to the forefront.

Mr. President, many believe that these nonprotective improvements to San Clemente have resulted in former President Nixon being unjustly enriched at the cost and expense of the taxpayers of this country. Because the House of Representatives addressed this issue in its consideration of this appropriation bill, I believe the Senate ought to consider it in the same context.

To put this issue in perspective, I want to point out that after the Government reports of 1973 and 1974, Congress expressed its will on the subject of such expenditures with the enactment of the Presidential Protection Assistance Act of 1976.

This act places certain limitations and conditions on the expenditure of funds for the protection of the President, Vice President, and others whom the Secret Service is directed to protect. It provides that executive departments and agencies shall assist the Secret Service by providing services, equipment and facilities on a temporary and reimbursable basis when requested by the Director of the Secret Service, and on a permanent and reimbusable basis upon advance written request from the Director.

Section 5 of the act states that all improvements and other items acquired pursuant to provisions of the bill shall remain the property of the U.S. Government. All such improvements and other items shall be removed upon termination of Secret Service protection unless the Director determines that it would not be economically feasible to do so. However, they shall be removed regardless of cost if the owner of the property, at the time of termination, requests removal.

If such improvements are not removed, the owner shall compensate the Government either for the original costs or for the amount by which the improvements have increased the fair market value of the property, as determined by the General Accounting Office, whichever is less.

Although the 1976 law does not apply to San Clemente retroactively, it sets out provisions which I believe should guide the actions of all former Presidents. That is the purpose of my amendment today—to express the will of Congress that former President Nixon should not be unjustly enriched at the cost and expense of the taxpayers of the United States.

Examples of such reimbursable costs are: A heating system at $13,500; a fire protection system at $33,300; gazebo renovation at $6,600; sewer lines at $3,800, and a flagpole at a cost of $2,300. There has been some discrepancy on a final figure regarding the reimbursable

amount. For this reason, I suggest that a 1979 GAO verification be initiated to arrive at an appropriate and final figure.

It is not the intention of this amendment, Mr. President, to be a prejudgment or accusation of wrongdoing. It is not intended to level a legal claim against the property at San Clemente. Nor is it intended to reduce funds for former President Nixon's staff and office expenses as the House voted to do on July 16, 1979, during its consideration of this bill.

The Senate Appropriations Committee is currently reviewing the proper level of appropriations for expenses for former Presidents. The Government Affairs Subcommittee on Civil Service and General Services, of which I am chairman, is presently looking into the proper type of expenditures for former Presidents. In fact hearings have already been held on the Former Presidents Act of 1958 and the Presidential Transition Act of 1963 in order to determine if these two statutes can be altered to clear up some areas of ambiguity that presently exist.

I believe, Mr. President, that the amendment I propose today is a most reasonable and fair approach to this issue at this time. I urge my colleagues to join me in support of this measure.

At this time I yield to our distinguished colleague from the State of Colorado (Mr. HART).

UP AMENDMENT NO. 516

Mr. HART. I thank the Senator from Arkansas. Mr. President, I send to the desk a modifying amendment to the amendment of the Senator from Arkansas, and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair must inform the Senator from Colorado that the amendment to the amendment is not in order until the time on the amendment of the Senator from Arkansas has expired, except by unanimous consent.

Mr. PRYOR. I yield back the remainder of my time.

Mr. CHILES. I yield back my time.

Mr. SCHMITT. I yield back my time.

The PRESIDING OFFICER. The amendment is now in order. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an unprinted amendment numbered 516 to amendment 397:

On page 1 line 5, strike all through page 2 line 2, and insert the following:

any construction, renovation, improvements, equipment or articles paid for by the Federal Government of the United States, or for the amount by which they have increased the fair market value of the property, as determined by the Comptroller General of the United States, as of the date of sale, whichever is less.

Mr. HART. Mr. President, first, I would like to commend Senator PRYOR for bringing the issue of former President Nixon's sale of San Clemente to the Senate floor. This is an issue I first raised in the Senate in June when I introduced a resolution seeking reimbursement to the U.S. Treasury of any gain made in the sale of former President Nixon's residence at San Clemente which resulted from improvements made to the property from Federal funds.

The Presidential Protection Act of 1976 provides that when improvements made to non-governmental property at Federal expense are not removed, the owner of that property at the time of termination shall compensate the United States for the original cost of such improvements or for the amount by which they have increased the fair market value of that property, as determined by the Comptroller General of the United States, as of the date of termination, whichever is less.

Senator PRYOR's amendment calls for reimbursement of original cost for non-protective benefits. My amendment to his amendment adopts the language of the Presidential Protection Act and provides for reimbursement of the amount by which improvements have increased the fair market value of the property, or for reimbursement of original cost, whichever is less. Taken together, these amendments track the language of the 1976 Presidential Protection Act and express the sense of the Congress that the principles of the Act should be applied in the case of former President Nixon's sale of San Clemente. These amendments put the Senate on record in support of prohibiting personal gain by employees and officials of the Federal Government at public expense.

Mr. President, the sale by former President Nixon of his residence at San Clemente presents a test of our dedication to public ethics. Substantial public expense was incurred to improve San Clemente, most of which was necessary at the time for purposes of security and official function. However, the sale of the residence precludes its further use in the public interest. The public's financial investment should be returned to the Treasury.

Mr. President, neither of our amendments is intended to single out or discriminate against Mr. Nixon. Our intent is to support a policy which should be applied to all Federal employees and officials, past, present, and future. I urge my colleagues to join us now and in the future. I ask them to help keep the trust, confidence, and credibility of the American people in their Government officials.

Again, I commend Senator PRYOR for bringing this issue to the floor. There has been great public interest in this since my resolution was introduced in June. Now the Senate has an opportunity to act. I hope the Senate will adopt our amendments together.

Mr. STEVENS. Will the Senator yield?

Mr. SCHMITT. I yield to the Senator from Alaska such time as he may desire.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. May I ask the Senator from Colorado, is it the understanding of the Senator from Alaska that this is still a sense-of-the-Congress amendment to the bill? Is that correct?

Mr. HART. The Senator from Alaska is correct.

Mr. STEVENS. Then it would be this Senator's understanding that the effect of this sense-of-the-Senate amendment would be for the Senate to go on record as interpreting the Presidential Protection Act of 1976 as it applies to the sale of the Nixon property?

Mr. HART. The Senator is correct.

Mr. STEVENS. And is there any intention in this sense of the Senate amendment which would in any way change any prior interpretation by the Comptroller General or any other executive agency of the Presidential Protection Act of 1976 as that act might apply to the sale of the Nixon property?

Mr. HART. Not to the knowledge of the Senator from Colorado.

Mr. STEVENS. Mr. President, we have been concerned with the problem of the improvements made to any residence of a President. There are, I believe, instances where other improvements have been made in the past. Certainly, there are improvements being made even right now, as I understand it, to the incumbent President's residence or home. It is something that must be done to meet the needs of the Secret Service. I do think we ought to go on record as indicating what our interpretation of existing law is as it applies to the sale of the Nixon property in San Clemente.

As a member of the committee which has been involved with this over a period of years I am concerned and want to make certain, though, that the understandings that we reached in 1976 are in no way affected by this sense of the Senate amendment. It really is declaring once again that that act and the principles of that act should be applied to the sale of the Nixon property as that act is interpreted by the Comptroller General of the United States.

Mr. HART. The Senator is correct, but I want to clarify a previous answer so that the Senator will understand. The General Services Administration has rendered an opinion that the act does not apply to President Nixon. It was not retroactive. It was enacted in 1976. The Senator's question was cast, I think, in terms of the General Accounting Office. The answer is no, there is no General Accounting Office opinion that I am aware of. But the General Services Administration has itself interpreted the law to mean that it does not apply to President Nixon.

Mr. STEVENS. I understand the statement of the Senator from Colorado, and I concur in the position stated by him in that regard. I take it we are setting a precedent that should President Johnson's farm be sold or President Truman's former residence be sold, we would again look at the principal as far as the Presidential Protection Act of 1976. Certainly, that act applies to all Presidents who serve in office subsequent to 1976.

Mr. HART. The Senator is correct.

Mr. STEVENS. I thank the Senator for his answers.

Mr. HART. I yield to the Senator from Arkansas.

Mr. PRYOR. I thank the Senator for yielding. I would like to say, Mr. President, that the modification that Senator HART is making to my amendment is to include the more precise language of the Presidential Protection Assistance Act of 1976 regarding the fair market value of the property.

It has been my intention throughout

this endeavor to use the Presidential Protection Assistance Act as the basis for my amendment. I gladly accept the change to my amendment sought by the distinguished Senator from Colorado (Mr. HART).

Mr. HART. I thank the Senator for his remarks.

Mr. President, I am prepared to yield back the remainder of my time.

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

Mr. SCHMITT. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. All time having been yielded back, the question recurs on the amendment offered by the Senator from Colorado to the amendment of the Senator from Arkansas.

The amendment was agreed to.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Arkansas, as amended.

The amendment, as amended, was agreed to.

Mr. PRYOR. I move to reconsider the vote by which the amendment, as amended, was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 517

(Purpose: to prohibit the use of funds to issue or enforce regulations relating to the inclusion in gross income of fringe benefits)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) proposes an unprinted amendment numbered 517:

On page 45, between lines 8 and 9, insert the following new section:

SEC. 616. None of the funds available under this Act may be used to issue or administer regulations providing for the inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1954 unless such fringe benefit was so included as of July 1, 1978.

Mr. ARMSTRONG. Mr. President, a reading of the amendment spells out clearly the purpose of it. The need of it is very simple. My amendment arises from a 1977 proposal by the Internal Revenue Service, which announced plans to tax some 40 employee benefits which would have boosted the tax bill of a typical worker by about $240 per year. Among the benefits that would have been subject to taxation under the IRS proposal would have been such things as free parking on employer premises, subsidized meals in employee cafeterias, free transportation for employees of airlines, buslines, and railroads, discounts for retail employees, the company picnic, and the company Christmas party, to name a few of them.

I think it was the feeling of most of us in Congress at that time that such a proposal was, first, unwise, and, second, a policy decision that should be made by the Congress, not by the regulatory bureaucracy at the IRS.

When this was proposed, I offered an amendment identical in language to what is now pending before the Senate to the Treasury-Post Office bill which was then being considered by the House of Representatives. It was adopted unanimously or nearly so, then later was preempted when the Ways and Means Committee passed a substitute which addressed this problem.

Unfortunately, the prohibition which was contained in that act expires on December 31 of this year, so that on January 1, the IRS will be free to go ahead and tax the fringe benefits which I have just mentioned and others of similar kind. The administration has indicated its intention to do so.

Therefore, unless we pass this amendment or something similar to it, there is every reason to believe that they will go ahead and implement this plan to tax fringe benefits. It may be that, after hearings, Congress would wish to extend tax to these benefits. I personally am doubtful of it. In any case, I think we can all agree that a further extension of the time limit to give us a chance to decide that, rather than just let it happen by accident of regulation, is well advised.

With word of explanation, I encourage my colleagues to support this amendment. I shall, for the moment, at least, reserve the remainder of my time.

Mr. CHILES. Mr. President, this amendment is one that we did not discuss at all in the committee or in the subcommittee. I was trying to determine whether the chairman of the Committee on Finance wanted to come to the floor and have an opportunity to speak to the amendment. I think that it might be wise for us to determine that. Under those circumstances, I think I shall ask for a quorum on my time and see if I can get hold of him.

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. CHILES. 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. ARMSTRONG. Mr. President, in order to facilitate the work of the Senate, we have, as I understand it, advised the chairman of the Committee on Finance of the action we are taking. In order to proceed without holding up the Senate in consideration of its business, I ask unanimous consent that this amendment be laid aside temporarily and that I be permitted to offer another amendment pending the arrival of the Senator from Louisiana, the chairman of the Finance Committee.

The PRESIDING OFFICER (Mr. ZORINSKY). Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 518

(Purpose: To prohibit funds from being used to enforce Revenue Ruling 79–72)

Mr. ARMSTRONG. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) proposes an unprinted amendment numbered 518.

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

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

The amendment is as follows:

On page 45, between lines 8 and 9, insert the following:

SEC. 616. None of the funds made available under this Act may be used to carry out the purposes of Revenue Ruling 79–72 or the proposed amendment to section 1.1232–3A(b)(2) of the income tax regulations, published June 29, 1979 in the case of time deposit certificates which are described in the revenue ruling and the proposed amendment and which are issued after December 31, 1978 by reason of Sections 451 or 1232 of the Internal Revenue Code of 1954.

Mr. ARMSTRONG. Mr. President, I believe I can explain this amendment very quickly. This amendment would prohibit the Internal Revenue Service from changing the present tax treatment on short-term certificates of deposit. Let me explain briefly what has happened up to now.

The IRS has proposed new rules which would amend income tax regulations of the Internal Revenue Code to require holders of short-term certificates of deposit with maturities of 1 year or less where interest accrues over into the next year to pay taxes on the interest that has been accrued by the end of the calendar or tax year, even though that interest has not been received by the taxpayer. This new rule would require banks and other financial institutions to furnish returns reporting interest under a new and, I am advised, a very difficult-to-implement formula. The taxpayer would then have to declare this amount as taxable income, even though he or she had not actually received the money and would not receive it until the following year.

There are two reasons why I am suggesting this proposed amendment: First, because, as a matter of justice, most taxpayers are on a cash accounting basis. It seems to me they should become liable for the tax only after they have received the interest earned on the certificate of deposit. That is the present law. My amendment does not change the present law. What it does is prevent the imposition of the tax prior to receipt of the interest payment, which is the present IRS proposal. So I am simply freezing the present law and leaving that for later determination by Congress.

The second reason why this is important to do is that it imposes a serious administrative burden on the banks and others which are affected. I think it is obvious why this is needed. I point out that this amendment enjoys the support

of the American Bankers Association, the United States Savings and Loan Association League, the Ameriran Association of Retired Persons, and the Independent Bankers.

With that word of explanation, I urge the adoption of this amendment.

Mr. CHILES. Mr. President, I say to my distinguished colleague that while we have not, again, held any hearings on this amendment, it does appear that it is going to work a burden and it would be inequitable and cause tremendous recordkeeping problems to a number of our senior citizens, who put their savings into these bank certificates. So it would be my disposition to say that we could take this amendment at this time and go to the conference committee with it. If we then find out that there are going to be some tremendous tax consequences or lost revenue or something, we would be able to take that up with the conference committee. At this time, I would be disposed to take it.

Mr. SCHMITT. I think the Senator from Florida makes an excellent suggestion.

Mr. CHILES. I yield back any time we have.

Mr. ARMSTRONG. Mr. President, I appreciate the courtesy of the managers and I yield back any time I have.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Colorado.

The amendment (UP No. 518) was agreed to.

Mr. SCHMITT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ARMSTRONG. Is the pending business now my earlier amendment?

The PRESIDING OFFICER. The Senator is correct.

Who yields time?

Mr. CHILES. I wonder if the Senator would further consent to set his amendment aside at this time and let us take up the Humphrey amendment.

I do not know whether we were able to reach Senator LONG or not. We put in a call. But, in the meantime, we will try to see.

Mr. ARMSTRONG. I am happy to withhold.

Mr. CHILES. I thank my distinguished colleague.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I inform the floor managers that I will be requesting a rollcall vote on my amendment. I would certainly be willing to defer until the vote on the amendment which is scheduled at 2:30—I see it is now 2:40.

Mr. CHILES. The agreement we had was that there would be no rollcall before 2:30.

Mr. HUMPHREY. Yes.

Mr. CHILES. It may well be the vote on the Senator's amendment would be the first rollcall.

Mr. HUMPHREY. I see.

Mr. CHILES. I think we have waited long enough.

Mr. HUMPHREY. Fine. I did not realize it was this late.

UP AMENDMENT NO. 519

Mr. HUMPHREY. Mr. President, I send to the desk an unprinted amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an unprinted amendment numbered 519:

On page 17, line 24, strike the period and insert in lieu thereof a comma and the following: "and of which $500,000 shall be available only for activities related to the investigation of possible violations of federal law connected with the Carter peanut warehouse in Plains, Georgia."

Mr. HUMPHREY. Mr. President, indictment of President Carter's good friend Bert Lance on 15 counts of misapplication of bank funds raised more questions than it answered. Lance and three banking colleagues are alleged to have engaged in a conspiracy beginning in 1972 involving $20 million, 383 loans, and 41 banks. The indictment said the actual or potential loss to the banks exceeded $500,000. However, Mr. Lance's most famous loans—to the Carter peanut warehouses—were not among those covered in the indictments. Yet these million dollar loans and the way they were administered may have had an immeasurable impact on the life of this Nation because it has been alleged that Bert Lance's banking practices made possible the winning candidacy of Jimmy Carter in 1976.

The background of the startling accusation is this: In 1975 and 1976 Bert Lance, then the president of the National Bank of Georgia, made a loan to the Carter warehouse to purchase a peanut sheller and for improvements to the warehouse. From the very beginning, the loans made little economic sense. There was never at any time enough income produced by the warehouse to amortize the loans.

To be specific, the Carter warehouse needed to make a profit of at least $250,000 per year—$144,000 for the principal and $106,000 for interest—to repay the loan. This, of course, would be over and beyond any income paid out to Jimmy Carter, his brother Billy, and to his mother. Yet the records show that in order to meet just the loan requirements the warehouse would have had to shell 25,000 tons of peanuts each season. It would have cost $9.8 million to purchase 25,000 tons of peanuts, but the Carter warehouse spent about $2.8 million for peanuts in 1975. In 1976, $4.4 million was spent on peanuts.

Under these financial circumstances, there was no way—simply no way—the loans to the business could be met by the peanut shelling operation. The Washington Post on March 11, 1979 charged that Billy Carter altered the records of the family peanut warehouse and delayed making payment of $500,000 to Bert Lance's National Bank of Georgia.

Second, the Carter warehouse had insufficient collateral on hand to secure the loans. At the end of 1975, the Carter warehouse owed the National Bank of Georgia $1,690,000.

For this loan to have been properly secured, the warehouse should have had $2,112,500 worth of peanuts on hand. Instead the warehouse had on hand peanuts valued at $1,499,403—a shortfall of $613,097. At about the same time, in March of 1976, the Nation magazine charged that Billy Carter had transferred $500,000 from the Carter warehouse bank accounts at the National Bank of Georgia to his personal account at the same bank. According to the Nation, this money then was shortly withdrawn. The Nation also reports that $500,000 was redeposited in Billy Carter's personal account in May and June 1976. The money was then transferred to the warehouse account and then used to repay the delinquent loan.

These dates and the amounts involved are crucial. In 1974 the Congress enacted the Presidential Campaign Finance Law. Among other provisions, the law limited individual campaign contributions by business. On January 30, 1976, the Supreme Court handed down a decision that upheld part of the Act including the limitation on contributions, while striking down certain other provisions. The Court, however, stayed its ruling until March 22 to give the Congress time to enact remedial legislation. On midnight, March 22, the matching Federal Campaign faucet was turned off. The Congress finally enacted remedial legislation, 43 days after the Supreme Court deadline and the President signed the bill May 10.

Meanwhile, Mr. President, the primaries continued on schedule. A number of candidates were hard pressed for campaign funds and were forced to curtail their efforts. But not Jimmy Carter. Senator HENRY JACKSON, for instance, spent only $167,150 in his Pennsylvania effort. Carter, even though his campaign was in debt almost $1 million, spent $472,117. On April 27, Carter won the crucial Pennsylvania primary. Carter carried 64 of 67 counties and had a margin of 170,000 votes. This election effectively ended Senator JACKSON's campaign, and Jimmy Carter went on to wrap up the nomination when he won the Ohio primary on June 8, 1976. Coincidentally—everything seems to be a coincidence—during this crucial period the Rafshoon Advertising Agency extended massive credit to the Carter campaign. According to documents on file within the Federal Election Commission, by the end of May the Carter campaign owed the Rafshoon agency almost $646,000.

The Nation magazine suggests the Rafshoon Agency was the recipient of the $500,000 Billy Carter withdrew from the warehouse account. In effect, the Nation alleges that Rafshoon and company laundered the money.

Mr. Rafshoon, of course, is now a

high White House aide, paid $56,000 per year to attend to Jimmy Carter's image.

Since these allegations were first made, there has been a massive silence in Washington. Nobody is asking: "What did Jimmy Carter know and when did he know it?" Yet, if these allegations are true, Jimmy Carter violated Federal election laws.

The indictment of Bert Lance should encourage the Federal Election Commission and the Special Counsel, Paul G. Curran, to fully investigate the loans made to the Carter warehouse and the dubious disposition of those funds.

The statute of limitations is about to run out on the possible FEC violations. Other laws, with longer statutes of limitations, are also applicable. The Lance-Carter connection must be fully examined. It seems unlikely that a man who is accused of conspiring over a period of 7 years of misapplying bank funds involving 383 loans exempted the Carter warehouse loan from this pattern of conduct—a loan, by the way, he publicizes in the 1976 annual report of the National Bank of Georgia.

There can be no doubt of the closeness of Jimmy Carter to Bert Lance. He was the first person Carter named to his Cabinet. His tearful acceptance of Lance's resignation provided memorable television drama.

On October 8, 1976, while campaigning, Jimmy Carter attacked President Ford, who was being investigated on a phony charge of misusing campaign funds. Jimmy Carter urged the press corps to question President Ford, saying:

> I call on the American news media to insist that Mr. Ford be cross-examined in a carefully prepared, open, previously announced press conference, with sound.

It is time Jimmy Carter answered some questions about the charges that have swirled about as a result of his relationship with Bert Lance.

Mr. President, the Federal Election Commission on August 21 announced that it had, by a 4-to-2 vote, cleared the Rafshoon agency of charges of giving illegal financial assistance to the Carter general election campaign. The matters which relate to the Carter peanut warehouse, in contrast, have to do with the Presidential primary period which has been swept under the rug and not been subject of a full investigation by the Federal Election Commission. Neither has there been any decision by the FEC on the validity of the charges which have been made in the Nation and elsewhere regarding the Carter peanut warehouse financial transactions.

We have it in our power to encourage the FEC to conduct the thorough investigation this serious matter deserves. A vote for this amendment is a vote for clean elections, a vote to prove to the American people that even the President of the United States is not immune to the operation of the law. We cannot afford to allow these serious charges to remain uninvestigated by the FEC.

Imagine what the average citizen must think about the failure of the appropriate agencies to conduct a thorough investigation. Is the voter to believe that because those in charge of exposing violations of the law are Presidential appointees that the President is, therefore, safe from investigation? This must not be, Mr. President.

Must we wait until a new President takes office? The term to which Mr. Carter was elected is close to three-fourths gone. It is time for an investigation now.

Mr. President, my amendment would reserve $500,000 of the FEC budget to facilitate a thorough investigation of these very serious allegations. It seems to me very strange that the FEC has been very slow to move in looking into these charges.

As I mentioned a moment ago, the statute of limitations with respect to the laws which it is alleged have been violated will be running out very soon, and I think it is time for the FEC to act. I urge my colleagues to urge the FEC to act by accepting this amendment.

Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHILES. Mr. President, I am going to make a few remarks, and when time has expired—the Senator has 30 minutes on his side—I propose to move to table his amendment. I will do that when the time has expired, so he can make any other comments he wishes.

For the convenience of the Senate, perhaps we could take up the vote on the Senator's amendment after the vote on the McClure amendment, which is going to follow the first rollcall vote we have today. That might help us to get underway, so that we can finish this bill today and not be too late in doing so.

Mr. HUMPHREY. That is perfectly agreeable.

Mr. CHILES. Mr. President, I ask unanimous consent that the vote on the Humphrey amendment or the motion to table the Humphrey amendment occur immediately following the vote on the McClure amendment, which will follow the first rollcall vote we have today.

The PRESIDING OFFICER. As a clarification, the McClure amendment is the committee amendment.

Mr. CHILES. That is correct. It is the committee motion to strike.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. CHILES. Mr. President, we are now going to have two rollcall votes immediately following that. I ask unanimous consent that on the next two rollcall votes, after the first rollcall vote, there be a limitation of 10 minutes on each vote. That has been cleared on the minority side. There will be 15 minutes on the first rollcall vote. Senators will be here. This is an attempt to speed up the process.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Reserving the right to object, Mr. President—and I do not object—the distinguished chairman has cleared this with me. We are talking about the three rollcall votes—two back-to-back behind the initial one, which will be 15 minutes.

Mr. CHILES. Yes, the first will be 15 minutes.

Mr. ROBERT C. BYRD. And the warning bell will be sounded after the first 2½ minutes on the subsequent two.

Mr. CHILES. Yes.

Mr. ROBERT C. BYRD. I have no objection.

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

Mr. CHILES. Mr. President, referring to the amendment of the Senator from New Hampshire (Mr. HUMPHREY), as I understand the amendment, he says that $500,000 of the funds going to the Federal Election Commission would have to be spent on the investigation of the Carter warehouse and its activities.

My understanding is that the FEC has concluded the audit of the Carter campaign. They have also concluded and published their findings on the audit of Rafshoon and his dealings. So I do not see why it is necessary to have $500,000 of funds reserved or $500,000 taken out of this budget.

It also is my understanding that the Justice Department has been designated to be the lead agency for an investigation in regard to the Bert Lance matter, and that Department has been conducting that investigation. So these funds would not be in that capacity.

In addition, there were some allegations that the Justice Department is also investigating Billy Carter and the warehouse operation. The Justice Department is conducting those investigations.

The FEC's audit of the Carter campaign has been completed, the audit of Rafshoon and his dealings is virtually completed and is soon to be published, and the Justice Department is the lead agency in these matters, in the Bert Lance investigation and allegations in regard to Billy Carter and any improprieties that might involve him with respect to the warehouse. Under those circumstances, I cannot see any reason for saying that we are going to peg down $500,000 and that these funds cannot be spent for the general business of the Federal Elections Commission.

Under those circumstances, I will move at the proper time to table the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. Mr. President, I yield back any time I have, but I do not want to prohibit the Senator from New Hampshire from speaking.

Mr. HUMPHREY. Mr. President, my amendment would not mandate the FEC to do anything. It is hoped that it would encourage the FEC to do something; namely, look into these very serious charges which heretofore, it seems to me, it has ignored.

Senator CHILES noted that the Justice Department has been designated as the lead agency—to use his words—in investigating the Carter campaign. Nevertheless, that designation does not render the FEC inoperative.

In addition, the FEC audit of the Carter campaign did not investigate the serious charges relating to half a million dollars which came from Bert Lance's bank to the Carter warehouse and then to Billy Carter and then mysteriously disappeared during the critical months of the Presidential primary

campaign. The FEC audit of Rafshoon covered only the general election period, not the primary period in question.

If a President whose campaign is under investigation appoints the Justice Department as the lead agency and thereby nullifies the FEC or absolves the FEC of its responsibilities, then we are in a difficult situation. It seems to me that some very serious charges here have been swept under the rug.

My amendment is very simple. It simply would reserve $500,000 to permit the FEC to conduct an investigation, an early investigation, a long overdue investigation, a critical investigation, into these very serious charges.

Mr. CHILES. Mr. President, I am prepared to yield back my time.

I will yield back the remainder of my time if the Senator is prepared to yield back his.

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

Mr. CHILES. Mr. President, I move to lay the amendment on the table and ask unanimous consent that we set the amendment aside in accordance with the previous unanimous-consent agreement.

The PRESIDING OFFICER. The unanimous-consent agreement has already been made.

Mr. CHILES. I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Colorado.

Mr. CHILES. No. In accordance with the previous unanimous-consent agreement we are now setting the amendment aside.

The PRESIDING OFFICER. That has occurred.

Mr. SCHMITT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SCHMITT. Has the amendment by the Senator from Colorado (Mr. ARMSTRONG) been temporarily set aside?

The PRESIDING OFFICER. It has been done so twice and would ordinarily occur as the pending amendment unless set aside the third time.

Mr. SCHMITT. Thank you, Mr. President.

Mr. CHILES. Mr. President, we had set aside the amendment of the Senator from Colorado. I have been unable to get the chairman of the Finance Committee. My disposition is to tell the Senator that I think I would just be prepared to take his amendment and go to conference with it. If the Senator from Louisiana, the distinguished chairman of the Finance Committee, has great objection or the committee does, they can make that known to us or if they have some other way of handling this prior to the time we go to conference, and I hate to keep the Senator.

Mr. ARMSTRONG. Unless there is further discussion that solution would suit me fine, Mr. President.

Mr. CHILES. Under those circumstances, Mr. President, I yield back the remainder of my time and shall try to take the amendment to conference.

The PRESIDING OFFICER. Does the Senator from Colorado yield back his time?

Mr. ARMSTRONG. Yes, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question recurs on agreeing to the amendment of the Senator from Colorado.

(Putting the question.)

The ayes appear to have it. The ayes do have it.

The amendment (UP amendment No. 517) was agreed to.

Mr. SCHMITT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 520

(Purpose: To delete the IRS debt offset program)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

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

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

The amendment is as follows:

On page 6, line 17, strike: "$774,660,000" and insert in lieu thereof "$773,660,000".

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. SCHMITT. Mr. President, I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished Senator for yielding.

TIME-LIMIT AMENDMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on this amendment be limited as follows: 30 minutes under the control of Mr. SASSER; 30 minutes under the control of Mr. SCHMITT; 15 minutes under the control of Mr. WEICKER; and 15 minutes under the control of Mr. PERCY.

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

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from New Mexico.

Mr. SCHMITT. Mr. President, this amendment deletes $1 million from the appropriations for the IRS, the $1 million that is allocated for the purpose of a study having to do with the IRS offsetting debts owed to the Department of Health, Education, and Welfare for student loans.

Mr. President, it is disturbing to learn that in fiscal year 1978 over $400 million owed by individuals and businesses to the Federal Government was written off as uncollectable. When individuals refuse to pay their legitimate debts to the Government, the taxpayers of this country are cheated. There is no question about that and there is clearly a need for increased efforts by the agencies in collecting legitimate debts owned to them by the citizens of the country.

On March 9 of this year, the Comptroller General issued a report recommending that the Internal Revenue Service offset loans in default against income tax refunds. That is if there is a loan in default the IRS would, in coordination with the particular agency, offset that loan against a refund that the same individual might be owed. That recommendation by the Comptroller General has become a test program in this bill. During committee consideration of H.R. 4393, I offered an amendment to delete this section. The amendment failed by an 11 to 10 vote. I again offer this amendment.

This program is ill-conceived, unwise, and potentially dangerous and to embark on it at this time is fundamentally wrong. The need for the proposal has not been established nor have the consequences been fully examined. The proposal has raised many questions which are left unanswered.

Mr. President, giving the Internal Revenue Service $1 million and 30 positions to enter into a wholly new debt collection procedure is without precedent, and without the benefit of adequate inspectional oversight by either the Treasury, Postal Service, and General Government Subcommittee or the full Senate Appropriations Committee. As a matter of fact, in both the House and the Senate, the four committees having direct jurisdiction over this new endeavor, the House Ways and Means Committee, the Senate Finance Committee, and the House and Senate Committees on Appropriations, have not held hearings which would justify this expenditure and the need for this program. Last December, the Senate Finance Subcommittee on Taxation and Debt Management Generally held a hearing on debt collection but no mention was even made about the involvement of the IRS in offset.

The House has not held any hearings on the issue of offsetting defaulted debts against income tax refunds. Should this provision remain in this bill, the House would never even have the opportunity to vote on this major issue, if accepted in conference.

The only hearing on this subject was a 45-minute hearing before the Senate Appropriations Subcommittee on the Legislative Branch on March 20 of this year. Testimony was taken from the Comptroller General and his staff. There were no other witnesses, not even the Internal Revenue Service, the agency which will have to implement the program.

The proponents of this proposal have not established a need for such a drastic step, as to have the IRS become a debt-collection agency rather than being solely a tax-collection agency as it is today. To be sure, the Government writes off many millions of dollars every year in bad debts, and I support efforts to increase the effectiveness of collection efforts. The Comptroller General has stated that departments and agencies "have not been aggressive in pursuing collection (of debts)," and recom-

mended steps which could be implemented in-house to increase collection efficiency. These recommendations have, for the most part, not been implemented.

In addition, the Congress enacted legislation in 1978 providing for Inspectors General for various departments and agencies. Little or no effort has been undertaken to direct IG's to tighten debt collection procedures at the various agencies. These alternatives should be considered first before we embark on the uncertain waters of IRS debt collections.

My major concern and the concern of many of my colleagues is the rights of individuals and due process. This proposal, without any guidelines, shifts the burden of proof of guilt or innocence from the Government to the individual. No longer will the Government be forced to prove an individual owes money; rather, the individual will be forced to prove he does not owe the Government any money just to recover the tax refund due him. If through computer or human error, an innocent individual is thought to owe money to the Government, that individual could very well have his hard-earned money confiscated and then forced to spend months trying to recover it.

The proposal is inherently discriminatory. It is assumed that individuals who do in fact owe money to the Government are unwilling rather than unable to pay. There may be extenuating circumstances that the judicial system of debt collection would consider legitimate, but that this automatic system does not take into account. The proposal assumes that all tax refunds are due to income earned. It is very possible that some individual who is unable to pay off his debt to the Government receives an income tax refund due to medical expenses during the year. Clearly, this proposal for debt collection is prone to error and inflexible, as it now stands.

The issue of privacy and individual rights are not even addressed. Even in the case where an individual is guilty of defaulting on a loan, that individual has the right to due process. I hope we have established this principle in this country by now.

The relationship between a taxpayer and the Government is one of extreme confidentiality and must be protected. The Tax Reform Act of 1976 put a limitation on the use of tax return information. This proposal runs counter to the intent of that legislation and that law poses problems for this program. Under the Tax Reform Act of 1976, the IRS would be unable to report to the Office of Education, in this case, or any agency on the disposition of any accounts referred to collection. The initiating agency will have no way of knowing if the account was accurate or in error, paid or still in default. Should the individual apply for another loan, what kind of credit rating will that individual have at the agency?

The Internal Revenue Service is a revenue-collecting agency. A great deal of thought and discussion is needed before we embark on a program which would expand the IRS into a bill-collecting agency. At a minimum, the relevant committees of the House and the Senate should review the program and the IRS should be allowed to state its position on the program.

The IRS is strongly opposed to the program for a number of reasons. At this time I would like to read the letter I received from the Commissioner of Internal Revenue, Jerome Kurtz:

DEAR SENATOR SCHMITT: As requested by your staff, I am providing the following comments on the General Accounting Office's proposal that the government collect delinquent non-tax debts by keeping Federal tax refunds as offsets. This recommendation was contained in GAO report FGMSD-79-19, of March 9, 1979.

The Service opposes the test GAO recommends because although it could answer the narrow question of the cost effectiveness of the offset concept, we do not believe it would resolve the difficulties we foresee if IRS were to become the Nation's debt collector for small claims.

Overall, our opposition to offset is based on three major concerns.

RISKS TO THE NATION'S TAX WITHHOLDING SYSTEM

The IRS will collect about 90% or some $450 billion of the $500 billion in Federal revenues forecast for FY 1980. Taxpayers will voluntarily determine that they owe more than $440 billion, will file the required tax returns, and will pay this money—largely through withholding—without direct IRS enforcement action. Less than $10 billion will be collected as a result of direct enforcement action. It is the withholding system that makes it possible for the IRS to collect tax revenue at the inexpensive cost of about .50 per $100 collected.

If taxpayers react to the idea of IRS becoming the Nation's small debt collector by adjusting their tax withholding as much as 1%, the initial loss of Federal taxes voluntarily paid would be $4 or $5 billion. We are seriously concerned about the risks to which a National non-tax debt collection program would expose the withholding system.

PRIVACY CONCERNS

The test raises the issue of using tax information and the tax administration system for non-tax purposes. The GAO proposal would put IRS in the middle of controversy between the debtor and the agency owed the debt. Thus offsets which partially cover the debt, disagreements as to amounts between the debtor and the agency owed, remaining balances, and similar controversy would ultimately place the IRS in an awkward position. To maintain taxpayer privacy and to prevent unauthorized disclosure of tax information, IRS would be burdened with dealing with the taxpayer in attempting to resolve the controversy between the taxpayer and the agency owed the debt—without the authority to resolve the matter.

Additionally, we question whether the inter-agency use of personal financial data on citizens would adequately recognize concerns about citizen privacy in the use of data processing technology.

IMPACT ON IRS AS AN INSTITUTION ENTITLED TO PUBLIC CONFIDENCE

Maintaining taxpayer confidence in the tax administration system is one of the most critical tasks that we have. To add the task of public debt collector for small claims to our tax administration responsibilities would, in our judgment, damage our institutional position. The underpinning of the tax system is the voluntary payment of billions of dollars by more than 90 million individuals. We believe Congress should weigh the possible consequences of imposing such a test on the tax administration system.

I trust this information is of use to you in your deliberations, and appreciate very much your interest in the operations of the Internal Revenue Service.

With kind regards,

Sincerely,

JEROME KURTZ.

Mr. President, in summary, I believe very strongly that it would be a mistake to enact this major policy change in our tax and debt collection policies without adequate debate and discussion within the relevant committees and, subsequently, on the floor of the two Houses.

There are many practical problems and questions left unanswered. The major concern, however, is the potential for violation of the rights of individuals and the denial of due process. Saving the taxpayers some money is not worth the cost of what we may have to pay in terms of taxpayers' rights.

The PRESIDING OFFICER (Mr. HART). The Senator from New York.

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

Mr. SCHMITT. I would be happy to yield to the distinguished Senator from New York.

Mr. MOYNIHAN. Mr. President, as a member of the Committee on Finance, no less than as a Member of the Senate, I would like to express my appreciation for the extraordinarily thoughtful and capable comments that have just been made by my colleague, Senator SCHMITT.

It sometimes is an occasion almost for despair to see how little regard we have for the singular trust which Americans reside in our institutions of Government. We read an awful lot about distrust.

Go to a society where there is no trust in Government and see how taxes are paid. There is no greater measure of the stability of this society, of the strength of its policies, than the willing payment of taxes. As Commissioner Kurtz described to us, he made a rough calculation that $10 billion out of $440 billion, perhaps 3 percent, is collected by actions of the tax collection agencies, and better than 90 percent voluntarily, largely unnoticed. Is it not possible to make a conservative argument that if we have an effective method now, do not tamper with it? Do not, in fact, let a petty annoyance with post-teenagers who may not have paid their bills jeopardize this extraordinary institution of trust and reciprocity between citizen and Government.

I cannot too much congratulate the Senator for what he has said. I would like to note, as a member of the Finance Committee, that it is my understanding that the Finance Committee has not held hearings on this matter. I believe the Senator shares my understanding.

Mr. SCHMITT. That is correct.

Mr. MOYNIHAN. It would be a misuse of power to accept this amendment. It would be a mindless trifling with an imperative that we have the most profound responsibility to maintain in effect. I hope the Senate will not do this. I think it is more than attractive that such a proposal as this has come from the other side of the aisle, in a matter that should be attended on this side of the aisle as well.

Mr. SCHMITT. I thank the Senator for those comments. I would just make the minor correction that what I am trying to do is remove this provision from the bill.

Mr. MOYNIHAN. That is correct.

Mr. SCHMITT. Which the committee adopted by a vote of 11 to 10.

Mr. MOYNIHAN. Did I indicate otherwise?

Mr. SCHMITT. You indicated otherwise, but just in case anyone is paying attention to us, I want to have you on the side of justice.

Mr. MOYNIHAN. This should not be a part of this bill.

Mr. SCHMITT. But more seriously, you make such a profound argument about the voluntary tax system, and you above all, with the experience you have had with other governments and with the history of Government, recognize that it is a truly unique tax system. It is a voluntary tax system, and there are not many of those around; not in major nations, with the internal domestic complexity of our own.

Unfortunately, there are other pressures on that taxing system right now that are denigrating the voluntary nature of it: just the tax burden itself, the complexity of the tax system, the abuses by the IRS in other areas, all tend to make it less voluntary.

And Heaven help us if we ever lose a significant degree of voluntary activity on the part of the taxpayer. As I understand, the French Government is now in a situation where it is basically a negotiated tax. We do not want that. We do not want to have to negotiate with every citizen of this country on what their tax will be. It has to be a voluntary system, or there will be difficulties without end.

Mr. MOYNIHAN. In France the taxes are negotiated, as you say. In some countries they take the form of genuinely regressive tariffs and sales taxes. The whole system that we have adopted so faithfully of progressive taxes, of sharing the burdens according to ability to pay—what is the matter with us? Can the Senator explain to me how a body of this consequence, through centuries, almost, in the building of such an act in this Chamber, would jeopardize an institution so precious?

Mr. SCHMITT. I think we just move too quickly, and with the sincere motivation of trying to make the system of Government work better. I think everyone feels that if there are legitimate debts, they ought to be paid; but the issue has been transferred to "Let us have IRS collect them," and that is unfortunately the wrong way to go about it.

Mr. MOYNIHAN. Are we not jeopardizing the confidentiality of these matters?

Mr. SCHMITT. That is my opinion. It is also the opinion of Jerome Kurtz, the Commissioner of Internal Revenue.

Mr. MOYNIHAN. If I may say to my colleague and friend, I had something to do, in the executive branch, with the enactment of these student loan programs, but if we have to compromise the integrity of the Internal Revenue Service in order to collect these loans, I would rather see us not make any loans.

Mr. SCHMITT. The original proposal made in the committee was that we collect the VA debt. That did not meet with much popularity. This is an experiment.

Mr. MOYNIHAN. Might we not as well rent out the Internal Revenue Service to the local bookmakers, used car dealers, and savings and loan associations? We could rent an Internal Revenue Service.

What has become of sovereignty, and the dignity of the American Government?

Mr. SCHMITT. I think the Senator's implicit point is that we have moved from what has been the trend relative to privacy in Government, privacy of the individual in Government, or has been deflected by Government into an uncertain course. Where this will lead us I do not know. That is one of the problems with the proposal. The guidelines and constraints within which the IRS would operate are not defined. That should certainly be discussed before such a proposal becomes the law.

Mr. MOYNIHAN. I certainly wish to stand here and say that I am grateful to the Senator from New Mexico. I think he is right. I wish more were listening. But I certainly hope the Senate will not go forward on this course without even giving the Committee on Finance an opportunity to address this matter. I see the distinguished ranking Republican member of that committee is on the floor, and while I do not know his position on this matter, I think clearly the case of something so much opposed by the Internal Revenue Department and which represents such a departure from its historic function is certainly not something that should be done in a single afternoon, on a matter which has no bearing whatsoever on the measure before us.

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

Mr. SCHMITT. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from New Mexico has 5½ minutes remaining.

Mr. DOLE. Will the Senator yield me 1 minute?

Mr. SCHMITT. I yield the Senator from Kansas 1 minute.

Mr. DOLE. Mr. President, as the ranking Republican member of the Finance Committee, I do not have any quarrel with the intent of the amendment, but we have not had any hearings. That is the point. It seems to me this is a proper matter for the jurisdiction of the Finance Committee. Perhaps with hearings we could work out guidelines, and IRS could testify, and others could testify. But on the basis of what little information I have, I would guess no members of the Finance Committee would favor it, not because of jurisdiction or some other reason, not because we did not want anybody to invade our jurisdiction, but because there have not been hearings; and because of other problems I see, I would support the efforts of the Senator from New Mexico, and I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. I see no basis for argument, because that institution is working. Leave it alone.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. I yield myself such time as I may require.

Mr. President, I rise in opposition to the amendment from the Senator from New Mexico (Mr. SCHMITT). The Senator's amendment would strike the committee amendment designed to withhold income tax refunds from former students who have defaulted on their Government subsidized student loans. I commend the chairman of the Treasury, Postal Service and General Government Subcommittee (Mr. CHILES) for his courtesy and support of this "offset" amendment.

THE FEDERAL GOVERNMENT IS OWED $140 BILLION

We found at a recent hearing that the debt owed to the Federal Government from all sources is $140 billion.

THREE AND A HALF BILLION DOLLARS IN BAD DEBTS

We have also found that Federal agencies are despairing of ever collecting an increasing portion of that debt. The sum of $3.5 billion has been written off as "bad debts."

This is an increase of 60 percent in the past 2 years.

The committee amendment provides 30 positions and $1 million for the budget of the Internal Revenue Service to conduct the pilot project which could save the taxpayers an estimated $35 million. I repeat—a $1 million investment that has a potential payback of $35 million—a favorable benefit-cost ratio of 35 to 1. In fact, this may be the most cost effective amendment in the bill.

Yet from the dialog we have heard on this floor today, Mr. President, one would think that this pilot project, the amendment to recover $35 million of hard-earned taxpayer's dollars, was rocking this Republic down to its very foundation.

THE PROBLEM

Mr. President, the magnitude of the problem is stunning.

Currently, there are over $2 billion in student loans in default at the Office of Education.

When those defaults due to death, disability or bankruptcy of the borrowers are excluded—the amount remaining in default is still around $2 billion.

Mr. President, I ask unanimous consent that a table containing information supplied by the General Accounting Office be printed in the RECORD at this point. The table shows the amounts loaned, paid, and defaulted in Office of Education loan programs.

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

(*Amount in billions*)

Guaranteed student loan program:	
Amount loaned as of fiscal year 1979	$15.3
Amount repaid by students	6.2
Amount defaulted	1.3
Amount outstanding	7.8
In repayment	3.2
Students in school	4.6

(*Amount in billions*)

National direct student loan program:	
Amount loaned as of fiscal year 1979	$5.6
Amount repaid by students	1.6
Amount outstanding	4.0
Defaults	.7

Mr. SASSER. Mr. President, to continue:

SOME EXAMPLES OF DEFAULTERS WITH THE ABILITY TO PAY

The General Accounting Office has supplied me with 10 examples of student loan defaulters—all with the ability to pay. Each has a good credit rating outside the Government. They pay their bills to everybody except the taxpayers of this country. These cases represent the type of loans which would be included in the pilot test conducted by the IRS.

Each of the following examples have been in default since 1976 or earlier, and efforts to collect the amounts due have been unsuccessful.

None of the students have disputed the amount owed. In most cases, they simply refused to acknowledge the collection efforts.

CASE 1

The person defaulted for $454 in 1975. During the period 1975 to 1979, he satisfactorily paid off four unsecured bank loans in the amounts of $1,900, $1,700, $500, and $1,100.

CASE 2

The person defaulted for $595 in 1973. In 1977, he was granted an automobile loan for $8,900, and as of July 1979, he had paid about $3,000 on that loan.

He is riding around in a new automobile but he cannot bring himself to pay the funds owed to the U.S. Government, which loaned him the money to get the education which perhaps enabled him to get the loan for the automobile.

He has also paid off over $600 on a $1,300 installment sales contract with a major department store.

CASE 3

The person defaulted for $754 in 1976. During 1978, he was granted an unsecured bank loan for $1,300 which was satisfactorily paid off in 6 months.

Mr. President, I ask unanimous consent that cases 4 through 10 be printed in the RECORD at this point.

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

CASE 4

The person defaulted for $571 in 1972. During 1978–1979 he satisfactorily paid off an $1,000 secured loan. He was then granted a $1,000 unsecured loan in March 1979, of which $88 has been paid off as of June 1979.

CASE 5

The person defaulted for $832 in 1976. She has a "bank card" account with a credit extension of $2,000 and two charge accounts at department stores with credit lines of $700 and $500. She has an estimated income of $10,000 and shares a $350 a month apartment with another person.

CASE 6

The person defaulted for $549 in 1976. In March 1979, she was granted an unsecured loan for $6,600. As of June 1979, she paid almost $2,000 on this loan.

CASE 7

The person defaulted for $301 in 1975. In 1979, he had been granted a charge account with a credit line of $900 at a local department store. He also had been given two bank card accounts with a credit line of $1,400 on each account. He is employed with an estimated annual income of about $12,000.

CASE 8

The person defaulted for $328 in 1976. In March 1979, she was granted a $6,400 car loan by a bank. She paid off almost $400 of the loan through June 1979.

CASE 9

The person defaulted for $505 in 1974. As of 1979, she had been granted two bank card accounts with lines of credit of $700 and $200. She has also had two department store charge accounts with lines of credit of $400 and $500.

CASE 10

The person defaulted for $829 in 1976. She has been granted a bank card account with a credit line of $1,600. She also has department store charge accounts with credit lines of $800 and $500.

PROPOSAL FOR PILOT TEST

Mr. SASSER. Mr. President, the 30 positions and $1 million proposed for inclusion in the IRS budget has been approved by the Senate Appropriations Committee. It is contemplated that these resources would be used to match a target group of 100,000 defaulted student loans from the Office of Education—worth over $100 million—against income tax refunds.

Once the amount due the Government has been firmly and conclusively established by due process, beyond a reasonable doubt, the refund would be withheld as an offset against the defaulted loan.

IMMEDIATE SAVINGS OF $35 MILLION

The General Accounting Office, which supports this initiative, estimates that at least $35 million of the $100 million in defaulted loans in the target group could be collected through this limited investment—and the amount collected could range much higher.

ULTIMATE SAVINGS POTENTIAL

Once established, this mechanism has the potential of savings the taxpayer from one to two billion dollars.

FAIRNESS OF THE PILOT TEST

Mr. President, this pilot test is fair and equitable. It will target individuals who have had their higher education costs subsidized by the taxpayer, but who refuse to pay their just debts. Because of those subsidies, the affected individuals have been able to enjoy the benefits and income security deriving from higher education. It is only fair that these defaulted loans be repaid out of those higher earnings.

I think it is absolutely unfair and irresponsible to expect the taxpayers to subsidize higher education and then allow the recipients of that education to scoff at fellow taxpayers.

Mr. President, I ask unanimous consent that there be printed in the RECORD, at the conclusion of my remarks, a letter from the Comptroller General and a memorandum from OMB Director McIntyre on the subject of debt collection. The letter is in support of this experiment. It also addresses some of the concerns that have been raised about the pilot test by several of my colleagues.

The memorandum shows that the administration is also concerned about the matter of debt collection and recognizes more needs to be done in this area.

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

(See exhibit 1).

HONEST CITIZENS WOULD BE GRATEFUL

Mr. SASSER. Mr. President, I am in full agreement with the statement of the Comptroller General on this issue. I firmly believe that the vast majority of honest citizens—who pay their just debts to the Government—would be grateful to see the Government taking action to recover delinquent debts. But, that action cannot begin to take place in the ways I have explained—unless my colleagues support this committee approved amendment.

CONCLUSION

Mr. President, I hope my colleagues will support this amendment which has the potential of eventually saving the taxpayer in excess of $1 billion.

It is, I believe, a very moderate proposal—an opening gun—to combat a very serious problem.

If the committee amendment is approved, I believe we will be sending the correct message to the taxpayers—that is, that we recognize that it is patently unfair to the honest citizen who pays his debts to the Government to allow other debts to go uncollected.

It seems to me that if we do not approve the committee amendment, we are going to be conveying just the opposite message—that the U.S. Government does not have the will to collect from the deadbeats, even when the individual has the ability to pay and the amount of the debt is not in dispute.

Like all of my colleagues, Mr. President, I have visited my State over the past few weeks.

We recognize the mood of the country, the citizens we have been elected to serve are concerned about inflation, the Federal deficit, and taxes. Support for the committee amendment is one way we can tell them we, as their elected representatives, appreciate those concerns and stand ready to do something about it. Each million dollars collected under the provisions of the committee amendment reduces the defict, reduces the national debt, and has the consequent moderating influence on taxes and inflation.

Mr. President, I urge my colleagues to support the committee amendment.

I might say, in addition, that there have been questions raised here about confidentiality and the tax return being sacrosanct and that its confidentiality should be and ought to be must be protected. Mr. President, I could not agree more with those expressions, but I ask, how is the confidentiality of the tax return to be breached by the addition of 30 staff members to the Internal Revenue Service staff? Does not the staff of the Internal Revenue Service presently have access to the tax returns of the citizens of this country?

The question was raised, is there adequate due process? I say, Mr. President, that I am as concerned as the next Senator about guaranteeing and insuring that our citizens have access to due process of law. The system that has been set

up to collect these delinquent accounts would guarantee due process.

First and foremost, the delinquent borrower will have signed a note and, at the time that this note is signed, there would have been full disclosure of the rights and the obligations that flow between the parties with regard to this promissory note. At the time that the debtor or the borrower leaves the school, there would be an exit interview and there would be provided to the borrower or the debtor a repayment schedule, the schedule by which they are expected to repay this loan.

Thereafter, a written record is maintained of the exit interview, including a signed copy, signed by the debtor, of the repayment schedule.

Thereafter, contact is maintained with the borrowers after they leave the school, also establishing and maintaining regular billing and follow-up procedures during the period in which the outstanding loan balance remains unpaid.

Should, for some reason, it become impossible to contact the debtor through the ordinary course of events or through the mail, then a commercial skip-tracing organization or some organization performing the equivalent service for the institutions are employed to locate the borrowers. After the borrowers are located, if there is still no payment, then a collection agency is employed in an effort to collect the remaining indebtedness.

After all of these steps are taken and after all of these steps have been fruitless and all other avenues have been exhausted, then a letter would go forward to the debtor from the Office of Education, indicating that the debt is owed, asking if there is any dispute about the amount that is owed and, if some response is not forthcoming, then the debtor would be subject to offset; that is, the amount coming to the debtor by way of tax refund would be subject to an offset of this particular debt.

Now, should the debtor come forward and say, "I do not owe this money," or there is some dispute, then the debtor's name would be automatically removed from the pilot project and he would not be subject to the offset provisions.

Mr. President, I do not see how we could more fully guarantee and protect the due process of citizens than this—one procedure after another, and always there is present the signed promissory note, which is the basis for any effort in debt collection.

Mr. President, I again urge my colleagues to support this committee amendment. I think it is necessary and mandatory that we begin efforts now to collect the enormous amount of debt owing the honest taxpayers of this country from other citizens who are not conscientious about paying their just debts.

EXHIBIT 1

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

Hon. JAMES R. SASSER,
U.S. Senate.

DEAR JIM: This letter discusses the additional views which were included in the Committee on Appropriations Report on the Treasury, Postal Service, and General Government Appropriation Bill for Fiscal Year 1980 (H.R. 4393). These additional views concern a provision which would provide funding necessary for IRS to test the collection of delinquent debts by keeping tax refunds as offsets.

The provision would support a test program by providing $1 million to fund 30 authorized positions for IRS to perform the test. For this test, 100,000 debts due the Office of Education under the National Direct Student Loan Program would be selected. These debts would be delinquent loans on which the debtor had signed a promissory note to an educational institution and subsequently defaulted. These defaulted loans have all been assigned to the Office of Education by the educational institutions.

On all deliquent loans included in this test, the educational institutions will have exercised due diligence in their collection effort. Due diligence efforts include:

Fully disclosing to borrowers their rights and obligations when they sign the promissory notes,

Conducting an exit interview with borrowers and providing them a copy of the repayment schedule before they leave school.

Maintaining a written record of the exit interview including a signed copy of the repayment schedule,

Maintaining contact with borrowers after they leave school,

Establishing and maintaining regular billing and follow-up procedures during the period in which any outstanding loan balanco remains unpaid,

Using a commercial skiptracing organization or performing the equivalent service with institutional personnel to locate borrowers, and

Engaging a collection agency or performing collection activities with school personnel or resorting to litigation in those cases in which a borrower fails to make loan payments.

In addition to these efforts by the educational institutions, the Office of Education would be required to meet normal due process requirements prior to referring the debt for offset. Any disputed debts would be dropped from the sample of cases referred to IRS for possible offset. The remaining debts which would be transferred to IRS for offset would be ones in which both the school's and the Office of Education's debt collection process has proved unsuccessful.

We respect the views of your colleagues on this important legislation; however, we believe it is important that they consider all factors in arriving at a final decision on this matter. I would like to provide the following specific comments on points raised in the additional views of Senators Schmitt, Laxalt, Weicker, McClure and Hatfield.

1. The additional views make the statement that ". . . the four committees having direct jurisdiction over this new endeavor, the Ways and Means Committee, the Senate Finance Committee and the House and Senate Committees on Appropriations, have not held one hearing where evidence was received that would justify this expenditure allowing the IRS to enter into the vast unexplored area of debt collection by setoff". The Senators were apparently unaware that, on March 20, 1979, you presided over the Senate Committee on Appropriations, Subcommittee on Legislative Branch hearings on "Improving Government Debt Collection Operations." During these hearings, the feasibility of utilizing IRS to collect debts was discussed. In addition, in December 1978, we testified at length on Federal debt collection before the Senate Finance Subcommittee on Taxation and Debt Management Generally. While we did not discuss the subject of IRS setoff since our report had not been issued, the Finance Subcommittee received a copy of our March report.

2. As pointed out in the additional views, departments and agencies have not been aggressive in pursuing collection of debts. Also, although GAO has recommended certain improvements, actions to tighten debt collection procedures have not been completed.

We recognize the need for agencies to retain primary responsibility for collecting any debts due the Government resulting from their operation. The proposed method of collecting amounts due the Government by reducing future refunds due the taxpayer would work in conjunction with the present collection system. The Office of Education would retain primary responsibility for collection of amounts due. Only after the Office of Education has taken appropriate collection action and has determined that further efforts, including legal action, would not be economically feasible, would they then refer the debt to IRS.

In this test, the agency would transfer loans to IRS for offset only after the existing collection process has been aggressively pursued. Thus, this method would not replace normal agency debt collection procedures or eliminate the requirement for aggressive action on the part of the Office of Education. Instead, this process would be used as a last resort after the existing debt collection process has proved unsuccessful. However, as there were 841,181 students with $702,542,830 outstanding on defaulted loans at September 30, 1978, there will be many debts which cannot be economically collected by conventional methods.

3. The concern that ". . . taxpayer confidence in the tax administration system could be seriously compromised by turning the IRS into a bill collecting agency" would probably be unfounded. A widespread public outcry against using IRS as the Government's debt collector should not be heard if offset is used under the constraints discussed. Instead, quite the opopsite reaction would likely occur if this collection procedure were publicized. The majority of honest citizens who pay their debts to the Government would be gratified to see the Government taking actions to recover delinquent debts.

4. The statement that, under the proposal, the burden of proof of the debt is shifted from the Government to the individual is unfounded. Under the National Direct Student Loan Program, the debtor signed legally binding promissory notes. These notes have since been reassigned to the office of Education. Further, no collection action will be taken in any instance where the amount of the debt is in dispute.

5. Due process requirements and rights of the individual have been carefully considered. The Office of Education would be required to meet normal due process requirements prior to referring the debt. Also, we believe collection by offset is warranted by equity concerns. It's patently unfair to the honest citizen who pays his debts to the Government to allow other debts to go uncollected. This inequity is especially acute when the individual owing the debt has the ability to pay but does not, and the validity or amount of the debt is not in dispute.

6. The fact that "the relationship between a taxpayer and the Government is one of extreme confidentiality and must be protected in every way" was fully considered during our review. We recognize that tax return information is confidential under the Internal Revenue Code. However, no individual's tax return information will be released outside IRS. This test of offset will not contravene the intent of the Tax Reform Act of 1976. Instead, all limitations required by law will be strictly adhered to.

7. The conclusion that "IRS is given new authority to deduct from moneys due and owing a taxpayer those sums allegedly due the Government" is without legal basis. The Federal Government's right to collect delinquent debts by offsetting against amounts due to the debtors is strongly supported by

statutes and court decisions. IRS has on occasion, reduced tax refunds when agencies have requested that an offset be made.

8. The additional views discuss the need for the Congress to act in a deliberative manner and to make a decision based on full consideration of all available facts. We recognize the need for congressional consideration of the impact of any debt collection initiative of this magnitude. Also, we recognize that some of your colleagues will continue to have reservations about the desirability and practicability of this program. However, our report recommended that such a program first be tested by IRS to determine the extent to which there are problems and how they should be overcome before a full scale program is implemented. Further, we urged the IRS to keep Congress fully informed on the status of the test effort and to fully coordinate its approach with the appropriate committees. The action initiated by the Senate Appropriation Committee would provide funds for such a test and would provide additional data for use in any hearings or other deliberation deemed necessary by the Congress.

Because of the substantial amounts that could be collected under this program, we believe funding for this test offset program should be retained in the Treasury, Postal Service, and General Government's Appropriation Bill.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., Aug. 21, 1979.

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject, Debt Collection.

The amount of overdue debts owed the Government is a matter of increasing concern. Since I last wrote you in March, our recognition of the issue has been matched by a growing awareness in Congress and the media.

While we have included debt collection in the Financial Priorities Program, we believe stronger measures are required to collect the monies owed. Toward that end, we have created a Debt Collection Project under the newly formed President's Management Improvement Council. Following the lines of the successful President's Cash Management Project, the Debt Collection Project will seek answers to individual agency problems while pursuing solutions at the general government-wide level as well. The project is intended to build on initiatives already planned and underway, including those mentioned in responses to my March memorandum.

Mr. Wayne Granquist, our Associate Director for Management and Regulatory Policy will be responsible for the Debt Collection Project. In order to coordinate this joint effort, we request you designate a representative to help us in developing specific plans, coordinating the work in your agency and keeping you informed as the work progresses.

To begin early consideration of the work plan, we would appreciate receiving word of your representative designee during the next two weeks. For any additional information, please call Jerry Bridges at 395-3967.

JAMES T. MCINTYRE, Jr.,
Director.

Mr. SCHMITT. Mr. President, I shall yield to my distinguished colleague from Illinois. First, though, I ask unanimous consent that my response to the Comptroller's letter, referred to by the Senator from Tennessee, be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., September 4, 1979.

DEAR COLLEAGUE: The Senate will be considering the Fiscal Year 1980 Treasury, Postal Service, and General Government appropriations bill on September 5. During full Committee mark-up of this bill, I offered an amendment to delete the IRS Debt Collection provision. This provision would provide $1 million and authorize 30 positions for a test program which would deduct from IRS tax refunds the amount owed the U.S. Government by individuals participating in the Office of Education student loan program. The amendment was defeated by an 11 to 10 vote.

Senators Laxalt, Weicker, McClure, Hatfield, and I filed Additional Views on this subject which I circulated together with a Dear Colleague dated August 17, 1979. Since that time the Comptroller General has taken it upon himself to comment on the points raised in the Additional Views. Let me take this opportunity to respond to the points which he has raised.

1. The Additional Views stated that "the four committees having direct jurisdiction over this new endeavor, the Ways and Means Committee, the Senate Finance Committee, and the House and Senate Committees on Appropriations have not held one hearing where evidence was received that would justify this expenditure allowing the IRS to enter into the vast unexplored area of debt collection by setoff." The Comptroller General suggests that we were not aware of the hearings held. The fact is that no committee of the House has held any hearings nor would the House be given the opportunity to vote on this provision of the bill should the Senate retain it. The Comptroller General states that the Senate Finance Subcommittee on Taxation and Debt Management Generally held a hearing on debt collection last December but admits that offset was not even discussed. Lastly, the hearing before the Senate Appropriations Subcommittee on the Legislative Branch was a 45-minute hearing with only the Subcommittee Chairman in attendance, and only witnesses from the General Accounting Office testifying. This Subcommittee does not even have jurisdiction over the Internal Revenue Service, the agency which will implement this program if enacted.

2. The Comptroller General states that bad debts will be referred to the IRS "only after the Office of Education has taken appropriate collection action." "Appropriate collection action" is not defined nor are guidelines proposed. It is easy to foresee the possibility that the Office of Education or other Federal agencies will reduce their collection activities in anticipation that the IRS will bail them out.

3. The Comptroller General disagrees with our statement that the burden of proof will be shifted from the government to the individual. The fact is that if the Office of Education determines that a loan is in default under this proposal, the money of the individual will be confiscated without judicial review. An individual will then have to prove his innocence to retrieve the money due him.

4. The calculation of savings to the taxpayers is based on present withholding patterns. Individuals who do owe money to the government can adjust their tax withholding to eliminate or substantially reduce their refund. The IRS has stated that even a 1 percent shift in this direction would result in an initial loss of Federal taxes voluntarily paid of $4 to $5 billion. The cost of collection would thus increase. In addition, many students do not file income tax returns or are included on their parents' return. The proposal has not even addressed this problem.

5. Under the Tax Reform Act of 1976, the IRS would be unable to report to the Office of Education the disposition of any accounts referred to the IRS. The Office of Education will have no way of knowing if the account was accurate or in error, paid or still in default. Should that individual apply for another loan, what kind of treatment can the individual expect from the Office of Education?

6. The claim that IRS has collected debts owed to the government by offset in the past is inaccurate. I have been informed by the IRS that offset has only been used internally, i.e., collection of past due taxes by offsetting against current refunds. No collection by offset has been used for other agencies.

7. The major concern of the opponents of this proposal is dismissed by the Comptroller General. Due process and rights of individuals as well as the integrity of our tax system is not addressed in the legislation. No provisions or guidelines are included that will insure that the Office of Education and the Internal Revenue Service will observe all the rights of individuals in their efforts to collect loans in default.

8. The Comptroller General fails to mention the strong objections of the Internal Revenue Service to this proposal. With my previous Dear Colleague, I sent you a copy of the letter I received from the Commissioner of Internal Revenue outlining the concerns of the agency.

The effort to collect defaulted loans is a worthy one which has my support. I cannot, however, support a program that has not been adequately discussed and one which has the potential of compromising our tax system and violating the rights of taxpayers. The Report of the Comptroller General pointed out that agencies and departments "have not been aggressive in pursuing collection of (debts)." I suggest that steps be taken to increase the activities of agencies before we embark on this dangerous proposal. Your support of my amendment to delete this program will be appreciated.

Sincerely,

HARRISON SCHMITT.

Mr. PERCY. Mr. President, I support the amendment offered by Senator SCHMITT to strike the Internal Revenue Service debt collection provision. At the same time, I do want to indicate clearly that I agree with Senator SASSER, that the Government needs to increase the effectiveness of its debt collection practices. To this end, I find the proposal he has made intriguing, but I certainly would not feel free at this time to vote for it. I think there are enough negative factors that have been raised by the Internal Revenue Service to cause us to stop, look, and listen, and certainly study this matter much more carefully before proceeding.

I commend my distinguished colleague (Mr. SASSER) for pinpointing the need to establish better collection practices of the Government's debts. It was, after all, the Governmental Affairs Committee, on which he serves as a distinguished member, which revealed the scandalous conditions with respect to student loans. A billion dollars in default is minor compared to what we discovered. Not only were there defaults, there were defaults by hundreds of employees who worked for HEW and were receiving a paycheck twice a month, and yet still defaulting, year after year, on loans that they had received from their Government and solemnly promised to repay. So, certainly, I fully support improving our collection system.

As a result of those hearings, which

were held some time ago as a result of the appointment of an inspector general for HEW, we have begun to improve the debt collection capability of the Federal Government. We have not even approached the effectiveness achieved by the private sector, which does not waffle on this issue at all; it goes right after defaulted loans. But certainly, in this regard, I think we have to look very, very carefully at using the Internal Revenue Service.

It is apparent that we need to study this issue as carefully as we can. We want to look at the potentially serious ramifications of the program on the integrity of the income tax withholding system and the due process rights of taxpayers. And certainly, we need to look at how this proposal affects the privacy rights of our taxpayers.

The agency which would administer this program, the Internal Revenue Service, is opposed to it. They have not yet had an opportunity to testify before any committee on this matter. The officials of the IRS have stated:

> We are not prepared to run the risks to which a massive non-tax debt collection program would expose the withholding system.

If taxpayers react to the idea of the IRS becoming a debt collector by adjusting their withholding by as much as 1 percent, the initial loss of Federal taxes voluntarily paid would be as much as $5 billion. On the other hand, even proponents of this program claim that it has the potential of eventually recovering only $1 billion. It would be false economy to risk the loss of $5 billion in an effort to gain $1 billion.

Certainly, the withholding system and the integrity of that system is an integral part of the success of tax collection practices. We should be hesitant to tamper with that system in any respect. I respect the judgment of IRS in this matter; it is more knowledgable of the withholding system than anyone else.

Mr. President, I am also concerned that this program might result in the abuse of the taxpayer's right to privacy and due process. We are all well aware of bureaucratic error and insensitivity, and must give careful consideration to any proposal which invites further Government intrusion into the affairs of our citizens. We must also carefully examine the implications of shifting the burden of proof in establishing the validity and amount of debts onto the shoulders of the taxpayer.

Because of the serious concern I have with the debt collection problem, I certainly want to pledge to my distinguished colleague, Mr. SASSER, that I, as ranking minority member of the Governmental Affairs Committee, shall be happy to work with him to see that we do tackle this problem in a thorough manner. And I pledge to work with him in seeing that his proposal receives prompt attention. I hope we can work in tandem to find a debt collection proposal that would give a net plus result rather than a negative return to the Federal Government.

To date, we have only had one hearing. GAO has been the sole witnesses. Ordinarily, I highly respect GAO. In this case, however, I respectfully disagree with GAO that at this time we know enough to move ahead with this proposal.

I believe it would be irresponsible to proceed too hastily in such a sensitive area without a more thorough examination of the issues involved.

Therefore, I urge my colleagues to support the amendment offered by Senator SCHMITT.

Mr. SCHMITT. Mr. President, I thank the distinguished Senator from Illinois. He is a man with great experience in governmental affairs and also one who I think understands the complexities of a proposal of this kind for debt collection.

I join him and the distinguished Senator from Tennessee in that we have to do something. We will do some things, but we must do more about the collection of debts owed the Federal Government.

But to take this step, to move the nose of the IRS camel into this tent without knowing the consequences or even the size of the tent, in all proportions, I think would be a mistake.

My argument today, my amendment, is directed at the problem of having the IRS a debt collection agency, not at the fact we must collect debts. We must do that. But I hesitate, I think it is obvious now, to say the IRS should do it.

Mr. SASSER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 14 minutes remaining.

Mr. SASSER. Mr. President, I say in response to my distinguished colleague from Illinois that the precedent has already been set for the concept of offsetting funds owed to a taxpayer from the Bureau of Internal Revenue Service against funds owed by that taxpayer to the Federal Government.

This is a procedure which has been exercised a number of years by the Justice Department in collecting funds owed to the Federal Government that the Justice Department has been called upon to collect.

So I think we need not be unduly concerned about this being the nose of the camel under the tent, because the camel has been in the IRS tent full tilt with us for a number of years.

The problem we are trying to address here is the very vexing problem of approaching the collection of debts, just debts, owed the Federal Government in the most cost-efficient way possible.

One of the reasons that the amount of money owed to the Federal Government and the amount written off as uncollectable is just simply exploding and increasing in geometric ratios every year is that taxpayers and debtors have become aware that certain Federal agencies will write off as uncollectable amounts under an arbitrary figure, $600 for one agency, $750 for another agency. The rationale of the agency being that it costs the taxpayer more to employ a staff in that particular agency to move in and try to collect the debt over a long period of time than the Government would realize as an end result.

This knowledge is becoming widespread in certain circles. So the modus operandi, Mr. President, is simply to borrow $600, or to borrow $750, on a Government loan, or to borrow $1,000 and maybe pay $400 on it until it gets down to the magic figure of $600, which might be the threshold at which this particular loaning agency writes off the debt as uncollectable, and then they get $1,000 for the price of $400.

Where is the fairness and where is the equity to the hardworking taxpayer who pays those taxes that underwrites those loans?

We talk of hearings, of studying this matter, and let me say that I agree with my distinguished and able colleague, the ranking member of the Governmental Affairs Committee, who has rendered yeoman service and has done a great service for his country on the Governmental Affairs Committee. But let me say that that is what we are undertaking here, a study. This is a pilot project. This is the expenditure of $1 million to hire 30 additional individuals in the expectation that we will recover for the taxpayers a minimum of $35 million.

Should that expectation not be realized, should it develop that this pilot project is not cost efficient, should it develop that this is actually costing the taxpayers money, at the end of the 1-year period, I will join with my distinguished friend from Illinois and my able friend from New Mexico and be the first to sponsor an amendment deleting this committee amendment that we are discussing today.

What better way to study than with a pilot project?

Mr. LONG. Will the Senator yield at that point?

Mr. SASSER. I yield to the distinguished Senator from Louisiana.

Mr. LONG. Is the Government simply saying to a citizen, "you have been owing us money for some time, and it turns out now that it seems we owe you something. We will just credit you against what you owe us for what we owe."

For example, if the Senator from Tennessee owed the Senator from Louisiana $1,000 and the Senator from Louisiana owed the Senator from Tennessee $900, when we go to pay, there is no point paying the full amount because the other fellow owes something. We just reduce it by the amount the other fellow owes.

There is all sort of precedent for that type of thing. I know a bank does that. If you put money in the bank, you do not pay your note, just take it out of your account.

It would seem to me that where the Government is just consistently being chisled and cheated on, there comes a time we could say, "In view of the fact that you owe us some money, we are just not going to pay what we otherwise would pay. We will give you credit for what you did pay, but, in view of the fact that you owe us some money, we will just reduce your debt by that amount."

To me, it seems like a useful experiment. It has been suggested on occasion. I think it probably makes sense that when a person owes the Government money which was loaned in good faith, which he could have paid, or made no effort to pay, that at some point rather than pay it in social security, or just take something out of social security checks he would otherwise draw to

reduce the amount that person failed to pay Uncle Sam when he owed money, and perhaps could have very well paid it.

Is there a so-called pauper's provision in the provision the Senator has in mind?

Let us suppose a person to whom the Government owes something contends he is destitute and without, he would have to go hungry, is there anything about that in there?

Mr. SASSER. I would say to my distinguished friend from Louisiana that individuals who are disabled or have declared bankruptcy, for example, are excluded under this provision. The provision is aimed at those individuals who are able bodied, who are working, who have substantial credit in the commercial world. It is aimed at getting those individuals to pay their just debts to the Government of this country.

Mr. LONG. It seems to me that the Senator has been very generous to those who do not pay their debts. I, for one, somewhat resent young people taking bankruptcy in order to avoid repaying money they borrowed from the Government in order to get an education.

As a citizen and taxpayer, I resent those people being successful in later life, making a lot more money as a doctor or a lawyer than other people who did not borrow money from the Government, and yet they take bankruptcy in order to avoid paying an honest debt which they would well be able to pay—money they borrowed in order to get an education better than that of most citizens.

I find appeal in the Senator's proposal, and I think I will vote for it.

Mr. SCHMITT. Mr. President, will the Senator yield for a question?

Mr. SASSER. Mr. President, I appreciate very much the statement by the Senator from Louisiana. He has served more than 26 years on the Senate Finance Committee; and I find his analysis of this matter, which deals obliquely with the tax policy of this country, very persuasive.

I will be glad to yield to the Senator from New Mexico on his time.

Mr. SCHMITT. I will be happy to do that.

Mr. President, I direct a question to the Senator from Tennessee. He has talked in his opening statement as well as just now about some kind of program by which this provision is going to be administered. I have not seen that, by any law or any provision, paupers or bankruptcy would be eliminated.

Can the Senator direct me to where this program has been outlined in such detail?

Mr. SASSER. I say to the Senator from New Mexico that here, today, we are establishing legislative intent and the legislative history of this particular amendment.

The rules and regulations under which this legislative history will be interpreted and the legislative intent will be carried out will be promulgated by the Internal Revenue Service.

I believe we have stated adequately and amply that we intend, by this legislation, to exempt those who are lame, those who are unable to pay, those who are bankrupt.

There is an escape valve here. The escape valve is that when the individual who is the debtor gets the communication, after going through a procedure of 12 or 14 steps which I enunciated earlier, he or she will be subject to offsets, unless there is a disagreement as to the amount owed. Then they simply have to say, in this pilot project, "I don't think I owe that," or, "I don't owe the money." Then they are automatically taken out of the project and are not subject to offset. That appears to me to be a very secure guarantee.

Mr. SCHMITT. Even if it were—and I am not accepting that it is, because it will interact with many other things—we cannot write on the floor of the Senate the rules and regulations under which such an experiment is going to be conducted. That is why hearings are important. That is why we need to look at this as a bill, if we can, at a future time—some bill that looks at debt collection in general. I do not think we can assume that this is legislative history with respect to the IRS.

Mr. SASSER. I say to the able Senator from New Mexico that there have been hearings on this matter. Hearings were held by the Legislative Appropriations Subcommittee. At that time, there was testimony as to the amount of debt owed the Federal Government. There was testimony as to the problem of collecting. There was testimony as to the steps and procedures that would be undertaken in the event that a project was approved by the full Appropriations Committee.

There is a report of those hearings which will be filed, if it already has not been filed. As a matter of fact, I have a copy of the transcript of the hearings and the report which was filed, captioned "Improving Government Debt Collection Operation for Fiscal Year 1980."

Mr. SCHMITT. Who were the witnesses before that committee other than the Comptroller General? The IRS was not a witness. To my knowledge, there were no other witnesses.

How can a report be filed with any validity on this issue if we did not examine it from the perspective of the IRS and other parties who may be interested, including the taxpayer?

Mr. SASSER. Witnesses were heard from the General Accounting Office. We received letters and opinions in writing from the Internal Revenue Service.

However, I submit that it is not necessary, in conducting a full and fair hearing, that you call in every agency that might be impacted by a particular piece of legislation.

Mr. SCHMITT. It may not be necessary, but I think that in a case as profound as this, in terms of making brand new policy relative to the tax collection and debt collection activity of the Federal Government, it would have been appropriate to call in the agency that is going to administer it, the agency which presumably interprets constitutional and other legal ramifications of this—namely, the Justice Department—to get some kind of input from those people and the taxpayers who are going to be most affected by it.

As the Senator may recall, the original proposal was for the Veterans' Administration to be the pilot project; and because of objections raised in committee about the Veterans' Administration, it was changed in committee to student loans.

Every program is going to be different, every pilot project is going to be different, and I presume that some new set of guidelines would be worked out on the floor of the Senate for every agency. I do not see how we can do that.

I would be happy to join the Senator in trying to figure out how we are going to collect these debts, but let us not do it on the floor of the Senate with respect to the IRS. As the Senator from New York and others have indicated, that opens a major new policy direction for the U.S. Government, and I think it would be a mistake.

Mr. SASSER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. HEFLIN). The Senator has 2½ minutes.

Mr. SASSER. Mr. President, if I may respond to the observation of the Senator from New Mexico, that is just the point: This is not new policy. The Justice Department has used the concept of offset in the past. The Internal Revenue Service has cooperated with the Justice Department in the past in using the concept of setting off the funds owed to a taxpayer by way of tax refund against the debts the taxpayer owes the Government of the United States.

As the distinguished Senator from Louisiana very ably pointed out, this is not a new concept. There is not anything particularly novel about this. I would like to claim that this is original and that I originated a unique and novel concept for collecting just debts owed the Government of the United States, but that is not the case.

Mr. President, I relinquish the remainder of my time.

Mr. SCHMITT addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico has 30 minutes on the bill. His time on the amendment has expired.

Mr. SCHMITT. Mr. President, I ask unanimous consent that the time remaining to the Senator from Illinois and the Senator from Connecticut be provided to the Senator from New Mexico.

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

Mr. SCHMITT. Mr. President, the Senator from Tennessee and I are getting different information. I have been informed by the IRS that offset has been used only internally, within the IRS—that is, the collection of past due taxes by offset against current refunds. They have informed me that there has been no collection of offset for other agencies.

If my information is incorrect, I will go back to the IRS and try to find out more about it. That is their position on that particular point.

If the letter by the Comptroller General, which has been entered into the RECORD on this issue by the Senator from Tennessee is any indication of their understanding of this problem, then I think the Senator from Tennessee would have been well advised to ask other witnesses to testify.

The letter I introduced earlier takes their observations, point by point, and I think adequately rebuts them.

The most important thing is that we are sitting here with the Comptroller General in complete disagreement with the IRS about whether this should be done and in that kind of a situation, plus the clear philosophical and policy disagreements expressed here in the Chamber. I think the most appropriate thing to do is to agree, first, that we are going to take efforts in all arenas where it is possible to collect debts owed the Federal Government and, second, that the proposal of the Senator from Tennessee as well as other proposals will have full hearing before the appropriate committees of the House of Representatives and the Senate. In order to do that in a reasonable environment I strongly urge the adoption of my amendment to delete the money for this provision from the bill before the Senate.

Mr. President, I have no further use of my time. If everyone is in agreement, I yield back the remainder of my time and ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CHILES. Mr. President, I just wished to announce before the rollcall began that this will be followed under the unanimous-consent agreements by two more rollcalls, one on the committee's motion to strike and the second one on the Humphrey amendment, and both of those rollcalls will last 10 minutes. So Members should be advised that this is a 15-minute rollcall followed by two 10-minute rollcalls.

The PRESIDING OFFICER. The vote on the amendment of the Senator from New Hampshire is on a motion to table.

Mr. CHILES. That is right. It is my motion to table. That is correct.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment (UP No. 520) of the Senator from New Mexico. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON) and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "nay."

Mr. STEVENS. I announce that the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. JEPSEN), the Senator from Nevada (Mr. LAXALT), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Utah (Mr. HATCH) would each vote "yea."

Mr. GOLDWATER. Mr. President, regular order.

The PRESIDING OFFICER. The regular order is for Senators in the Chamber wishing to vote to do so.

Are there any Senators who desire to vote?

The result was announced—yeas 52, nays 38, as follows:

[Rollcall Vote No. 253 Leg.]

YEAS—52

Armstrong	Goldwater	Riegle
Baker	Hayakawa	Roth
Biden	Heflin	Schmitt
Boren	Heinz	Schweiker
Boschwitz	Helms	Simpson
Chafee	Humphrey	Stafford
Church	Javits	Stevens
Cochran	Kassebaum	Stevenson
Cohen	Kennedy	Thurmond
Cranston	Leahy	Tower
Culver	Lugar	Tsongas
Danforth	McClure	Wallop
Dole	Morgan	Warner
Domenici	Moynihan	Weicker
Durenberger	Packwood	Williams
Durkin	Percy	Young
Exon	Pressler	
Garn	Pryor	

NAYS—38

Baucus	Ford	Muskie
Bellmon	Glenn	Nelson
Bentsen	Gravel	Nunn
Bradley	Hart	Proxmire
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Jackson	Sarbanes
Byrd, Robert C.	Johnston	Sasser
Cannon	Levin	Stennis
Chiles	Long	Stewart
DeConcini	Matsunaga	Stone
Eagleton	Melcher	Talmadge
	Metzenbaum	Zorinsky

NOT VOTING—10

Bayh	Jepsen	McGovern
Hatch	Laxalt	Pell
Hatfield	Magnuson	
Inouye	Mathias	

So Mr. SCHMITT's amendment (UP No. 520) was agreed to.

Mr. SCHMITT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the question now occurs on agreeing to the committee amendment to strike section 102. The yeas and nays have been ordered, with a 10-minute rollcall vote.

Mr. McCLURE. Mr. President, a parliamentary inquiry. May we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. Because the situation is rather complex and perhaps may be misunderstood, am I not correct in stating that the House measure had a provision in it which the committee now moves to strike? So if Senators desire to strike that material, they would vote "yea"; if they desire that the House provision remain in the legislation, the vote would be "nay."

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. I thank the Chair.

Mr. CHILES. May I have 5 minutes to explain my position?

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

Mr. STEVENS. I announce that the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. JEPSEN), the Senator from Nevada (Mr. LAXALT), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The PRESIDING OFFICER. Is there any other Senator present who wishes to vote?

The result was announced—yeas 41, nays 49, as follows:

[Rollcall Vote No. 254 Leg.]

YEAS—41

Baucus	Hart	Nunn
Bentsen	Hollings	Percy
Bradley	Huddleston	Pressler
Cannon	Jackson	Ribicoff
Chafee	Javits	Sarbanes
Chiles	Johnston	Sasser
Culver	Kassebaum	Schmitt
Danforth	Kennedy	Stevenson
DeConcini	Levin	Stone
Durkin	Long	Talmadge
Eagleton	Matsunaga	Tsongas
Ford	Metzenbaum	Wallop
Glenn	Moynihan	Weicker
Gravel	Muskie	

NAYS—49

Armstrong	Durenberger	Pryor
Baker	Exon	Randolph
Bellmon	Garn	Riegle
Biden	Goldwater	Roth
Boren	Hayakawa	Schweiker
Boschwitz	Heflin	Simpson
Bumpers	Heinz	Stafford
Burdick	Helms	Stennis
Byrd, Harry F., Jr.	Humphrey	Stevens
Byrd, Robert C.	Leahy	Stewart
Church	Lugar	Thurmond
Cochran	McClure	Tower
Cohen	Melcher	Warner
Cranston	Morgan	Williams
Dole	Nelson	Young
Domenici	Packwood	Zorinsky
	Proxmire	

NOT VOTING—10

Bayh	Jepsen	McGovern
Hatch	Laxalt	Pell
Hatfield	Magnuson	
Inouye	Mathias	

So the committee amendment to strike section 102 was rejected.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The next vote is on the motion to lay on the table the unprinted amendment of Mr. HUMPHREY, unprinted amendment numbered 519. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington, (Mr. MAGNUSON), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. JEPSEN), the Senator from Nevada (Mr. LAXALT), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

The PRESIDING OFFICER (Mr. EXON). Are there any other Senators wishing to vote?

The result was announced—yeas 61, nays 29, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS—61

Baucus	Garn	Nelson
Belimon	Glenn	Nunn
Bentsen	Gravel	Packwood
Biden	Hart	Percy
Boren	Hayakawa	Proxmire
Bradley	Heflin	Pryor
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Jackson	Riegle
	Javits	Sarbanes
Byrd, Robert C.	Johnston	Sasser
Cannon	Kennedy	Stennis
Chiles	Leahy	Stevenson
Church	Levin	Stewart
Cranston	Long	Stone
Culver	Matsunaga	Talmadge
DeConcini	Melcher	Tsongas
Durkin	Metzenbaum	Weicker
Eagleton	Morgan	Williams
Exon	Moynihan	Zorinsky
Ford	Muskie	

NAYS—29

Armstrong	Goldwater	Schweiker
Baker	Heinz	Simpson
Boschwitz	Helms	Stafford
Chafee	Humphrey	Stevens
Cochran	Kassebaum	Thurmond
Cohen	Lugar	Tower
Danforth	McClure	Wallop
Dole	Pressler	Warner
Domenici	Roth	Young
Durenberger	Schmitt	

NOT VOTING—10

Bayh	Jepsen	McGovern
Hatch	Laxalt	Pell
Hatfield	Magnuson	
Inouye	Mathias	

So the motion to lay on the table UP amendment No. 519 was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas.

UP AMENDMENT NO. 521

Mr. BUMPERS. Mr. President, I have an amendment at the desk which I ask be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 521:

On page 11, strike lines 9 through 16.

Mr. BUMPERS. Mr. President, this amendment strikes an amendment that I added to the appropriations bill dealing with the Postal Service during markup in the Appropriations Committee.

I did it because I was consistently hearing from my constituents who were telling me that personnel policies in the Postal Service, especially in the smaller post offices, were patently unfair.

What had been happening as a pattern, or seemed to be a pattern, was that outside postal employees who did not live in the community were being moved in to take vacancies as Postmasters in small communities.

This creates a lot of local opposition because, obviously, usually a clerk in a three- or four-person post office, the assistant postmaster or clerk, most of the time, is quite able to succeed the postmaster, yet time and time again they were going outside the area served by that post office and bringing other people in to take that vacancy.

So I added language to provide that none of the funds here could be used to pick a postmaster unless he was selected under a procedure that would provide a priority for otherwise qualified applicants who resided in the area.

Mr. President, I have had lengthy conversations with the Postmaster General, and he has satisfied me. As a matter of fact, he has satisfied me in writing that changes will be made, and they are imminent.

I would like to read the three or four really relevant paragraphs from his letter and then I will have it printed in the RECORD.

Also, the Senator from Kentucky (Mr. FORD) would like to comment on this problem.

In any event, the Postmaster General sent me this letter, and he states:

In the smallest offices, numbering about 4,700, where there is no career postal employee other than the postmaster, vacancies will be advertised both within and outside of the service simultaneously. Since most of the time career postal employees are not interested in taking these low paying jobs, this should result in expeditious appointment of a local resident, frequently the person who was acting as temporary replacement for the postmaster during periods of absence such as leave or illness.

He goes ahead and says that he is going to try to rectify this in post offices, the very smallest offices, of which there are 4,700, in the next size offices, of which there are 7,000, and in the next size, which is 12,000. That is a total of 23,700 post offices. All but 6,400 post offices will have personnel policies applied to them essentially in keeping and commensurate with the amendment I offered in committee.

Mr. President, I ask unanimous consent that the Postmaster General's letter to me be printed in the RECORD at this point.

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

THE POSTMASTER GENERAL,
Washington, D.C., September 5, 1979.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BUMPERS: Confirming our discussion, following is a summary of postmaster selection procedures which will become effective within the next week.

In the smallest offices, numbering about 4,700, where there is no career postal employee other than the postmaster, vacancies will be advertised both within and outside of the service simultaneously. Since most of the time career postal employees are not interested in taking these low paying jobs, this should result in expeditious appointment of a local resident, frequently the person who was acting as temporary replacement for the postmaster during periods of absence such as leave or illness.

In the next sized offices which usually have a postmaster, a career part-time clerk, and perhaps a rural carrier, a non-competitive appointment will be made of one of these career employees, provided he is qualified and resides within the limits of delivery from the office where the vacancy exists. There are about 7,000 such offices.

In the rest of the rural offices which may have more than one career clerk and perhaps two or more rural carriers, the higher level supervisory responsibility of the postmaster requires that we consider candidates from outside the office as well as those who work there. The best qualified candidate will be selected and the rules require that a qualified employee from within the office must be appointed if judged to be equal or better qualified than other candidates. There are about 12,000 such offices.

In the remaining 6,400 larger post offices, because of the need for superior management skills on the part of the postmaster, I need the flexibility to choose new postmasters from anywhere in the postal service. In all cases, however, qualified candidates from within the office will have the opportunity to appear before the selection board without being subject to prenomination screening out.

The 290 very largest offices, where the postmaster also has an area management responsibility of considerable significance, we have designated as Sectional Centers and classified the Sectional Center Manager/Postmaster's position in the Postal Career Executive Service (our version of the Senior Executive Service). These appointments are made by me after careful management review and are not open to competition as are the others.

Finally, I have added a requirement that in all cases where a newly appointed postmaster does not reside in the area of delivery for his office, he must move there within one year of appointment. Exceptions to this rule can be made only by my personal approval, and I will not delegate this responsibility. It is my firm belief that the concerns you have are properly solved by the administrative process described above and that further legislation on the matter is not required.

Sincerely,

WILLIAM F. BOLGER.

Mr. BUMPERS. I say further, Mr. President, that, of course, my amendment will strike the language I put in there to accomplish almost exactly what the Postmaster General says they will do administratively, and the amendment is to strike that language.

I think the distinguished floor manager and the subcommittee chairman are willing to accept the amendment. But before voting on it, I would like to yield to my distinguished colleague from Kentucky (Mr. FORD).

Mr. FORD. I thank my colleague from Arkansas.

Mr. President, the amendment presented by the Senator from Arkansas included the total spectrum of the postmasters. My amendment to his amendment would have limited that provision to postmaster grades Executive Administrative Schedule–E or lower.

I think it was a proper amendment. I discussed it with the senior Senator from Arkansas and he agreed that my amendment was a good one.

Since he will not be pursuing his amendment, my amendment to his amendment would not serve any purpose.

I wanted to make the record clear that I would have introduced that amendment in order to give priority to applicants who rise in the area served by the smaller post offices.

I compliment the Senator for his diligence in this effort. Through his discussions with the Postmaster General, he seems to have gained administratively what the amendment was intended to do.

It seems ironic to me that we have to go to a point such as this to get the attention of the agencies around the Federal Government.

Again, I compliment him for what he is accomplishing and support him in this endeavor.

Mr. BUMPERS. I thank the Senator.

Mr. President, I move the adoption of the amendment.

Mr. RANDOLPH addressed the Chair.

Mr. BUMPERS. Mr. President, I yield to my distinguished colleague from West Virginia (Mr. RANDOLPH).

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I am grateful for my colleague from Arkansas yielding to me.

It is in the nature of a compliment to him because of the work he has done in this area.

In the State of West Virginia we have approximately 1,000 Postmasters. We are a State——

Mr. BUMPERS. Mr. President, the Senator from West Virginia is trying to pay me a compliment and I can hardly hear him. I want to hear every word of it.

The PRESIDING OFFICER. Will the Senate please be in order? The Chair would like to ask that the Senators please take their seats so we can have order in the Senate.

With my apologies to the Senator from West Virginia, I recognize him once again.

Mr. RANDOLPH. I thank the Chair.

I was saying that in the State of West Virginia we have approximately 1,000 postmasters. The majority of our offices are very small post offices. During my service on the Post Office and Civil Service Committee here in the Senate I gave much attention to, frankly, the plight of the small post offices.

I am asking a question now as well as complimenting my colleague because it was my feeling that the abrupt procedures within the Postal System of closing these smaller offices was an ill-adviseed action.

I believed that before an office could be closed, the patrons of that office would be given the opportunity, no matter how small the office, to express their feeling about whether the office could remain open, be closed, be served by rural carriers, or by a nearby post office.

The procedure that I have just described was enacted into law to provide the Postal Service better guidelines while at the same time giving people the opportunity to express themselves.

Has this procedure been addressed in connection with the modification of the amendment that the Senator BUMPERS—I think appropriately—offers to the pending measure?

Mr. BUMPERS. I say to the Senator from West Virginia that it does not address the problem of post office closings.

I will describe precisely what I was trying to get at.

It had become a common complaint from my constituents, especially in small communities, that the Postal Service was recruiting postal employees for postmaster vacancies from outside the area served by that post office, when there were perfectly competent and qualified people in the post office or in the communities.

My amendment, which I put in the Appropriations Committee, provided that they must hire the local people if their qualifications are equal to or better than those from outside the Service. It is that simple.

Mr. RANDOLPH. I understand your amendment. I have read it; I know its contents.

Mr. BUMPERS. Will the Senator restate the question?

Mr. RANDOLPH.. My comments on post offices have a close connection with postmaster appointments. That is why I talked of this related subject. However, because of the work he has done, because of the letter he has elicited from Postmaster General Bolger, because of the depth of the Senator's study and understanding of a situation needing review, I commend him. Senator BUMPERS . . . your legislative action does no damage to the career system in the appointment of postmasters. Is that correct?

Mr. BUMPERS. The Senator is absolutely correct.

Mr. RANDOLPH. The Senator is giving an opportunity to a person, when qualified, within the so-called local area of the post office, to seek the position of postmaster.

Mr. BUMPERS. The Senator is absolutely correct. It is just that simple. That is all I was trying to accomplish. I certainly was not trying to do damage to the rights of anybody, but simply to take care of a parochial interest where it did not do damage.

Mr. RANDOLPH. I think the parochial interest is understandable. Too often, we have gone afar to have someone come in to a community and take a position, when a person at the local level is perhaps more knowledgeable and more understanding of the job. Attitude which is very important, must also go with the aptitude to do the job. It is important to relate himself or herself to the public and to their problems—not always as the postmaster handling the mail, it also means helping people to answer those documents that come increasingly from the Federal Government, which people sometimes do not understand.

In other words, it is the helping hand of the postal worker at the local level that I think is the strength of our postal system.

Mr. CHILES. Mr. President, as I understand it, the Senator now is going to make his motion to strike.

Mr. BUMPERS. The amendment is to strike the amendment, and I am prepared to vote on it, if the manager is.

Mr. CHILES. Mr. President, I urge that we support the amendment.

The distinguished Senator from Arkansas, by his amendment, which he offered in the committee and which was accepted in the committee and was made a part of the original text, with which we are now dealing, has accomplished exactly what he set out to do. I compliment him for that.

Now the man who gave us right turns on red in 50 States of the Union and almost every place except Washington, D.C., has done it again. He has now given us back some local autonomy in the appointment of postmasters.

I think the action he is now taking, in shooting his own horse by his amendment to strike, is valid. His amendment now is not necessary.

It is sort of like a laxative of last resort, called Croton. It is said to do the work of dynamite, without quite the explosive force. I think his amendment has done the work of dynamite now, without the explosive force, if he moves to strike, and I support the motion.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Senator from West Virginia (Mr. RANDOLPH) be added as a cosponsor.

Mr. CHILES. We need a technical amendment simply to change one of the lines, and I move the technical amendment to the motion to strike.

The PRESIDING OFFICER. The request was made that the name of the Senator from West Virginia be added as a cosponsor. Without objection, it is so ordered.

Mr. CHILES. The technical amendment would be to strike lines 7 through 16.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Is all time yielded back?

Mr. BUMPERS. I yield back the remainder of my time. I did not realize we were under a time agreement.

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

The amendment, as modified, was agreed to.

UP AMENDMENT NO. 522

Mr. JAVITS. Mr. President, I send to the desk an amendment on behalf of myself, Senator RIBICOFF, Senator HATFIELD, Senator WEICKER, Senator BAUCUS, Senator METZENBAUM, Senator TSONGAS, and Senator BRADLEY.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS), for himself and others, proposes an unprinted amendment numbered 522:

On page 44, beginning with line 24, strike all through the end of the paragraph.

Mr. JAVITS. Mr. President, I understand this amendment has 2 hours for debate.

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Mr. President, I assure the Senate that I will do my utmost to abbreviate that time; but I do want the amendment to be understood clearly, and I hope that can be done in a shorter time than 2 hours.

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

Mr. JAVITS. I yield.

Mr. CHILES. I think we might inform the Senate that this is the last amendment I know of on which there is a rollcall vote.

Mr. HELMS. I think there will be another.

Mr. CHILES. I take that back.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I emphasize, first, that the amendment is very serious. It affects the civil rights of citizens of the United States very materially.

The vote in the committee which allowed the amendment, which is a House amendment adopted on the floor of the House, to be incorporated in this bill was 12 to 11. I hope Members will listen carefully, because the amendment is important and resulted in a very close division in the committee.

Mr. President, the amendment we are seeking to strike proposes to deny to the Internal Revenue Service the opportunity to incorporate in what is tantamount to a regulation—that is, it is called a revenue procedure, but it is a regulation specifying how a private school may be denied tax exemption because it segregates against students as against the mandate of the Constitution of the United States.

The leading case on this subject is Green against Connally, affirmed by the Supreme Court in 1971, that tax exemption can be denied to such a school on that ground, and that this is the case even if it is a church-related school, on the ground that it is not dealing with or affecting religion; that it simply denies a privilege which can be denied.

Mr. President, there is a regulation on the books now relating to this subject. May I say, especially as the chairman of the Finance Committee is here—I do not know how he is going to vote, and it does not matter in respect of my point now to be made—that where you deal with such a profound, substantive question as this, affecting the separation of church and State, affecting the civil rights of Americans in a very serious way, it seems inconceivable to me that it would be done on an appropriations bill.

The Finance Committee, which would be the committee of jurisdiction in charge of a matter of this kind, should certainly have passed on it, let alone the Committee on Human Resources, which deals with education, or the Judiciary Committee, which deals with civil rights.

But here by a limitation on expenditures we have a specific regulation stricken down which the IRS wishes to promulgate and which we have a letter from the Secretary of the Treasury saying that they should promulgate and that he wants it promulgated, and they have been denied that opportunity by this rider on the appropriations bill.

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

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

THE SECRETARY OF THE TREASURY,
Washington, D.C., September 5, 1979.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, the Senate Appropriations Committee by a 12–10 vote added an amendment to the Treasury Appropriations bill prohibiting the Internal Revenue Service from implementing its proposed revenue procedure to review the tax-exempt status of private schools which are racially discriminatory.

The Treasury Department strongly opposes such an amendment. Our first objection is on the procedural ground of attaching such a provision to an appropriations measure without consideration from the Committees having jurisdiction over the substantive tax laws. The Oversight Subcommittee of the House Ways and Means Committee and the Subcommittee on Taxation and Debt Management of the Senate Finance Committee have each held hearings on the proposed procedure and have taken no action on the proposal to date.

The Internal Revenue Service has an obligation under existing law to deny tax-exempt status to racially discriminatory private schools. Its proposed procedures are uniform guidelines for IRS to follow in reviewing racial discrimination. These guidelines have been the subject of thorough hearing and review and have been substantially modified to take into account the comments made during the review process. A clear indication of the need for new guidelines is the fact that a number of private schools retain their tax exemption even though they have been held by Federal courts to be racially discriminatory under standards consistent with those proposed in the procedure.

The proposed IRS procedures have been the subject of substantial misinterpretation, distortion, and misinformation. These distortions must be cleared up.

First, the requirement that private schools be operated in a racially nondiscriminatory manner to be eligible for Federal tax-exempt status has been required by the Federal courts for a number of years.

Second, the IRS procedure is applicable only to a limited class of private elementary and secondary schools—those which have already been held by a court or appropriate agency to be racially discriminatory, and those which are classified as "reviewable" under the procedure. A "reviewable" school is one which was founded or substantially expanded at the time of public school desegregation, whose founding or expansion was related in fact to such public school desegregation, and which has insignificant minority enrollment. Schools which do not fall into these fact patterns are not subject to further review under the proposal. Schools of this type have been the subject of special scrutiny in Federal courts.

Third, the IRS procedure does not require schools to meet racial quotas or to grant preferences to minorities in hiring or admissions.

Fourth, the proposal does not presume schools to be discriminatory until proven innocent since the schools affected by the proposal would be reviewed in accordance with their overall facts and circumstances. Such overall considerations include special circumstances which limit the schools ability to attract minorities such as an emphasis on special programs or curricula which by their nature are of interest only to identifiable groups which are not composed of minority students.

Finally, the IRS is not usurping Congressional power. It is simply digesting applicable Federal law into a uniform procedure for the guidance of agents in the field.

The Treasury Department recognizes the need for procedures which provide an effective method for reviewing the tax-exempt status of private schools which in fact discriminate while at the same time protecting the rights of the vast majority of schools which do not discriminate. The proposed procedures strike this careful balance.

Sincerely,

G. WILLIAM MILLER.

Mr. JAVITS. Mr. President, this matter of a so-called Freedom Academy was decided in the Green case. This was in a section of the country, which is an interesting anomaly, that both deeply resented the desegregation activities of the United States in respect of the public schools and at the same time was the most active in complying with them. The record on the whole has been better in terms of compliance there than it has been in the North and the West because we had very very much less of that to begin with. But nonetheless that is the case.

Yet you have the strange anomaly in which the States and the people who lived in those States went to these extremes of organizing public schools outside the confines of a public school system in order to avoid the decision of the Supreme Court in Brown against the Board of Education.

Mr. President, that is their privilege. But the question is should they have tax exemption? Should the United States put itself out in order to reward the practice? And this, it seems to me, borders on the immoral. Yet that is the purport of this particular amendment which we are seeking to strike, and that is why I felt it my duty to undertake it.

Mr. President, the Internal Revenue Service in connection with the procedure which is on the books now has allowed schools to operate and to get tax exemption, notwithstanding the courts in specific cases have said that they discriminate against students on the grounds of color. The reason is that the IRS had a revenue procedure that stated that the surface indication that the school published the fact that it was not discriminating was sufficient. So long as they publish it, the IRS assumed that they were not discriminating and allowed them the tax exemption.

It is only in specific cases in which a major Federal case was made, as in this Green case to which I have referred, that any effort was made to cancel the tax exemption of such schools; and as com-

pared with the thousands that are involved, about 100 schools suffered the penalty of what should be the law in this matter because they discriminated.

As I said, 7 years after the IRS was directed by court order to stop granting tax exemption to these discriminating schools, we now have an effort by the IRS to promulgate a series of specific regulations which would deal in a pinpointed way with this situation; and now this effort to inhibit the IRS from doing that at all.

It is very important to note the procedure which the IRS has adopted, because I think that is an important factor in what we are discussing.

The procedure in the first place applies to two types of schools. One are schools which were adjudicated as discriminating by the courts, et cetera, and the other type are the so-called reviewable schools where there is little or no minority enrollment and which under the circumstances in the particular case, and it is a case-by-case proposition, were found to be formed or substantially expanded at the time of public school desegregation.

In those cases, the IRS had adopted, if we let them adopt it, a specified procedure by which those cases may be determined, and the specified procedure is as follows:

First, there is no mechanical test. That was the defect in a previous effort to promulgate new regulations. There is now no mechanical test. But the question is based upon the facts and circumstances in each case on a case-by-case basis. Does it or does it not discriminate?

However, the burden, as in all taxpayer cases, is placed on the taxpayer, and that is the big thing that is accomplished by this particular proposed regulation.

Second, the regulation clarifies the standard of whether there is "significant minority enrollment" by expressly treating those which have enrollment of 20 percent of the percentage of minority in the community. In other words, if there is a 50-percent population of minorities in that area then 10 percent of the enrollment of minorities would exclude that school from any question whatever. It would have tax exemption. But if it does not have that, then nonetheless the school may show that it still does not discriminate, but then the burden is again upon the taxpayer to show that.

Lastly, where a private school has been expanded in connection with the time frame and incidence of public school desegregation in the area, then naturally again the burden will be on the taxpayer. But the mere fact that the expansion occurred does not ipso facto or automatically make that school reviewable. It still depends upon the facts and circumstances.

A whole host of agencies and organizations have approved the effort to sharpen this rule in the way which I have described, and I think it is very important that these particular organizations be named here. They include the Attorney General.

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

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C. September 4, 1979.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Appropriations,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: On July 16, 1979 the Senate Appropriations Committee approved H.R. 4393 which included appropriations for the Department of the Treasury. By a close division of the Committee, the bill, as approved, contained two provisions which the House had adopted in H.R. 4393 on amendments proposed by Congressman Dornan. One of those amendments provides:

"None of the funds available under this Act may be used to carry out proposed revenue procedure 4830–01–M of the Internal Revenue Service entitled 'Proposed Revenue Procedure on Private Tax-Exempt Schools' (44 F.R. 9451 through 9455, February 13, 1979, F.R. Document 79–4801), and proposed revenue procedure 4830–01 of the Internal Revenue Service entitled 'Proposed Revenue Procedure on Private Tax-Exempt Schools' (43 F.R. 37296 through 37298, August 22, 1978, F.R. Document 78–23515), or parts thereof."

The other amendment purports to prohibit the Internal Revenue Service from using the appropriations funds to implement any revenue ruling concerning private schools operated by religious organizations.

It is my understanding that the appropriations bill is scheduled for consideration by the Senate on September 5, 1979. I also understand that there may be an attempt on the floor of the Senate to amend the appropriations bill reported from Committee to add an amendment offered by Representative Ashbrook which the House added to H.R. 4393.

The Ashbrook amendment provides:

"None of the funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard or measure which would cause the loss of tax-exempt status to private, religious or church-operated schools under Section 501(c)(3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978."

By a letter of July 20, 1979 from James P. Turner, Deputy Assistant Attorney General, Civil Rights Division, we informed you of this Department's strong opposition to the above amendments. I am writing this letter to request that you support on the Senate floor elimination of the above Dornan amendments and that you oppose any efforts to add the Ashbrook amendment to the bill reported from the Committee.

In his letter to you, Deputy Assistant Attorney General Turner set out our reasons for opposing the above amendments to H.R. 4393 because of the support they would provide for private racially discriminatory schools. As you know, there is a serious question of whether it is constitutionally proper for the Federal Government to confer tax-exempt status on private institutions that discriminate on the basis of race. Insofar as these amendments might be intended to bar the Executive Branch from ascertaining whether constitutional violations have occurred and from exercising enforcement discretion with respect to those cases, we believe they intrude upon the President's duty under Article II of the Constitution to see that the laws are faithfully executed. Moreover, if the intent of the amendments is simply to prevent the Executive Branch from enforcing a substantive law which Congress has previously enacted, we think they offend the sound principle—grounded in the notion of separation of powers—that it is the function of this Branch to carry out the laws enacted by Congress. Unless we are to be disabled from performing that function, Congress must not deprive this Branch of the necessary tools.

We would appreciate any efforts you could make to prevent the Dornan and Ashbrook amendments from being included as part of the appropriations bill for the Department of the Treasury. Please do not hesitate to contact us if we can be of assistance on the matter.

Sincerely,

BENJAMIN R. CIVILETTI,
Attorney General.

Mr. JAVITS. The Attorney General opposes this amendment which we are seeking to delete and is for our position.

Similarly, the Secretary of the Treasury—and his letter has already gone in the RECORD; the American Civil Liberties Union; the League of Women Voters; and a joint letter from the National Urban League, National Urban Coalition, ACLU, the Washington Bureau of the NAACP, and the National Association of Social Workers. Stanley McFarland, Director of Government Relations for the National Education Association has asked that his organization be associated with this joint letter.

I ask unanimous consent that all of these letters be printed in the RECORD.

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

AMERICAN CIVIL LIBERTIES UNION,
Washington Office, August 31, 1979.

DEAR SENATOR: The Treasury Department Appropriations bill (H.R. 4393) will be considered on the Senate floor on Wednesday, September 6. This bill contains two amendments, added during House floor consideration, which present serious constitutional issues. On behalf of the American Civil Liberties Union, we write to urge you to vote to delete the so-called "Dornan" amendments from the Treasury Appropriations bill.

The Dornan amendments are aimed at two actions of the IRS—a revenue ruling concerning charitable deductions ("Dornan I") and proposed revenue procedures for reviewing the tax-exempt status of private schools ("Dornan II"). In each situation, the IRS acted to enforce tax laws based on existing law and accepted precedent. The Dornan amendments would impede legitimate IRS enforcement efforts and hinder IRS from fulfilling its constitutional and statutory mandates.

The Dornan I amendment reverses a revenue ruling of the IRS which limits a parent's charitable deduction for contributions which are actually used to finance a child's education at church-operated schools. The IRS had ruled that parents are entitled to deduct only that amount which exceeds the fair market value of their children's schooling. Additionally, the broad language of this amendment means that a religious organization can claim any activity is "educational"—including business activities or lobbying which are not entitled to exemptions—and IRS cannot rule otherwise. The amendment is also objectionable on constitutional grounds. Allowing parents to deduct contributions which are actually used to finance their child's education effectively creates a subsidy for religious education in violation of the establishment clause of the First Amendment. Finally, the amendment impedes constitutionally mandated school desegregation by offering indirect encouragement to the flight from public schools to private institutions.

The Dornan II amendment prohibits IRS from implementing meaningful review proce-

dures for determining the tax exempt status of private schools. Currently the IRS presumes a private school to be racially nondiscriminatory if it merely states in writing that it does not discriminate. This procedure has allowed white-flight schools, even those found by courts to be racially discriminatory, to receive the benefits of tax-exempt status—effective receipt of a federal subsidy for segregation. IRS first proposed regulations barring tax exempt status for segregation academies in August 1978. These regulations met with a storm of protest from organized private schools and some religious schools who argued that the minority enrollment guidelines would be applied inflexibly to schools for which desegregation was irrelevant. In February 1979, IRS revised its regulations which made clear that the target is the "segregation academy." The February regulations:

Apply only when the private school was formed or expanded during a period of public school desegregation;

Contain "special circumstances" exceptions made for religious schools.

The new regulations make clear that the only target is the segregation academy.

Maintaining the Dornan amendments in the Treasury Appropriations bill would be a major blow to civil rights. We urge you to vote to delete these damaging amendments.

Sincerely,

JOHN H. F. SHATTUCK,
Director.
KAREN CHRISTENSEN,
Legislative Counsel.

MEMORANDUM

AUGUST 30, 1979.

To: Members of the United States Senate.
From: Ruth J. Hinerfeld, President; Nancy Neuman, Action Chair; Dot Ridings, Human Resources Coordinator.
Re: Anti-Civil Rights Amendments to the Treasury Appropriations Bill.

Immediately upon reconvening after Labor Day, the Senate is scheduled to consider HR 4393, the Treasury and Postal Service Appropriations Act. Two amendments to this bill were added in the House which we view as pernicious anti-civil-rights amendments. The League of Women Voters of the United States is opposed to these amendments and urges that they be struck from the bill.

The first amendment would preclude the IRS from executing the law of the land in the area of civil rights in education. This amendment, Sec. 614 of the bill, is referred to as the Dornan segregation academy rider. The amendment strikes at a procedure proposed by the IRS to review the tax exempt status of private schools which appear to be discriminatory. The League and other civil rights groups have long urged the IRS to develop procedures that would bring its policy in line with federal court decisions which declare discriminatory private schools ineligible for tax exemptions and state that schools formed or substantially expanded at the time of public school desegregation, and having little or no minority enrollment, bear the burden of proving that they do not discriminate on the basis of race. The proposal by the IRS currently under attack by the Dornan rider does set forth procedures to address discriminatory admissions policies and tax exemptions for private schools. And, it does so in a manner that is exceedingly sensitive to those institutions of religious affiliation with legitimate reasons for low or no minority enrollment. The League therefore can see no motive, other than veiled racism, for supporting this rider to the bill. We urge you to strike it.

The second amendment, Sec. 613 of the bill, is also a Dornan rider. The intent of this amendment is to reverse a previous IRS ruling which limits the deductible portion of a contribution to a church school made by a parent of a student at the school to that which is in excess of the fair market value of the child's education. The amendment, then, would allow tuition for religious schools to be deducted as charitable contributions. We question the amendment's constitutionality, for it in effect creates a subsidy for religious education in violation of the Establishment Clause of the First Amendment.

Furthermore, we view this amendment as nothing less than a tuition tax credit rider for those parents with children in religious schools. The League opposed legislation in the last session of Congress which would have allowed tuition tax credits for elementary and secondary private schools. The League is especially concerned about the impact of tuition tax credits on school districts which are currently implementing desegregation plans. We believe that such legislation would provide an incentive for the expansion of non-public schools in desegregated areas to the detriment of a strong public education system. We oppose this amendment, Sec. 613, and urge you to vote to strike it as well.

NATIONAL URBAN LEAGUE, INC.,
Washington, D.C., August 28, 1979.

DEAR SENATOR: Once again an issue challenging bedrock civil rights principles is before the Senate.

You will shortly be asked to vote on H.R. 4393, the Treasury and Postal Service Appropriations Act. Section 614 of the bill is the Dornan segregation academy rider, added by the House.

The Dornan segregation academy rider would bar funds for IRS civil rights enforcement and would stymie the first serious attempts by the IRS to enforce the law precluding tax exemptions for private schools which practice racial discrimination—the "segregation academies." These academies perpetuate dual school systems in areas of desegregating public schools, thereby undermining orders of the federal courts. Equally dangerous, they cause a serious erosion of interest in—and support for—the public school system. Taxpayer support for these academies is an outrage!

The federal courts have specifically held that the IRS may not grant public subsidies for segregation academies by permitting them to be tax exempt and to receive tax deductible gifts, and has ordered the IRS to revoke the academies' exemptions.

Today, eight years later, the IRS still permits segregation academies specifically found discriminatory by federal courts to hold federal tax exempt status!

The IRS, under pressure from law suits and at last recognizing its responsibility, in August 1978, promulgated the Revenue Procedures listed in the Dornan segregation academy amendment. The proposal did not create a new law. Rather it was designed to advise affected schools and the public of improved enforcement procedures and of IRS intent to focus enforcement efforts on schools which were created or significantly expanded in the wake of public school desegregation. In response to strong protest and extensive public comment, the IRS published a modified proposed revenue procedure in February 1979. Neutral commentators described the modified version as fair, reasonable, and responsive to the comments of affected schools. Innocent schools will not lose exemptions under the modified Revenue Procedure. Only segregation academies have anything to fear. Mere paper compliance by segregation academies will no longer be sufficient for tax exempt status.

The Dornan segregation academy amendment would preclude effective law enforcement by the IRS. Its passage would be a blow to civil rights and would permit continued taxpayer support for segregation. We urge you to strike this harmful language from the Treasury Appropriations bill.

Mr. JAVITS. Mr. President, one of the problems presented by this amendment is the question of religious schools. As I said before, the fact that it is a religious school does not necessarily mean that in the pursuit of being a school it is entitled to tax exemption.

Indeed, in a well-known case, the case of Goldsborough Christian Schools, the Court held that denying tax exemptions does not violate the separation of church and state. The Court said:

There is a legitimate secular purpose for denying tax exempt status to schools maintaining a racially discriminatory admissions policy.

Indeed, in the leading case, the Green case, to which I referred, the Court also rejected the claim of violation of church and state separation, saying:

Freedom from governmental "regimentation or interference."

The Court's definition in leading cases respecting separation of church and state—and I will read it again:

Freedom from governmental "regimentation or interference" is not to be equated with the right to support.

And tax exemption is support. So the courts have properly made that distinction.

Now, Mr. President, it is claimed by the opponents of my amendment to strike that the IRS is treating private schools unfairly by placing the burden of proof on them to show that they qualify for tax exemption.

I submit that this is only the way in which the tax law is generally enforced. Any taxpayer claiming tax exemption or a tax deduction must prove that that taxpayer meets the qualifications, and so private schools must demonstrate that they qualify for tax exemption just like trade associations, labor unions, or social clubs, again with the same rights of appeal to the courts as any other organization seeking to obtain or to maintain tax-exempt status.

Now, Mr. President, in addition to the support which this amendment of mine—this is an effort to strike the amendment in the bill—has received from the list of organizations to which I have referred, it has also been supported by leading exponents of religion who believe in religious schools. Here is a quote from William H. Elder, Director of Christian Citizenship Development for the Christian Life Commission of the 13 million members of the Southern Baptist Convention. He writes as follows:

because we support the nondiscriminatory thrust of the law of the land, because we believe that the IRS has acted responsibly in the criteria selected for demonstrating nondiscriminatory status and because after having examined the arguments and oppositions to the proposed procedure, we have found them to be flawed.

They in effect come out against this provision which is in the bill.

Also the chairmen of two American Bar Association Committees, one, the chairman of the Committee on Exempt Organizations, and the other the chairman of the Section on Taxation, support the IRS in this matter, as do the Committees on Taxation, and on Civil

Rights, of the Association of the Bar of the city of New York.

I have already pointed out that the Attorney General, the Secretary of the Treasury, and many other distinguished organizations take the same position.

Mr. President, if this rider to the appropriations bill is not stricken on my motion, and that of my colleagues who have joined with me, the IRS will be required to enforce the law against tax exemption for racially discriminatory private schools. Without any defined procedure to guide either the IRS or the schools, and without adequate enforcement procedure, these segregated academies will continue to flourish with taxpayer assistance, thus perpetuating the threat to the vitality of the public schools that have been the backbone of the American educational system. We have already seen, as I said, that under the existing practice these schools continue to flourish by the thousands, continue routinely to get tax exemption to which under law or morality they are not entitled.

We must not take away the tools of the IRS to enforce the law.

Mr. President, we have had many opportunities to act on civil rights in a moral sense, and I know of few more justified than this one, and I hope very much the Senate will vote "aye" on my proposal and strike this amendment.

Mr. MOYNIHAN. Mr. President, I thank the Chair and I would like to rise to state that once again I will be voting for a proposal put forward by my revered senior colleague who, I think, is acting with prudence and responsibility in this matter.

Mr. President, the point which my senior colleague made that this is a matter that ought properly to be resolved in the course of the oversight responsibility of the Committee on Finance seems to me to be unassailable and, indeed, we have discussed this matter in the committee.

It is not a matter to be resolved by an emotional proposal on the floor of the House of Representatives or, for that matter, on the floor of the U.S. Senate, absent inquiry, absent data, absent the due process that we associate with hearings. So I will most assuredly support my senior colleague.

At the same time, I would like to state, simply to be certain that we are balanced here, that the existence of a nongovernment school is not a suspicious circumstance. While it is entirely the case, as my senior colleague observed, that the public schools are the backbone of the American educational system, they are not its entirety.

The American educational system began with church-related schools. There were none other in the United States in the 18th century. For the first half of the 19th century there were almost none of them. In the Southern States of the Union there were no public schools until the second half of the 19th century.

The oldest schools in our country are church-related schools. They do not have to explain their existence. They have been there since the beginning of public education. Some of these schools are what we would call private in that they do not draw from a particular neighborhood, but persons are sent from homes in various places to them, and they are, I suppose, the oldest schools of their kind, having their origins in Europe.

But the neighborhood schools of America in my city of New York when they began, with public assistance; the State of New York set aside lands in the western part of the State, just as the Northwest Ordinance was done by the Congress in 1787, and then reaffirmed by the First Congress, lands to provide for public education, and these moneys went to the schools that were there, sponsored by churches in precisely the same way that public moneys go to hospitals sponsored by churches at this time.

Those schools, in place for almost two centuries, do not have to explain their existence as one which raises immediate questions as to their legitimacy. The Senate will know that I am one of those who feel that there has been of late a great deal of change, which a Federal judge, a judge of the Third Circuit Court, Judge Weiss, not 2 months ago described as "a regime of judicial hostility to nonpublic schools."

"Judicial hostility" is not my term; those are the words of a Federal circuit court judge. I would be very much disturbed if that judicial hostility should transfer to a form of administrative hostility. But I have no reason to think that would be the case.

The Internal Revenue Service, whose legitimacy and integrity I was speaking for earlier today, I will speak for again. I have every confidence that IRS will do this job well. And when they do so, they will proceed from the fact that the overwhelming majority of church-related schools are altogether beneficent and splendid public institutions, without which my city of New York would be bankrupt tomorrow, if the parochial schools of the Catholic Church were to close.

New York would lose one of its greatest educational resources if the Hebrew schools were to close. It would lose some of the cultural ornaments of the city if the Protestant schools were to close. Those schools, as I say, were there before the public schools, and the IRS should pay heed to the fact, and will do so. If it does not, we will be here to observe that it has not.

So in these circumstances, I would think that the proper course of action, once again, is to support the proposal of my senior colleague, and this gives me an opportunity to say, as I have said before, that this body would be bereaved without him.

Mr. JAVITS. Mr. President, let me sum it up in 1 minute by saying that I have fought for the parochial schools, and I will continue to do so, and to provide that their children will have the same opportunity as public school children; and in addition, that the revised procedures for dealing with either by the IRS will consider the special circumstances of any school, including, for example, curriculum which is geared to the makeup of that particular religious group, the drawing of its constituency from a designated geographic area where there may be no minorities, and the fact that the system traditionally—and that goes for practically every Catholic school—has been run on a nondiscriminatory basis.

So I would certainly join my colleague from New York in eternal vigilance in that regard, and I associate myself with the things he has said, and make it clear that that is the purport, the thrust of what I am arguing here today.

Mr. MOYNIHAN. Will the Senator yield?

Mr. JAVITS. Of course.

Mr. MOYNIHAN. I would particularly like to call attention to his remarks, because one of the unfortunate facts of recent years is that well-intentioned persons and organizations, I do not doubt, have nonetheless commenced to cast doubt upon the bona fides and legitimacy of schools that stand for just the very opposite of the things which are suggested about them. The parochial schools of the city of New York have the most extraordinary representation of all the groups in the city. They are neighborhood schools. They reflect the composition of their neighborhoods. It would be most unfortunate to see those aspersions—I will use that word—continue with respect to these schools. What the senior Senator from New York has said is right, right about his record and right about the record of these schools.

Mr. JAVITS. I thank my colleague.

The PRESIDING OFFICER. It is the understanding of the Chair that the Senator from North Carolina is in control of the time in opposition. The Chair recognizes the Senator from North Carolina.

Mr. SCHMITT. Mr. President, that is correct. I yield to the Senator from North Carolina.

Mr. HELMS. I thank the Chair and the distinguished Senator from New Mexico.

Mr. President, I have listened with great interest to my friends from New York, Mr. JAVITS and Mr. MOYNIHAN, and a thought occurred to me while they were speaking. I wonder if either of them has visited a Christian school affected by the amendment which they would strike.

Considering the frequent arrogance of the IRS in making unfounded charges of discrimination, I would be willing to wager that there is not one student named Moynihan in any of those Christian schools, nor one named Javits. So, per se, the IRS could say, "This school is discriminating against all of the Moynihans and all of the Javitses." That is absurd, of course, but I use it as an illustration.

I have visited countless private religious schools, and I have yet to hear race mentioned. Now, the people who have built these schools, the people who are sacrificing to maintain them and operate them, are interested in what they perceive to be better education for their children, period—not about race. For the IRS to step in and arbitrarily say, "Because you do not have x number of whatever race enrolled in this school, your tax exemption is eliminated," is tyranny. It

ought to be recognized as such. That is the question here.

Moreover, the IRS is making law, and has been making law, by its regulations. It is just as simple as that.

Let me tell you about some of these Christian schools, Mr. President. I speak with firsthand knowledge about those in North Carolina. For example, I went on a tour of one in the northeastern part of my State a year or so ago, and I remember a farmer who was so very proud of the facility which was being shown that afternoon. He looked at me, stretched out his calloused hands, and said, "Senator HELMS, I built this room with these hands. I laid every one of these cinderblocks, and I did it all because I wanted my young'un to have a better chance than I had."

Then he proceeded to say, "There are no fights in this school, and no drugs in this school, and if I wanted to sacrifice for my child to have this sort of education, I think I ought to be entitled to do it."

Yet the IRS says, "Oh, no, you are not going to have any tax exemption, because we are going to throw irrelevant racial arithmetic at you."

The IRS does not ask how many blacks have applied to this school. They just take note of the fact that there may be only one or there may be only five, or maybe none. Yet, Mr. President, every time one of these schools enrolls a student, it reduces the financial burden upon the taxpayers in the operation of the public schools.

Mr. President, since the IRS announced its policy to deny tax exempt status to private schools which allegedly operate on the basis of a policy of racial discrimination, it has done so without the legal authority of specific legislation. In a public statement made on January 9, 1978, IRS Commissioner Jerome Kurtz discussed the proposed regulations and admitted that the IRS has "almost no specific statutory guidance" in moving into this area.

Instead, the IRS has argued that private schools must be treated as charitable organizations and has applied to them the common law principle that a charity must not operate illegally or contrary to public policy. The IRS has then defined this broad public policy mandate in terms of Brown against Board of Education and Title VI of the Civil Rights Act of 1964.

In his testimony before the IRS public hearings on behalf of the National Committee for Amish Religious Freedom, the Association of Christian Schools International, Organized Christian Schools of North Carolina and the North Carolina Association of Christian Schools, Mr. William B. Ball took issue with this theory by the IRS. Mr. Ball observed:

> The guidance (the Commissioner) said, has been derived from Brown v. Board of Education, and "the broad national policy announced in the Civil Rights Act of 1964". The Proposed Revenue Procedure also cites Norwood v. Harrison and Green v. Connally. I wonder why. These citations are simply not relevant. What the IRS administrators have done here is to convert a thimble-full of assumed, but non-existent, statutory power into an ocean of regulation. The Proposed Revenue Procedure can only be described as "home made" law. If it is desired to impose such restrictions on churches, then IRS must go to the lawmaker, the Congress, and make candid and public plea there—be willing to face the arguments of the people in that forum.

Similarly, in his testimony before the House Ways and Means Oversight Subcommittee, Dr. Robert Lamborn, executive director of the Council for American Private Education, considered the IRS theory and stated:

> This view is not supported by the legislative history of the act and has been soundly criticized by commentators. CAPE would vigorously oppose resting the authority of the IRS for the revenue rulings prohibiting racial discrimination in private schools on Title VI. If accepted, it would follow that other federal statutes which apply conditions to direct recipients of federal aid would also apply to private schools, a position which CAPE believes is legally insupportable and indefensible as a matter of education policy.

Dr. Lamborn continued in his testimony to call upon Congress "to take the lead in setting fundamental policy in this 'important area'" and to "provide explicit authority for the IRS position while limiting the discretionary power of the IRS to change or expand 'public policy' applicable to tax-exempt private schools."

Another witness before the House Ways and Means Oversight Subcommittee, Dr. Mark I. Klein of the Northern California District of the American Jewish Congress, observed:

> There is no compromise possible with the Internal Revenue Service on this issue which does not place our community, and others like ours totally innocent of racial discrimination, in grave danger in the future. We have no reason to question the good faith and intent of the current government, but the painful lessons of history teach that the future is always uncertain. These regulations probably exceed the Constitutional limits of the government's administrative powers.

The theory put forth by the IRS to defend its proposed procedures represents a profound distortion of the administrative process. Administrative agencies, such as the IRS, operate by means of delegated power from Congress. They are creatures of Congress and receive their power to act only from specific statutes. It is fanciful to suggest that in the absence of specific statutory authority the IRS is empowered to act in tax matters on the basis of laws and court decisions dealing with public education. This distortion is compounded when an administrative agency seeks to regulate in an area affecting sensitive first amendment rights.

It is more than curious that 2 years ago the IRS itself argued in Federal court against many of the very same procedures it now proposes. At that time, the IRS maintained that the legality of such procedures is highly doubtful. The IRS admitted, for example, that a private school may have few minority students because of many factors other than discrimination.

That is so evident to anyone who has ever visited one of these schools. Let me reiterate. Of all of the visits that I have made to private Christian schools, I have never once heard race mentioned. They do mention their desire for their children to pray in school, which the Supreme Court apparently feels is a crime. They mention that they do not want their children educated in an atmosphere of violence, which prevails in so many public schools today. If you do not believe it, Mr. President, ask some of the teachers who spend more time trying to defend themselves than teaching.

They want their children educated in an atmosphere free of drugs. I have no difficulty understanding these things. Neither should this Senate.

Mr. METZENBAUM. Will the Senator from North Carolina yield for a question?

Mr. HELMS. Yes, gladly.

Mr. METZENBAUM. I have listened attentively to the Senator from North Carolina discussing his visits to the Christian schools. He mentioned that he had never once heard the word race mentioned.

Mr. HELMS. Exactly.

Mr. METZENBAUM. Will the Senator from North Carolina be good enough to advise the Senator from Ohio as to the percentage of black students, if at all, he has encountered in these so-called Christian schools?

Mr. HELMS. Well, as I think I said, sure, such enrollment is small. But that does not prove discrimination. I think of one in Kinston where I delivered a commencement address earlier this year. I think there were only three or four. But there has been no instance of a black child whose application was declined.

Mr. METZENBAUM. Has my friend from North Carolina inquired into that subject so that he speaks from knowledge? In other words, has he inquired of the schools as to whether there have been any black children who have been declined admission?

Mr. HELMS. I will say to the Senator that I know the people who are running these schools. I know their attitude, I know their character, and I know the way they feel about things. I do not need to investigate the schools.

I will ask the Senator if he has. Has he investigated one Christian school? Has he ever visited one?

Mr. METZENBAUM. No, I have not.

Mr. HELMS. But the Senator is willing to impose restrictions upon these schools.

Mr. METZENBAUM. No, I would not do that at all. I think I would only impose upon them their obligation, A, to be Christian in every sense of the word, and, B, to abide by the Constitution.

Mr. HELMS. Does the Senator have any evidence they are not doing it?

Mr. METZENBAUM. I would say that I think it is a pretty well-accepted fact.

Mr. HELMS. By whom?

Mr. METZENBAUM. By the general community that many of these schools have been set up on the basis of providing a means to eliminate the integrated school requirements of our Constitution.

I think both the Senator from North Carolina and I could agree that that is the reality of the situation, that they were not set up to avoid drugs, they were not set up to avoid violence; they were set up to avoid the imposition or

the necessity of integration in accordance with the Constitution of the United States. The IRS, in this instance, is actually only implementing the law of the land. Now we are attempting, by legislation, to bar them from doing so.

Mr. HELMS. Does the Senator realize that he has made implicit charges which he cannot possibly support? He has just acknowledged that he has never visited one of these schools. I presume he has never talked with any of the people who operate them. I have.

Mr. METZENBAUM. I never visited the Soviet Union, and I do not know whether the Senator has. I certainly know of the repression and the problems and the lack of human rights aspects of that form of government. I do not think it is necessary for any of us to have visited a particular area to know what kind of government operation Idi Amin had in Uganda or the Soviets had.

Mr. HELMS. Mr. President, I am not going to yield any more if my friend from Ohio insists upon relating the people of North Carolina to Idi Amin——

Mr. METZENBAUM. I do not mean to do that.

Mr. HELMS. If he compares Idi Amin to the people of North Carolina, I would resent it and I am sure he does not intend to do that.

Mr. METZENBAUM. I certainly do not mean by any sense of the word to suggest any comparison with Idi Amin or the Soviet Union. I was only attempting to respond to the Senator from North Carolina as to whether this Senator had to have visited a place in order to know of the problem. That is the only reason. Otherwise, the comparison is entirely inappropriate, and I certainly would not, by any sense of the word, make that suggestion. I certainly had no intention of it.

Mr. HELMS. Very well. We have no problem. I appreciate the Senator's clarification.

IRS ACTION DISTORTS INTERNAL REVENUE CODE

Mr. President, the IRS has responded to the absence of specific statutory authority from Congress by constructing a theory which substantially distorts the legislative intent and clear meaning of section 501(c)(3) of the Internal Revenue Code. IRS asserts that for a private school to qualify for tax-exempt status under section 501(c)(3) it must be both a charitable and an educational organization. However, section 501(c)(3) lists the exempt purposes as being independent and separate. Nowhere in the statute can it be inferred that an organization seeking exemption must be both "charitable" as well as meet the requirements of one of the other listed purposes.

The enumeration of exempt purposes in section 501(c)(3) is plain and unambiguous. It states that organizations are exempt which are "organized exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." By the rules of statutory construction, the word "or' must be read after each of the listed categories. This section is to be read to mean "religious OR charitable OR scientific OR educational."

Congress clearly did not intend that "religious" or "educational" purposes be included under or in addition to a requirement of a "charitable" purpose. If Congress had wanted to provide for the double test of charitable and one other listed purpose, it could have done so with language such as "organized and operated exclusively for charitable (including, religious, scientific, testing for public safety, literary, or educational) purposes." However, Congress did not use this statutory construction.

One important reason for rejecting such statutory language is the fact that it misstates the purpose of a religious organization. A church or a church-related school is not organized and operated exclusively or even substantially for charitable purposes. Such an organization is organized in the exercise of constitutionally protected rights of worship and religion which may or may not include works of charity. As the Supreme Court recognized in *Waltz* v. *Tax Commission*, 397 U.S. 664 (1970), the tax exemption of religious organizations does not depend upon their serving some pragmatic community purpose.

The general IRS regulations dealing with section 501(c)(3) state with equal clarity:

(d) Exempt Purposes—(1) In general

(i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively *for one* or more of the following purposes:

(a) Religious,
(b) Charitable,
(c) Scientific,
(d) Testing for public safety,
(e) Literary,
(f) Educational, or
(g) Prevention of cruelty to children or animals.

. . . (iii) *Since each of the purposes specified in subdivision (1) of this subparagraph is an exempt purpose in itself an organization may be exempt if organized and operated exclusively for any one or more of such purposes.* (emphasis supplied)

26 C.F.R. Sec. 1.501(c)(3)–1(d)(1), (2).

By basing its new revenue procedures on an interpretation of section 501(c)(3) which is unwarranted by its legislative history and its express terms, the IRS has overstepped its authority and usurped the authority of Congress. In *Manhattan General Equipment Co.* v. *Commissioner*, 297 U.S. 129 (1935), the Supreme Court clearly set the limits of an agency's power:

The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity.

As the Supreme Court later ruled, "this reasoning applies with even greater force to the Commissioner's rulings." *Dixon* v. *United States*, 387 U.S. 68 (1965). By seeking to alter the law in this proposed revenue procedure, the IRS has unconstitutionally attempted to seize a power reserved solely to Congress.

IRS ACTION DISTORTS COURT DECISIONS

The IRS relies upon *Norwood* v. *Harrison*, 382 F. Supp. 921 (N.D. Miss. 1974) to support its contention that a private school can legally be denied a tax exempt status on the grounds of its racially discriminatory actions. However, the facts in Norwood differ from those involving the proposed IRS procedures in two substantial aspects.

First, unlike under the IRS procedure, the schools in Norwood were found to be operated in a racially discriminatory manner by a court. The Court did not propose, as the IRS has done, to look to a "safe harbor test" or revoke the presumption of innocence on the basis of when the school was organized. It formulated a simple and constitutional test. It stated:

It is important to emphasize that the ultimate issue . . . is not whether black students are actually enrolled at the school, but whether their absence is because the school has restrictively denied their access; simply, does the school have a racially discriminatory admissions policy?

Second, the Government action involved in Norwood was not tax exemption, but a State financed textbook program. This is a fundamental difference in the two fact situations. The Supreme Court has, for example, struck down State textbook programs for church-related schools while upholding the constitutionality of tax exemption of churches. In a constitutional sense, a tax exemption is not a subsidy. The theory, now adopted by the IRS, that a tax exemption constitutes just such a tax benefit was argued before the Supreme Court in *Waltz* v. *Tax Commissioner*, 397 U.S. 664 (1970) and was rejected. In his concurring opinion, Mr. Justice Brennan stated:

Tax exemptions and general subsidies, . . . are qualitatively different. Though both provide economic assistance, they do so in fundamentally different ways. A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources exacted from taxpayers as a whole. An exemption, on the other hand, involves no such transfer. It assists the exempted enterprise only passively, by relieving a privately funded venture of the burden of paying taxes . . . Tax exemptions, accordingly, constitute mere passive state involvement with religion and not the affirmative involvement characteristic of outright governmental subsidy.

It is interesting to note that in Norwood, the Court found two schools which had no minority students, but which had a nondiscriminatory admissions policy could not be forced to withdraw from the textbook program. This decision does not stand for the principle, as the IRS asserts, that a private school must undertake an affirmative action program to obtain minority students in order to convince Government officials that it does not have a racially discriminatory policy.

The IRS relies upon the decision of two Federal courts which have denied tax exempt status to organizations which maintain a policy of racial discrimination. *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C. 1971), *Goldsboro Christian Schools, Inc.* v. *United States*, 436 F. Supp. 1314 (E.D.N.C. 1977). While these courts refused to accept the contention of the IRS that in enacting section 501(c)(3), Congress intended organizations to qualify under the common law of charitable trusts, they nonetheless terminated the schools' tax exemption on

the basis that their activities violated Federal policy.

In coming to a decision in the Green and Goldsboro cases, the courts improperly extended the decision of the Supreme Court in *Tank Truck Rentals* v. *Commissioner*, 356 U.S. 30 (1958). First, the decision in Tank Truck concerned the legality of a taxpayer's deductions, not the tax exempt status of a private organization. Second, the taxpayer's conduct in Tank Truck involved violations of State law, not an ambiguous public policy as defined by the IRS.

The Tank Truck case involved a trucking company which encouraged its drivers to exceed speed limits in order to provide customers with faster service. The company would pay its employees' speeding tickets and then deduct the amount from its corporate income tax. The Supreme Court found that allowing this deduction would directly encourage violations of State law by lessening the penalty of the fine. In its opinion the Court outlined the test to be applied in these situations:

> This is not to say that the rule as to frustration of sharply defined national or state policies is to be viewed or applied in any absolute sense. *"It has never been thought . . . that the mere fact that an expenditure bears a remote relation to an illegal act makes it nondeductible."* Although each case must turn on its own facts, *the test of nondeductibility always is the severity and immediacy of the frustration resulting from allowance of the deduction.*

The IRS proposed procedure fails to meet the Court's test of "immediacy" as outlined in Tank Truck. The facts of that case revealed a direct cause and effect relationship between the encouragement of illegal conduct by reducing the sting of the penalty mandated by State law. However, in regard to private schools, the mere fact of tax exemption does not encourage the school to adopt a policy of racial discrimination. If the IRS can ignore the Supreme Court's rule that there is to be a cause and effect relationship between the deduction or exemption, then why not deny all such tax treatment to any taxpayer who violates any law?

IRS ACTION IGNORES RELIGIOUS NATURE OF SCHOOLS

The religious schools affected by the proposed procedures select their teachers, staff and students on the basis of their religious commitment. As the Supreme Court held in Lemon these religious schools are "integral parts of the religious mission" of the churches and religious organizations which operate them. Many parents sincerely believe it is a religious necessity and a duty in conscience to have their children enrolled in religious elementary and secondary schools, as found by the Supreme Court in Yoder. These schools seek out teachers and staff who totally agree with the moral and faith standards of the church or religious community appointing them.

Often these teachers in church-related schools are considered ministers or board members of the affiliated churches. These strict standards are maintained because the religious faith of these communities is encouraged among students not only by instruction, but by the very presence of teachers who exhibit and display firm religious beliefs and moral conduct. It makes a mockery of the constitutional doctrine prohibiting the entanglement of the Government in religious matters, for an agency of the Federal Government to insist upon setting hiring and admission rules which substantially affect the religious mission of these schools.

In its decisions affecting church-related schools, the Supreme Court has found that the activity and purpose of these schools is essentially religious in nature. For example, in *Meek* v. *Pittinger*, 421 U.S. 349 (1975) the Court stated:

> The very purpose of many of those schools is to provide an integrated secular and religious education; the teaching process is, to a large extent, devoted to the inculcation of religious values and belief.

It strains the bounds of logic to assert that these schools change from essentially religious to essentially secular depending upon the Government interest to be served.

The misunderstanding by the IRS of the essential nature of religious and church-related schools manifests itself throughout the proposed revenue procedures. For example, the IRS proposal creates a new obligation on the part of these schools to the community in which they reside. While this obligation may be consistent with the IRS theory which regards such schools as charitable organizations, it is not consistent with the religious purpose and operation of the schools themselves.

As William Ball pointed out, the term "community" as used in the proposed revenue procedure "bears no rational relationship whatever to the religious necessities" of the religious schools affected by the proposal. The obligation of religious schools is clearly to a geographical community. But unlike public schools which serve a geographical region, church-related schools serve their own faith communities. The error of the IRS proposal, Mr. Ball continued, "is that it attempts to force the schools of the faith communities to be related to population patterns of public school districts." The affirmative action quota burden imposed upon religious schools is determined by the racial make-up and desegregation problems of the public schools in their area without reference to the needs and resources of their own religious communities.

IRS ACTION VIOLATES ESTABLISHMENT CLAUSE OF FIRST AMENDMENT

Conflict with the establishment clause of the first amendment is the unavoidable result of the IRS proposal. All religious organizations, under the IRS theory, could be denied tax exemptions unless the IRS has judged the organization's purposes and practices to be in line with expressed Federal policy. According to IRS, only religious organizations, whose purposes and practices are in harmony with those of the Federal Government, will be granted an exemption. To preserve its tax exemption, a church, or other religious organization such as a religious school, would have to make sure it stayed in step with Federal public policy.

In *Tilton* v. *Richardson*, 403 U.S. 672 (1971), the Supreme Court stated its well-known test for determining if a statute contravenes the establishment clause:

First, does the act reflect a secular legislative purpose? Second, is the primary effect of the act to advance or inhibit religion? Third, does the administration of the act foster an excessive entanglement with religion?

Regardless of the stated purpose of the IRS procedures, a primary effect will be the inhibition of those religious organizations whose policies are not consistent with national policy as declared by the IRS and the advancement of those religious groups that conform with Federal public policy.

The Supreme Court in *Walz* v. *Tax Commission of the City of New York*, 397 U.S. 664 (1970), determined that the granting of property tax exemptions equally to all churches did not violate the establishment clause of the first amendment. But, instead of all religious organizations being treated equally, as was the case in Walz, the new IRS proposal places the burden of taxation only on those religious organizations whose procedures the IRS has determined conflict with the Federal public policy. As the Supreme Court observed in Committee for Public Education against Nyguist, one form of the oppression of religion by Government is taxation. In Nyguist, the Court commented as follows:

> Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this Court. 413 U.S. 756 (1973).

The construction of section 501(c)(3) argued by the IRS would do away with the general grant of tax exemptions to all religious organizations, which was found in Walz to be an act of benevolent neutrality. Instead, it would transform the statute to provide a special tax benefit to some religious organizations. Since only selected religious institutions would receive exemption under the IRS interpretation, tax exemption provided by section 501(c)(3) no longer manifests neutrality toward all religions but favors some groups over others. The IRS procedures will strengthen and promote religious organizations whose religious practices do not conflict with Federal public policy and discriminate against religious groups whose convictions may conflict with those principles. Thus it essentially runs afoul of the second test articulated in Tilton, that is, a primary effect to advance or inhibit religion. Such a result strikes at the heart of the establishment clause of the first amendment.

The IRS proposal would also violate the third test of Tilton in that its administration fosters an excessive entanglement with religion. The revised revenue procedures maintain the presumption against private schools on the basis of when the school was established, they retain the affirmative action quota sys-

tem for student admissions and the procedures limit the evidence which a school may use to overcome the presumption of racial discrimination.

These procedures cannot but help to guarantee the extensive oversight by an agency of the Federal Government with the day-to-day activities of hundreds, possibly thousands, of religious schools and religious organizations. Under the IRS theory, the Government would be required to monitor continually the practices of religious organizations to determine their entitlement to exemption. The proposed IRS regulations provide for a sustained and detailed administrative relationship between the Federal Government and church-related schools.

Recently, the Fifth Circuit Court of Appeals outlined the strict standard by which Government regulation of first amendment rights is to be measured:

> Only in rare instances where a compelling state interest in the regulation of a subject within the State's constitutional power to regulate is shown can a court uphold state action which imposes even an incidental burden on the free exercise of religion. In this highly sensitive constitutional area only the gravest abuses, endangering paramount interests give occasion for permissible limitation. *Sherbert v. Verner,* 374 U.S. 398 (1963). Restrictions on the free exercise of religion are allowed only when it is necessary to prevent grave and immediate danger to interests which the state may lawfully protect. *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943).

Mr. President, I believe it is clear that the IRS has failed to meet this standard and others developed by the Supreme Court and the Constitution to protect the free exercise of religion. The vast majority of private schools to be affected by the proposed procedures are church related or religious schools. Many of these schools are operated by religious minorities which have been subject to discrimination and other sanctions in our society.

It is too easy to lose sight of the fact that this issue involves the rights of two groups of minorities, one which is ethnic and the other religious in character. Both groups have suffered unequal treatment during the course of American history. Both groups have important constitutional rights which must be respected. The present difficulties with the IRS procedures point to the problems which arise when an administrative agency without authorization or guidance from Congress attempts to take it upon itself to resolve such sensitive issues.

It is the responsibility of Congress to examine the issues presented in this question. The legislative process is well suited to affording all interested parties a fair and open hearing. If new national policy is to be set on this matter, then it is the lawmaker, the Congress, which should act.

Mr. President, I say again that here we are, the Senate of the United States, considering an unwise and unfair proposal to strike from this piece of legislation an amendment that has already been approved by the House of Representatives by a substantial margin. Moreover, by what we do here today, we will be saying yea or nay to a proposition that the Internal Revenue Service and its bureaucrats can continue to make law and deprive citizens of the United States of their right to provide for their children what they perceive to be a better education.

These people are not asking that they be relieved of paying taxes to support the public schools. No, they are simply saying, "Leave us alone. We are willing to pay taxes to support schools which we do not use—but please don't destroy the schools we have sacrificed to build."

I say again, Mr. President, that I would be willing to wager that no Senator who votes to strike this amendment from the bill has ever visited a private Christian school. No Senator who votes to strike this amendment from the bill has talked with the average Americans who, with their own sacrifices and often with their own hands, have built these schools—not for any ulterior purpose, but simply because they want something a little bit better, in their perception, than they think would otherwise be available for their children. They may be wrong; maybe their schools are not better. But that is a judgment for the parents to make. It is certainly not a judgment for us to make in the U.S. Senate. It certainly is not a judgment for the IRS to make.

As a matter of fact, the Senator from North Carolina is persuaded that the deterioration of the public schools of America began when the Federal Government began intruding into the operation of the schools of America. I, for one, do not blame those parents who are willing to sacrifice to provide for their children's education which they perceive to be better than that which is otherwise available.

Mr. President, I believe the Senator from South Carolina wishes to speak.

(Mr. DECONCINI assumed the chair.)

Mr. THURMOND. Will the Senator from North Carolina yield to me 7 minutes?

Mr. HELMS. I yield whatever time the Senator wishes.

Mr. THURMOND. Mr. President, I rise to oppose the amendment offered by the distinguished Senator from New York (Mr. JAVITS).

I congratulate the members of the Appropriations Committee for having the courage and foresight to include in this bill an amendment adopted overwhelmingly by our colleagues in the House. I refer to section 615, an amendment that effectively prevents the IRS from implementing their proposed revenue procedure dealing with tax-exempt schools.

This procedure strays far from the statutory bounds within which the IRS is required to work. It is objectionable on numerous grounds, not the least of which is that it represents an unreasonable entanglement by the State in the internal workings of churches. It, further, imposes affirmative action plans, complete with numerical quotas of certain designated minority students, on affected private schools.

Finally, Mr. President, this procedure has evoked anger, outrage, and despair from hundreds of thousands, even millions of ordinary, decent citizens. The IRS is not the most popular of our governmental organizations to begin with, though the function it serves is a necessary one, as anyone will admit. But when this proposed procedure was published in the Federal Register, the IRS was deluged with a flood of protests. Indignant citizens from all over the United States, from Texas, Florida, California, Michigan, South Carolina, New Jersey, literally dozens of States, came to Washington to register their opposition. They were doctors, lawyers, housewives, clergy, businessmen; ordinary people who sacrificed, for various reasons, to educate their children privately. Let me point out that they also support public education with their taxes.

Mr. President, we in the Congress have a responsibility to enact the laws. We owe a duty to these concerned citizens and to all of our constituents to consider this matter carefully. A change this drastic merits more study than it has received. Section 615, approved by both Houses of Congress, will give us the opportunity to study, to fully debate the issue, to consider the far-reaching implications, to decide in Congress, where it should be decided, whether this is what we want to do.

Mr. President, the sponsors of this amendment have sought to simplify this issue so as to evoke a knee-jerk response. It is not as simple an issue as they would have us believe.

First, the sponsors appeal to the Brown against Board of Education decision in an attempt to categorize this issue as a "segregation" issue. The Brown decision dealt with public schools—I repeat, public schools—not private schools, Mr. President. It outlawed "separate but equal" public schools. It did not deal with private schools.

The sponsors try to justify application of the Brown decision by declaring that private schools operate "with taxpayers' support." In other words, tax-exempt status is active governmental support. That argument was rejected by the U.S. Supreme Court in *Walz* v. *Tax Commission,* 397 U.S. 664 (1970), a case which upheld tax-exemption for religious organizations as neutral governmental activity.

Further, they would have us believe that this question is solved by the case of *Green* v. *Connally,* 330 F. Supp. 1150 (D.D.C. 1971), affirmed without opinion by the Supreme Court in that year. I would suggest once again that the situation is not as simple as we are told.

In a 1974 case between Bob Jones University in my State and the IRS, Justice Lewis Powell noted that "the question of whether a segregative private school qualifies under section 501(c)(3) has not received plenary review in this Court, and we do not reach that question today." I repeat, has not. This is 3 years after the case Senator JAVITS and his colleagues cite as dispositive of the issue. Now they may wish that the issue were decided and may know how they want it to be decided, but I submit that it has not been decided. It is not, therefore, up to the IRS to decide it.

Mr. President, these proposed guide-

lines are not "narrowly targeted." They are vague and ill-defined. They impose monstrous burdens on private schools. They raise first amendment problems. Even should we decide that something like this should be done, it would require careful study and work to draft appropriate guidelines. I oppose this amendment. The bill as reported out of committee would give Congress a year in which to study and act, surely a reasonable time frame in which to act on a matter of such importance.

Mr. President, I am convinced that now is the time, that today is the day, in which we should act on this matter in a positive manner, in which we should tell the IRS that they have no business legislating.

Their business is to execute the laws. Under the Constitution, the Congress has the responsibility for legislating. It is the Congress responsibility to make the laws and the IRS is usurping the power of the Congress when they attempt to do what they are doing in a case of this kind.

I can hear now the sound of those who take a different view. Oh, they are only carrying out the Constitution.

They are not carrying out the Constitution or any such thing. They are usurping the right of the Congress.

This matter, Mr. President, is a matter for the Congress and the Congress only, and the IRS should never have taken the step it did and tried to legislate in its field where it has no authority to do so.

I hope that the provision contained in the appropriations bill by the committee will remain in the committee. It should remain in the committee. It is a reasonable provision.

After all, I want to ask, what harm have private religious schools done to this country? What harm have they done?

We had private religious schools in this country before we even had public schools.

I say that I know of no injustice that they have done to the public. I know of nothing bad they have done to the public. They have educated thousands and hundreds of thousands of students that the public governments would have had to educate if they had not done so.

Why do we want to destroy these schools? If people believe in a certain private school, why not let them have their school? If they want a school where they can read the Bible or where they can pray, why not let them do it?

I do not know of any child that was ever harmed by having the Bible read, although my opinion is that it should be a voluntary act.

On the other hand, I do not know of any child that was ever harmed by having prayer in schools.

It seems to me we have gone entirely too far in some of these fields. It seems to me we had better get back to the principles on which America was founded. It seems to me we had better get back to what is best for America.

I say that it is best for America if we allow these private religious schools to exist and educate these children and save the country, the States, and the localities, this expense, and further provide this freedom which they want and to which they are entitled, in my opinion, under the Constitution.

I think it is unfair. It is an unfair burden to place on them to say to them that the IRS is trying to dictate to them in the action they are taking.

I hope this provision will remain in this bill and I hope any steps taken to remove it will be defeated.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, I yield 7 minutes to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I thank the distinguished Senator from New York for yielding to me.

Mr. President, I rise in support of the amendment offered by the distinguished senior Senator from New York. The amendment strikes from this legislation a provision that would prohibit action by the IRS to terminate the tax-exempt status of private schools founded for the express purpose of perpetuating racial segregation.

The supporters of this provision have argued that it is directed at countering an attempt by the IRS to impose without legislative authority a bureaucratic view of what constitutes racial equality.

They have talked about eliminating violence and avoiding violence, but that is not what this amendment is all about.

I cannot accept the arguments that have been made in support of it.

In 1979, for example, a Federal court held in Green against Connally that racially discriminatory private schools are ineligible for the tax exemptions provided to educational institutions.

In 1976, the Supreme Court in Norwood against Harrison struck down a Mississippi law that provided textbooks and transportation to students attending racially discriminatory private schools.

Two years ago, in Goldsboro Christian Schools, Inc. against United States, a district court found that a tax exemption could not be granted to a private school in spite of the fact that its policy of racial discrimination was based on religious belief.

As recently as April of this year, in Prince Edward School Foundation against Commissioner, a Federal district court held that a racially discriminatory private school had failed to meet its burden of establishing its qualification for tax-exempt status.

The law, I say to the Members of the Senate, is clear on this issue. The meaning of the Constitution is clear. And it is also clear that the IRS has acted properly in moving to enforce the law.

I believe that the issue before us today, and it is the only issue, is whether or not the Senate will consent to legislation that requires the IRS to look the other way at illegal tax exemptions.

The issue is whether or not schools established for the express purpose of evading the law of the land should be rewarded with exemptions that amount to indirect subsidies from the taxpayers of this country.

In a larger sense, the issue before us today is whether or not we in the Senate are prepared to give our sanction to a backdoor method of restoring school segregation.

I believe that the answer to each of these questions should be a resounding "No," and I urge the Senate in the strongest terms to adopt the Javits amendment, to eliminate this iniquitous amendment, which has been adopted by the House and which, I am concerned, may be adopted by this body as well.

Mr. JAVITS. I thank the Senator very much for his support.

Mr. President, I yield 8 minutes to the Senator from New Jersey (Mr. BRADLEY).

Mr. BRADLEY. Mr. President, I support the Javits amendment.

It is now 25 years since the Supreme Court made it abundantly clear that segregation is unconstitutional. Even so, for this quarter of a century, after almost all overt signs of racial discrimination have been cleansed from our laws, the Federal Government still supports segregated education. It does this by granting tax exemptions to private schools that discriminate. In effect, the Federal Government—and every taxpayer—subsidizes segregated schools.

That is the issue involved in the so-called Dornan amendment and in the Javits amendment. It is simple and clear.

One may have criticisms, legitimate or devised, about the substance of the IRS rules in question, and one may be critical about the procedures adopted last year to promulgate them. But there can be no question that it is high time the IRS started to enforce the law of the land. The IRS should be permitted to employ effective methods to insure that the private schools which have the benefit of tax-exempt status are adhering to a very basic precondition of that benefit—that they not discriminate.

I will not belabor the long history of these procedures. Suffice it to say that for many years it was an open secret that many private schools set up in the wake of the Brown against Board of Education decision were created with the purpose and effect of avoiding the fundamental dictates of that ruling. Irrespective of whether there exists a private right to discriminate, that right does not carry with it a Government subsidy. For years the IRS was urged to adopt effective enforcement techniques to insure that the segregation academies did not keep their tax exempt benefits.

The IRS went through many Commissioners, and despite their personal support of more effective enforcement, somehow bureaucratic inertia and political strategies combined to produce inaction.

It certainly is to the credit of this President, and to Jerome Kurtz, the current Commissioner, that finally the IRS has produced these long-awaited and long-needed enforcement techniques.

If the history of the first 25 years of these enforcement procedures was one of inaction, it seems that the past 10 months have more than made up for that. Since last fall, when the first version was announced, there has been an extraordinary amount of controversy. In response to criticisms that the proce-

dures had not been the subject of public comment, the IRS held 4 days of hearings at which 193 persons testified. The transcript runs almost 2,000 pages. Many hundreds more persons and groups submitted written comments. Dozens of Senators and Congressmen appeared or sent letters. These procedures have had a most thorough public airing.

Based on those comments, the IRS substantially revised the procedures. The ones we now are considering are considerably different from the first version. Members of this body should be clear that the procedures which raised so much ire last fall are not the ones before us today. Let me spend a few moments outlining the differences between the two versions:

The original procedure set up two classes of schools, reviewable and adjudicated schools. An adjudicated school is one found by a court to discriminate. This class is not the subject of any dispute, so far as I am aware.

A school was reviewable if it was created or expanded during a time of desegregation of neighboring public schools, and if it had less than 20 percent of the minority student population ratio. The school would then have had to show that it met four of five criteria to keep its exemption.

That is now changed. The new procedures designate a school as reviewable only if it meets three criteria: It must have been created or expanded during public school desegregation; it must have an insignificant minority enrollment; and its creation or expansion must have been related in fact to public school desegregation.

The second and third criteria are determined according to the particular facts of each case. If, for example, the school's low minority enrollment is due to the fact that it offers programs which themselves attract groups with little or no minority presence, then the school does not become "reviewable."

This should relieve many religious schools of their fears. Obviously a school offering instruction in a branch of Hasidic Judaism will not have a large enrollment of persons who do not ascribe to those beliefs. One could not fault the school for not having many minority students, and the IRS and the new procedures would not apply to it either.

The new version also has a so-called "safe-harbor." Irrespective of whether the school fails all other tests, if it has an enrollment of 20 percent of the minority student ratio in the community, it will not be reviewable.

The third criteria—whether the school has expanded or created in response to public school desegregation—is likewise determined by an evaluation of all the facts. Examples of facts and circumstances that would excuse a school from the reviewable category include:

The students to whom the opening or substantial expansion of the school is attributable are not to any significant extent drawn from the public school grades subject to desegregation in the community served by the school. For example, the students may be drawn from other private schools, or from other areas not undergoing public school desegregation.

The rate of expansion is not greater than the rate of expansion experienced by the school in years prior to the time of public school desegregation, as defined in section 3.03(a) of this procedure.

The expansion is attributable to an increase in the school age population in the community.

The expansion results from a merger of the school with another private school and neither of the schools is "reviewable."

The expansion is attributable to a continuation of previous periodic expansion by adding grade levels as the school's enrollment in lower grades advance, and the school does not enroll a significant number of new students in the newly added grades from the public schools.

The school was formed or expanded in accordance with a longstanding practice of a religion or religious denomination which itself is not racially discriminatory to provide schools for religious education when circumstances are present making it practical to do so (such as a sufficient number of persons of that religious belief in the community to support the school), and such circumstances are not attributable to a purpose of excluding minorities.

At the time of formation or expansion, the school had some minority students, faculty, or board members.

Much of the controversy directed at these procedures has been focused on its application to religious schools, I have already indicated some of the provisions that are designed to protect those schools from the misapplication of the procedures. Two more points deserve to be made.

If a religious school does not have a large enough minority enrollment and was indeed created in a period of public school desegregation, it will not be reviewable if it is part of a larger religious school system which does satisfy the criteria. Thus, one school in a religious school system may have a low or nonexistent minority enrollment. But if other schools in the same system do not discriminate, then the individual school will not be reviewable.

The second point is even more important. The mere fact that a school is religious does not excuse it from the loss of tax exempt status if it does indeed discriminate. There may be a constitutional right to create private religious schools, and those schools may have right to discriminate. But that does not answer the question of whether religious schools which discriminate have the right to a tax exemption. They do not. Nobody has that right.

There should be no confusion on this point. Nobody has the right to a tax exemption, or a tax deduction. The tax laws grant these benefits and the taxpayer gets to take advantage of them if he follows the rules for claiming them.

One of the basic rules for getting or keeping an exemption or deduction is that the taxpayer has to justify his claim to it. If the IRS has reason to believe, or even no reason to believe, that the deduction or exemption is unwarranted, the taxpayer has the burden of satisfying the IRS. As many taxpayers would attest it's sometimes a nuisance. But that is the law. It is no less the law for private school, religious or otherwise. The exemption they have is a benefit, not a right. They must justify their right to keep that benefit. If the question arises or whether they are nonprofit, or really educational and charitable institutions, or whether they discriminate, it is their burden to show the facts which preserve their special tax status.

All this talk about harassment and infringement of religious rights is so much talk. Private religious schools are no different from other tax entities in the eyes of the tax laws.

The IRS rules we are debating today will serve these schools well. Rather than being harassment, they provide clear guidance to IRS employees as to whether a school is properly tax exempt. If a school meets the criteria, it has no reason to fear the IRS. As things now stand, these schools operate in a vague atmosphere of almost no rules.

If the IRS should question their right to an exemption, then the school does not have clear guidance on how to persuade the IRS they are not discriminating. These rules will help the schools, just as they will help the IRS. In the absence of the rules, enforcement of the nondiscrimination requirement will go on, but ineffectively and unsatisfactorily for all.

That is why I support the Javits amendment, and I urge the Senate to adopt it.

In these few minutes, I have had an opportunity to outline just a few of the points that bear on this debate. I ask unanimous consent to have printed in the RECORD, for the consideration of Senators, some material in support of the argument I have made.

Mr. President, I ask unanimous consent to have printed in the RECORD a number of articles supporting the argument I have just made.

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

[From the Washington Post, Dec. 12, 1978]

PRIVATE SCHOOL DISCRIMINATION

Late last summer, the Internal Revenue Service issued a proposed set of guidelines for determining whether elementary and secondary private schools discriminate against students on the basis of race. They are unusually simple by IRS standards; you don't need an advanced degree in legalese to understand them. Yet, much of the testimony given at four days of hearings last week and much of the mail that has been pouring into IRS headquarters suggests a comprehension of those guidelines about on the level of a recent advertisement in this newspaper. That ad began, "Why is the IRS trying to close our private Christian schools?"

The answer is that the IRS isn't trying to close any schools, Christian or otherwise. It is trying, at long last, to enforce a well-established principle of federal law that schools that discriminate against students on the basis of race are not entitled to tax-exempt status.

Of course, loss of that status does mean gifts to such schools will no longer be tax deductible. Since many private schools depend heavily on such gifts, the loss of the

tax exemption might put some of them out of businesses. But if that happens, it will be because the schools decided to let it happen. They will have chosen to discriminate rather than to receive an indirect federal subsidy through the deductions given their benefactors. By forcing all private schools to make that choice, the IRS is not crossing the line between church and state or interferring with freedom of religion—as the most vocal opponents of the guidelines contend—but simply enforcing the law on taxation and education.

There are some obvious problems with the proposed guidelines. But these involve only the standards IRS wants private schools to meet, not the principle of non-discrimination. Under the guidelines, any school that came into existence or suddenly expanded when the public schools in its community were desegregated will be suspect. It will lose its tax exemption unless it has a substantial minority enrollment or can show that it is making a good-faith effort to operate on a non-discriminatory basis. Thoughtful critics of the guidelines, such as the National Association of Independent Schools and some of the religious groups, have pointed out situations in which the proposed definitions of what is a substantial minority enrollment or a good-faith effort seem unduly harsh.

In revising the guidelines now that all the testimony concerning them is in, the IRS can quite appropriately make some changes to ease the burden that would otherwise be placed on some private schools, particularly religious ones, that want a racially mixed student body but have difficulty recruiting minority candidates. What the IRS must not do is to weaken the guidelines so that those all-white academies which sprang up after *Brown v. Board of Education* can continue to hold their tax-exempt status, as they do now, by paying for an occasional advertisement claiming they don't discriminate—while doing nothing else to change the complexion of their student body.

[From the Washington Post, July 30, 1979]

TAX LOOPHOLE FOR PRIVATE SCHOOLS

About a year ago, the Internal Revenue Service set out to put some teeth in the law that denies tax-exempt status to private schools that discriminate on the basis of race. Not surprisingly, it ran into trouble, and the more it tinkered with its proposed regulations, the louder the cries against them became. Now Congress is on the verge of forbidding the IRS to make any changes in its current regulations, thus permitting a small number of private schools to continue to make a farce out of the law.

Language to kill the proposed regulations was tacked onto the Treasury Department's appropriations bill on the floor of the House. The Senate Finance Committee refused last Thursday to delete that rider after Sens. Robert Packwood and Daniel Moynihan attacked the regulations, and the IRS, for "bias" and "hatred" toward religious schools.

But the problem the IRS is trying to solve has nothing to do with religious schools—unless they discriminate on the basis of race. The proposed regulations are aimed primarily at private schools that were created or suddenly expanded when nearby public schools were desegregated—like those "white academies" that sprang up all over the South in the 1960s. Currently, these schools get their tax-exempt status merely by saying publicly that they do not discriminate. The new regulations would require them to demonstrate, rather than just say, that they are not discriminating.

If Congress doesn't like what the IRS is trying to do, it can always write a new law giving tax-exempt status to those white academies or spell out precisely how the IRS is to determine which schools discriminate and which do not. Unless it is prepared to do either of those things, however, Congress should leave the proposed regulations alone. It makes no sense in terms of either tax or civil-rights policy to use a rider on an appropriations bill to stop the IRS from closing a loophole of this kind.

[From the New York Times, Friday, Dec. 8, 1978]

NO MORE WINKING AT "SEG ACADEMIES"

For years, the Internal Revenue Service has had a policy of denying tax-exempt status to "seg academies," the hundreds of private schools created to evade desegregation of public schools. There was little protest, since I.R.S. administered its policy with a wink. All that seg academies had to do to stay eligible for tax exemption was to say they do not discriminate. But now I.R.S. has proposed stern new enforcement regulations. Wink has become scowl and scowl has provoked a reaction—115,000 protest letters and an outcry in public hearings that conclude today. Some objections seem just, but for the most part the regulations are needed and we hope I.R.S. sticks by its guns.

In the first place, the principle, impressed on I.R.S. by the Federal courts, is right: to be tax-exempt, institutions must obey the law. It would be intolerable for the Federal treasury to support what Federal law denounces. So far, the seg academies have had things both ways. They have recoiled from any contact with the Feds lest it bring them under desegregation requirements. But they have worked to maintain tax-exempt status. Without it, many could not survive.

In practice, the proposed regulations would not be as onerous as some critics seem to fear. There are some 18,000 private secular schools and an unknown number of church schools in the country. The regulations would apply only to those founded or substantially expanded in the wake of desegregation orders in their communities. That would be 3,500 schools at most, and many of these have no segregation motives.

Still, even these could be affected, and painfully so. Rules intended for schools with 4,000 students but not one black would impose bizarre requirements on, say, small parochial schools. The proposed rules state that a school with no minority students does not qualify for tax-exemption except in "rare and unusual circumstances." Critics are left free to ask how many black Amish are there in Lancaster, Pa.; how many Chinese Jews in Brooklyn? It will be hard to broaden this exception without leaving more loophole than law but some wider exclusion is necessary.

Otherwise, the Internal Revenue Service deserves credit for setting out finally to enforce its policy of denying exemptions to seg academies. And it deserves Congressional support as it stands up to emotional, exaggerated criticism. The only schools with anything to fear should be those which practice private segregation with public money.

[From the New York Times, Aug. 3, 1979]

REWARDING RACIAL SEGREGATION

Congress goes off on summer vacation tonight without having cleaned up a particularly dirty piece of business which has been made to look like bureaucratic bumbling, and by everyone's least favorite agency at that—the Internal Revenue Service. But the issue is not bureaucracy. It is race. And straightening it out ought to be an early order of business when Congress returns.

The story concerns "seg academies," the hundreds of private schools created for white students fleeing newly desegregated public schools. Should Washington give them a big financial boost by permitting contributions to them to be tax-exempt? No, of course not, says Federal law. It would make no sense for Washington to seek desegregation under civil rights laws but then to subsidize segregation under the tax laws.

Last year, Internal Revenue belatedly proposed stern regulations barring tax-exempt status for segregation academies. For example, a school with no minority students could not remain that way except in rare circumstances. There was a storm of protest from people who feared that the regulations were too mechanical and would end up hurting religious and other schools for which desegregation was irrelevant. So earlier this year, Internal Revenue came up with revised regulations. These would cut off tax-exempt status only when a relationship could be shown between the formation or expansion of a private school and the desegregation of public schools. And special provision is made for religious schools. The new regulations make clear that the agency's only target is the seg academy.

But Congress so far has been unwilling to see that. On the contrary, there has now been action to forbid Internal Revenue from issuing its new rules—and even to punish the agency. Two weeks ago, the House barred the agency from revoking tax-exempt status in any new case. And this week, the Senate Appropriations Committee forbade spending any money to enforce the new rules. No rescue effort could be mounted on the Senate floor before today's recess.

Perhaps members who opposed the new regulations did so ignorant of the revisions. Perhaps they find it politically appealing to beat up on the tax collector. But during the recess, members may came to realize that many Americans will see a different explanation: that the Congress of the United States seeks, slyly and indirectly, to reward racial segregation.

[From the Los Angeles Times, Apr. 28, 1979]

SOUTHERN BAPTIST LEADER BACKS IRS IN SCHOOL TAX EXEMPTION FURORE

WASHINGTON.—A national official of the Southern Baptist Convention's social action agency broke ranks with much of the religious community and has endorsed controversial federal tax procedures designed to end racial discrimination in private and religious schools.

William H. Elder, director of Christian citizenship development for the Christian Life Commission of the 13-million-member Southern Baptist Convention, said he decided to support the procedures, proposed by the Internal Revenue Service, because it is "our conviction that racism is totally inconsistent with the Christian gospel."

The proposed procedures would set up a method of determining whether private schools operate in a racially nondiscriminatory fashion and would limit tax exemption of those schools found to be discriminatory.

When the proposed procedures were announced last August, they were greeted with a storm of protest from representatives of Jewish, Catholic and Protestant groups, including the Baptists' joint committee on public affairs.

The outcry forced the IRS to hold public hearings on the proposal last December, and more than 100 witnesses, including about a dozen members of the House and Senate, testified against it.

In February the IRS made public a revision in the proposed procedures, but the change did not satisfy most of the critics.

Elder wrote a four-page letter backing the proposal to IRS Commissioner Jerome Kurtz and Sen. Harry F. Byrd (D-Va.), chairman of a Senate subcommittee holding hearings on the issue.

In it, Elder said he supported the proposed IRS procedures "because we support the nondiscriminatory thrust of the law of the land, because we believe that the IRS has

acted responsibly in the criteria selected for demonstrating nondiscriminatory status and because after having examined the arguments in opposition to the proposed procedures we have found them to be flawed."

Elder said he does not believe the proposed procedures violate separation of church and state because "the state is not telling the church it must integrate, but it is saying that when the church is involved in providing public services it cannot enjoy tax exemption if it operates under a policy which runs counter to established public policy."

[From the Baltimore Sun, Jan. 20, 1979]

IRS VS. PRIVATE SCHOOLS

(By Thomas A. Troyer)

Recently the Internal Revenue Service proposed rules to foreclose tax exemption to private schools which practice racial discrimination. The IRS proposal has been greeted with strong support from civil rights groups, but vehement opposition from many educational and religious organizations. What is all the shooting about?

The controlling principle of law is simple and clear. Affirming a lower court in 1971, the United States Supreme Court held squarely that the advantages which the tax law establishes for educational, religious and other charitable organizations—tax exemption and qualification to receive deductible charitable contributions—do not extend to private schools which discriminate by race. That principle has been repeatedly recognized by other courts. By now, there is simply no room for reasonable dispute about it.

Despite the clarity of this law, there is broadscale evidence that many schools are not complying with it. A study published in 1976, entitled "The Schools That Fear Built—Segregationist Academies In the South," prepared by researchers at the Universities of Alabama, Tennessee, and elsewhere, found what it termed "startling growth" of private "segregationist academies" in the 13 southern states which it reviewed. The study estimates that between 3,000 and 4,000 such segregationist academies had developed in the 13 southern states by 1976.

Evidence of the growth of racially discriminatory private schools—not confined to the South—abounds. Federal court decisions, work by the Lawyers' Committee for Civil Rights Under Law, reports by the U.S. Commission on Civil Rights and the Illinois Advisory Committee to that Commission all underscore the phenomenon. Yet most of these schools continue to profit from precisely those tax benefits to which the Supreme Court held them not entitled.

Confronted by this evidence, the IRS proposed rules to enforce the Supreme Court decision. By and large, the IRS proposal uses concepts which the federal courts have evolved over the years to deal with other aspects of segregation. Here and there the rules need refinement or restructuring. Overall, though, the IRS proposal simply attempts to establish an administrative mechanism to insure that the law stated by the Supreme Court is carried out.

Why then the firestorm of criticism from educational and religious organizations? Some comments are constructive efforts to help the IRS restate its language to avoid impingement on tax benefits of schools operating in good faith, without racial discrimination. I expect the IRS to take full account of them as it frames final rules. Most critics, though, go further. Firmly and loudly, they tell the IRS that it has no right to act in this area at all.

Much of the argument flows from a time-honored maxim of lawyers: when the law is against you, argue about definitions. The assortment of disputes and quibbles which critics have contrived about words and phrases in the IRS proposal is a tribute to the inventiveness, if not the breadth, of the legal mind. To all of them the short answer is that the Supreme Court has established a clear and simple principle of law governing the subject; and it is surely not beyond the power of the English language to state rules carrying that law into effect. If the words which the IRS has chosen do not accomplish the result, let us help find ones that do. But we do not help with verbal shenanigans whose real object is to avoid the law.

Others assert that the IRS rules constitute unwarranted federal intrusion into private education. Here again, the answer is short. If schools do not want federal tax benefits, they need not concern themselves with the IRS rules. If they do want tax benefits, the IRS must see that they comply with controlling tax law.

Finally, some argue that, whatever law governs other schools, religious schools are not subject to it. As one who believes deeply in religious freedom, I find that argument profoundly disturbing.

The basis of the Supreme Court decision—that tax benefits created for charities do not extend to organizations operating illegally or contrary to public policy—is of great protective value to legitimate religious institutions. It allows much useful separation of legitimate institutions from others. If lawyers convince courts that this principle does not govern religious organizations, what shall we say when the Peoples Temple claims tax exemption and charitable contributions—but treats its members to fruit-flavored cyanide? What shall we say to the religious group claiming tax benefits as it pops rattlesnakes into the mail boxes of opponents? Are illegal activities really protected by the First Amendment as the "free exercise of religion?" And if they are not, what part of the Constitution requires us to grant tax benefits to religious institutions which embark on activities held squarely, directly, and repeatedly to be contrary to the public policy of the United States?

TAX BENEFITS FOR SEGREGATED PRIVATE SCHOOLS

We urge you to withhold your support for a rider concerning tax benefits for segregated private schools, which the House of Representatives attached to the recent Treasury Department appropriations bill.

In *Green v. Kennedy*, 309 F. Supp. 1127 (D.D.C. 1970) and *Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971); *aff'd sub nom. Coit v. Green*, 404 U.S. 997 (1971), a three-judge court ruled that IRS administration of charitable exemption provisions of the Internal Revenue Code in the area of private segregated schools violated both statute law and constitutional principles of Equal Protection; this ruling was affirmed by the Supreme Court. The court ordered the IRS to undertake adequate enforcement steps, and in particular to cease accepting as satisfactory evidence of nondiscrimination a private school's "oblique reference to racially nondiscriminatory policy" and other such perfunctory, self-serving assertions. *Green v. Connally*, 330 F. Supp. at 1175.

Despite the court order in *Green v. Connally*, the IRS remained satisfied for years with just the sort of "paper compliance" rejected by the court. Indeed, in flagrant violation of the order, private schools found discriminatory in separate federal court proceedings continue to receive tax benefits. See *Norwood v. Harrison*, 382 F. Supp. 921 (N.D. Miss. 1974). In August 1978, finally recognizing its responsibility, the IRS issued proposed improved enforcement procedures. Upon receiving extensive comments, and in some instances, strong protest from interested schools, the Revenue Service in February 1979 issued a revised and less stringent version of the August proposal. Fair-minded observers agreed that the February proposal was responsive to the comments of affected schools. See "School Regs Reflect Comments," *Legal Times of Washington* (March 5, 1979).

Despite the foregoing it appears that emotional appeals have induced the House of Representatives to take precipitate and unwise action, attempting by a rider to an appropriations bill to make substantive tax policy lacking constitutional validity and in conflict with a federal court order.

We understand that the rider in question prohibits the Revenue Service from carrying out any procedure regarding the tax exempt status of private schools unless issued prior to August 1978. The effect of this might be to force the Revenue Service to continue the policy of paper compliance precluded by the ruling in *Green v. Connally*—a ruling which rested ultimately on constitutional principles. 330 F. Supp. at 1163, 1171. See also *Green v. Kennedy*, 309 F. Supp. at 1133 *et seq.* The court was emphatic that the legal protection for the plaintiffs' had to be "effective directives and procedures" ensuring that private schools receiving tax benefits are not racially segregated. 300 F. Supp. at 1171.

The House rider is not only constitutionally vulnerable but ties the hands of the Revenue Service in direct conflict with the court's order. Such a legislative initiative is unwise as a matter of public policy and in derogation of the principle of separation of powers. Finally, it is particularly inappropriate to make substantive tax policy through the appropriations process where, as here, the action impinges upon the highest of national commitments to a society based on racial equality. If the Congress wishes to make fundamental changes in the tax exemption provisions of the Internal Revenue Code, it should be so in a careful, deliberate manner following the well established Congressional procedures designed for that purpose.

For all these reasons we urge you not to block the Internal Revenue Service from fulfilling its court-ordered responsibility to ensure that the United States is not an aider and abettor of private racial discrimination. The principle at stake is applicable not only in the tax context but has been adopted in numerous instances by Congress and is embedded in the Constitution. Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 200d *et seq.; Norwood* v. *Harrision*, 413 U.S. 455 (1973). See also *Runyon* v. *McCrary*, 96 S. Ct. 2586 (1976).

Question: What is the Dornan Segregation Academy Rider to the Treasury Appropriations bill?

Answer: The Rider prevents the IRS from enforcing in an effective manner the prohibition against federal tax exemptions for "segregation academies"—private elementary and secondary schools which discriminate in admissions on the basis of race.

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Question: Why does the IRS have any business dealing with such academies?

Answer: A three-judge court in *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C. 1971), *aff'd per curiam sub nom., Coit* v. *Green*, 404 U.S. 997 (1971), ordered the Internal Revenue Service to cease granting tax exemptions for schools with discriminatory admissions policies and to revoke those held by discriminatory schools. The *Green* court found that the practice of taxpayer subsidies for discriminatory schools—by permitting the schools to be tax exempt and to accept tax deductible contributions—is unlawful under the statute and the Constitution. The decision was affirmed without opinion by the United States Supreme Court and represents the law of the land. The IRS has a duty to enforce this law.

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Question: Why must new procedures be adopted now? Why can't the IRS continue under existing procedures?

Answer: The plaintiffs in *Green* have re-

opened the case, claiming that the IRS has failed to meet the requirements of the *Green* order. The IRS agrees that its present policies are inadequate. Under its present policies, the IRS accepts mere paper compliance as satisfactory evidence of nondiscrimination. A school must only include open admission language in its articles of incorporation and annually publish a notice of open admissions policies to remain tax exempt, without regard to its actual practices. As a result of this IRS policy, there are at least seven schools which have been found discriminatory by federal courts and nonetheless retain tax exemption. Moreover, there are thousands of private schools with no black children and no black faculty members in areas of public school desegregation. These schools have typically been created or significantly expanded at the time of public school desegregation in the community.

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Question: What harm do these schools do?

Answer: They have perpetuated a segregated dual school system, thereby thwarting desegregation orders of federal courts. Moreover, as white children have fled to newly-created or expanded private schools, public schools have suffered a significant decline in taxpayer interest and support.

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Question: Give an example.

Answer: One of many examples is the Delta Christian School in Madison Parish, Louisiana. The school was declared ineligible for state-loaned textbooks in *Brumfield* v. *Dodd*, 405 F. Supp. 338 (E.D. La. 1975). The court found that the school had never enrolled a black student or hired a black faculty member and that it was organized "as a direct response to the court ordered integration of the parish's public schools." 405 F. Supp. at 346. The court also found that the white students attending the school "left the public school system as a result of the racial integration of such system," and that the school "has significantly interfered with the integration of the public schools of the parish." Delta Christian School is listed in the current IRS list of tax-exempt organizations and continues to receive tax-deductible donations.

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Question: What changes in law enforcement is the IRS proposing?

Answer: On August 21, 1978, the IRS proposed a revenue procedure designed to advise affected schools and IRS field personnel of a new enforcement effort focused on two classes of private elementary and secondary schools: (1) those schools adjudicated by federal courts, state courts or state agencies to be discriminatory ("adjudicated schools") and (2) those schools with little or no minority enrollment which were formed or substantially expanded at the time of public school desegregation ("reviewable schools"). The August proposal would have required these two classes of schools to make special showings to rebut indications of racial discrimination. After studying public comment and criticism of the August proposal, the IRS in February 1979, published a second proposed revenue procedure designed to meet the special needs of certain religious schools and to respond to assertions that the first proposal was too harsh and mechanical. The February proposal contains substantially liberalized guidelines. It has the following significant features:

(1) Instead of the fixed "four-out-of-five factors" test of the August proposal, it adopts for adjudicated and reviewable schools an overall "facts and circumstances", case-by-case test, with liberalized criteria.

(2) It excludes from application all colleges, universities, preschools and schools for the handicapped.

(3) It provides relief for certain church schools which may be unable to attract minority students or which were formed as part of a plan predating school desegregation.

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Question: What do neutral commentators say about the revised procedure?

Answer: Michael Sanders, Chairman of the ABA Committee on Exempt Organizations, has described the procedure as follows:

"The revised procedure reflects the IRS' consideration of comments regarding potential problems and inequities under the first procedure, and in my view presents workable and equitable guidelines for private schools seeking to obtain and maintain tax exemption and for revenue agents charged with enforcing the long-standing principle that organizations which operate in a manner contrary to public policy—such as organizations which racially discriminate—are not entitled to federal tax exemption." Sanders, "School Regs Reflect Comments," *Legal Times*, March 5, 1979.

Similarly, Lipman Redman, Chairman of the ABA Section on Taxation, described the February proposal as "a realistic and practical approach to the problem: The Commissioner has provided helpful guidelines to the schools and to revenue agents. These guidelines appear to be reasonable and workable." Redman's Statement before House Ways & Means Subcommittee on Oversight, 2/22/79.

Bernard Wolfman, Professor of Law, Harvard University, an acknowledged tax law expert, stated his views and general support as follows:

Experience may prove that the guidelines need revision. Oversight will remain important as that experience develops. For now, however, it is important to the integrity of our tax system and to fulfillment of a national policy that eschews racial discrimination that Congress not impede the Commissioner's reasonable and measured efforts to comply with the law and enforce it even-handedly.

Letter dated April 16, 1979, to Commissioner of Internal Revenue Service.

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Question: Isn't it unconstitutional to require religious schools to adopt racially-nondiscriminatory policies for tax exemption?

Answer: In *Goldsborough Christian Schools, Inc.* v. *United States*, 436 F. Supp. 1314 (E.D.N.C. 1977), a federal district court held that a private religious school is not entitled to tax exemption. The court stated the principle as follows:

"There is a legitimate-secular purpose for denying tax exempt status to schools generally maintaining a racially discriminatory-admissions policy. Moreover, the general across-the-board denial of tax benefits to such schools is essentially neutral, and its principal or primary effect cannot be viewed as either enhancing or inhibiting religion. Finally, the policy patently avoids excessive governmental entanglement with and 'in fact, prevents indirect government aid to religion'." 436 F. Supp. at 1320.

However, one federal district court has found to the contrary in a case in which the discriminatory practices were perceived as based on religious dogma. *Bob Jones University* v. *United States*, Civ. No. 76-775 (D.S.C. 12/26/78), on appeal to the Fourth Circuit Court of Appeals.

In *Green*, the court specifically reserved the question of whether or not religious schools which discriminate on the basis of race because of religious beliefs fall within the *Green* order. However, the overwhelming majority of religious schools endorse the principle of nondiscrimination as part of their religious beliefs and do not discriminate as a matter of dogma. Thus, these schools are not within the *Bob Jones University* holding or the possible *Green* exception.

Question: Isn't denial of tax exemption for religious schools which discriminate an interference with their freedom of religion?

Answer: This claim has been rejected by the federal courts. As the *Green* court said, "Freedom from governmental 'regimentation or interference' is not to be equated with the right to support." 330 F. Supp. at 1166. In other words, even if private religious schools are free to discriminate on the basis of race, they have no right to do so with taxpayer support. (Secular schools may not discriminate by race whether or not they are tax exempt. *Runyon* v. *McCrary*, 427 U.S. 160 (1976).)

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Question: Won't the IRS proposal affect religious schools and religious education?

Answer: Religious schools which in fact discriminate by race will lose tax exemptions as required by federal law. However, in response to legitimate complaints of some religious schools, the second proposal provides that special considerations will be weighed in deciding whether a religious school can reasonably be expected to attract minority students. Moreover, the revised proposal expressly responds to the needs of church schools which are part of a school system and those whose founding was in accordance with long-standing religious practices and not related in fact to public school desegregation. The IRS will consider all of the relevant facts and circumstances.

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Question: What do church school leaders have to say about the proposal?

Answer: While many church school leaders have asserted that the proposal denies them freedom of religion and otherwise interferes with their rights, William H. Elder, Director of Christian Citizenship Development for the Christian Life Commission of the 13-million member Southern Baptist Convention, supports the proposal "because we support the nondiscriminatory thrust of the law of the land, because we believe that the IRS has acted responsibly in the criteria selected for demonstrating nondicriminatory status and because after having examined the arguments and oppositions to the proposed procedure we have found them to be flawed. . . . [T]he state is not telling the church it must integrate, but it is saying that when the church is involved in public services, it cannot enjoy tax exemption if it operates under a policy which runs counter to established public policy."

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Question: Won't the new IRS procedure put an unnecessary administrative burden on every private school in the country?

Answer: Many—and probably most—private schools will be unaffected by the new IRS enforcement policy since the IRS will closely examine only adjudicated or reviewable schools. This focus on adjudicated and reviewable schools is appropriate under a series of federal court cases which hold that the establishment or expansion of a school in the way of public school desegregation strongly suggests a racial exclusionary policy. Under the proposal, such schools—if innocent—can show that their founding or expansion was not in fact related to school desegregation and can otherwise provide evidence of facts and circumstances showing that they do not discriminate on the basis of race. (It is standard policy to require recipients of government benefits to demonstrate that they qualify for the benefits. Organizations seeking tax exemption have always had the burden of proving that they meet all criteria for qualification.)

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Question: What if the IRS improperly revokes a school's exemption?

Answer: Every school whose exemption is revoked has the right under the Internal Revenue Code to appeal to the federal courts. Moreover, under the proposal, all decisions with respect to such exemptions will be reviewed in the National Office of the IRS.

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Question: Isn't the IRS making new law without congressional action?

Answer: No. The law has been clear since 1971—segregation academies are not entitled to exemption. The new proposals represent a strongly-focused enforcement policy and not new law.

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NEWS RELEASE—IR–2091

WASHINGTON, D.C.—After considering public comments, the Internal Revenue Service today issued, in proposed form, a revised revenue procedure setting forth guidelines to implement the Service's obligation to limit tax exemption to private schools which operate on a racially nondiscriminatory basis.

Under the guidelines, the Service will examine certain schools and deny tax exemption where their actual operations are inconsistent with their stated policies of nondiscrimination.

The newly proposed procedure, on which public comments are invited, sets forth standards to be applied to two categories of private elementary and secondary schools: those that have been held by a court or government agency to be racially discriminatory ("adjudicated schools"); and those whose formation or expansion is related to public school desegregation in the community served by the school, and do not have significant minority student enrollment ("reviewable schools").

The proposed guidelines do not apply to colleges, universities, nursery schools, or schools for the handicapped or the emotionally disturbed.

The new procedure is a revision of a proposal published in the Federal Register on August 22, 1978. It gives greater weight to each school's particular circumstances, than did the earlier proposal, in determining whether a school is racially discriminatory as to students.

Under the new proposal, a school formed or substantially expanded at the time of public school desegregation will be classified as "reviewable" if it has an insignificant minority enrollment and its formation or expansion is related in fact to public school desegregation in the community. The procedure sets forth factors to be considered in making this determination.

A school classified as "reviewable" will be considered racially discriminatory unless it has undertaken actions and programs reasonably designed to attract minority students on a continuing basis. Unlike the earlier proposal, the new procedure does not require a minimum number of specified actions to be taken in every case. Rather, it provides greater flexibility for a school to show that it is operating on a racially nondiscriminatory basis.

Public comments on the new proposal should be submitted to the Internal Revenue Service by April 20, 1979.

A copy of the proposed revenue procedure is attached.

SECTION 1. PURPOSE

.01 This Revenue Procedure sets forth guidelines the Internal Revenue Service will apply in determining whether certain private schools have racially discriminatory policies as to students and therefore are not qualified for tax exemption under section 501(c)(3) of the Internal Revenue Code of 1954.

SECTION 2. BACKGROUND

.01 A school must have a racially nondiscriminatory policy as to students in order to qualify as an organization exempt from federal income tax. Revenue Ruling 71–447, 1971–2 C.B. 230. This requirement also applies to church-related and church-operated schools. Revenue Ruling 75–231, 1975–1 C.B. 158.

.02 Revenue Procedure 75–50, 1975–2 C.B. 587, sets forth certain affirmative record-keeping and publicity requirements along with other guidelines for determining whether schools have a racially nondiscriminatory policy as to students. Revenue Procedure 75–50 generally requires tax-exempt private schools to adopt formally a racially nondiscriminatory policy and to publicize that policy annually to the community.

.03 All private schools are subject to the requirement that they have a racially nondiscriminatory policy as to students in order to qualify for and retain tax exemption, and schools are subject to examination to verify the existence of that policy.

The question whether a private school has a racially nondiscriminatory policy as to students is based on all the applicable facts and circumstances.

If a school engages in any acts or practices that are racially discriminatory as to students, the school is not entitled to tax exemption even though it may otherwise comply with the provisions of Revenue Procedure 75–50 or this Revenue Procedure. For example, if there are overt acts of racial discrimination as to students, the school is not entitled to federal income tax exemption.

.04 There are situations in which a school's formation or expansion at the time of public school desegregation in the community casts doubt on the existence of a bona fide racially nondiscriminatory policy. In such situations the mere assertion and publication of a nondiscriminatory policy may be insufficient evidence of a bona fide nondiscriminatory policy. In these cases it is appropriate to examine whether actions have been taken by the school to overcome the indications that the school was established to foster racial segregation and that minorities are not welcome at the school. See *Norwood* v. *Harrison*, 382 F. Supp. 921 (N.D. Miss. 1974), on remand from the Supreme Court, 413 U.S. 455 (1973); *Brumfield* v. *Dodd*, 405 F. Supp. 338 (E.D. La. 1975).

This Revenue Procedure sets forth guidelines to identify certain private elementary and secondary schools that are racially discriminatory, even though they claim to have a racially nondiscriminatory policy as to students.

.05 This Revenue Procedure applies only to private elementary and secondary schools, other than schools organized and operated solely for the education of the handicapped or the emotionally disturbed. For example, it applies to church-related and church-operated elementary and secondary schools, but does not apply to colleges and universities, pre-schools, nursery schools, or schools for the blind or the deaf.

SECTION 3. DEFINITIONS.

.01 A racially nondiscriminatory policy as to students means that:

the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

Revenue Ruling 71–447. The Service considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin. Revenue Procedure 75–50.

.02 A school "adjudicated to be discriminatory" means any school found to be racially discriminatory as to students by a final decision of a federal or state court of competent jurisdiction; by final agency action of a federal administrative agency in accordance with the procedures of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*; or by final agency action of a state administrative agency following a proceeding in which the school was a party or otherwise had the opportunity for a hearing and an opportunity to submit evidence. The terms "final decision of a federal or state court" and "final agency action" mean actions or decisions from which no further administrative or judicial appeal can be taken.

.03 "Reviewable school" means a school (i) formed or substantially expanded at the time of public school desegregation in the community served by the school; (ii) which does not have significant minority student enrollment; and, (iii) whose creation or substantial expansion was related in fact to public school desegregation in the community. A school will not be treated as a reviewable school unless all three of the foregoing characteristics exist.

(a) A school will be considered formed or substantially expanded at the time of public school desegregation in the community served by the school if its formation or expansion takes place during any calendar year any part of which falls within the period beginning one year before implementation of a public school desegregation plan in the community (whether a court-ordered or voluntary plan) and ending three years after substantial implementation of such desegregation order or plan. "Voluntary plan" includes, for example, a written desegregation plan entered into with the Department of Health, Education and Welfare (HEW), or with a state agency.

A school will not be considered to have substantially expanded during a particular calendar year if the increase in the maximum number of students enrolled at any time during that calendar year is 20 percent or less of the maximum number of students enrolled at any time during the immediately preceding calendar year. If the increase is more than 20 percent, a determination will be made whether the expansion is related in fact to public school desegregation, as described in section 3.03(c), *infra*, before the school will be treated as a reviewable school.

Whether a school's minority student enrollement is significant depends on all the relevant facts and circumstances. Consideration will be given to special circumstances which limit the school's ability to attract minority students, such as an emphasis on special programs or special curricula which by their nature are of interest only to identifiable groups which are not composed of a significant number of minority students, so long as such programs or curricula are not offered for the purpose of excluding minorities. In giving such consideration, the Service will also take into account whether schools in similar circumstances are not limited in their ability to attract minority students.

In any event, a school will be considered to have significant minority student enrollment if its percentage of minority students is 20 percent or more of the percentage of the minority school age population in the community served by the school. For example, if 50 percent of the school age population in the community is minority, and the school enrolls 200 students, a school would not be "reviewable" if it had at least 20 minority students. (20 percent × 50 percent = 10 percent. 10 percent × 200 students = 20 students.)

If a particular school which is part of a system of commonly supervised schools would be treated as not having significant minority student enrollment under the foregoing provisions, it may nevertheless be considered to have a significant minority student enrollment if all the following conditions are met:

1. Taking into account all schools operated by the system within the community, the school system, in the aggregate, has significant minority student enrollment;

2. The schools within the community serve designated geographical areas, which designations are based on considerations other than race; and,

3. There is no evidence that the school system operates on a racially discriminatory basis, such as through the operation of a dual school system based on race.

(c) Ordinarily, the formation or substantial expansion of a school at the time of public school desegregation in the community will be considered to be related in fact to public school desegregation. However, notwithstanding this general rule, the Service will consider evidence that a school's formation or substantial expansion was not related in fact to public school desegregation in the community and that the school therefore is not a reviewable school. The determination that a school's formation or substantial expansion is not related in fact to public school desegregation must be based on objective evidence, taking into account all the facts and circumstances relating to the school's formation or expansion. The following are illustrative of facts which are relevant in making this determination, but these facts are not exclusive.

Facts tending to indicate that the formation or substantial expansion of a school was not related in fact to public school desegregation include the following:

(1) The students to whom the opening or substantial expansion of the school is attributable are not to any significant extent drawn from the public school grades subject to desegregation in the community served by the school. For example, the students may be drawn from other private schools, or from other areas not undergoing public school desegregation.

(2) The rate of expansion is not greater than the rate of expansion experienced by the school in years prior to the time of public school desegregation, as defined in section 3.03(a) of this procedure.

(3) The expansion is attributable to an increase in the school age population in the community.

(4) The expansion results from a merger of the school with another private school and neither of the schools is otherwise "reviewable."

(5) The expansion is attributable to a continuation of previous periodic expansion by adding grade levels as the school's enrollment in lower grades advance, and the school does not enroll a significant number of new students in the newly added grades from the public schools.

(6) The school was formed or expanded in accordance with a long-standing practice of a religion or religious denomination which itself is not racially discriminatory to provide schools for religious education when circumstances are present making it practical to do so (such as a sufficient number of persons of that religious belief in the community to support the school), and such circumstances are not attributable to a purpose of excluding minorities.

(7) At the time of formation or expansion, the school had some minority students, faculty, or board members.

Facts tending to indicate that the formation or substantial expansion of a school was related in fact to public school desegregation in the community include:

(8) The opening or substantial expansion of the school occurs in one or more of the same grades that are subject to public school desegregation.

(9) The students who enroll are primarily drawn from the public schools.

(10) The school occupies or utilizes former public school facilities made available to the school in the course of implementation of the public school desegregation plan.

(11) The school is a member of an organization which practices or advocates racial segregation in schools.

(12) The school, or its founders, officers, substantial contributors or trustees, have engaged in efforts to oppose desegregation of the public schools.

(13) The school in practice limits enrollment to students from a geographic area (or areas) with few or no minorities, and this limitation coincides with a public school desegregation plan that involves exchanges of students between such area or areas and one or more other areas that have a substantial school age minority population.

(14) Non-minority faculty members added to the school's staff at the time of its formation or substantial expansion are drawn primarily from the public school system subject to desegregation.

.04 The "community" served by the school means the public school district within which the school is located, together with any other public school district from which the school enrolls a substantial percentage of its student body. As an objective guideline, the Service will consider 20 percent a substantial percentage of its student body. Where a court desegregation order involves the mandatory assignment of students to or from any of such foregoing school districts, "community" includes all public school districts covered by the order, and the appropriate percentage of minority students will be determined with reference to all such districts. For example, if the school is located in public school district A, but draws 30 percent of its students from school district B, which is under a court-ordered busing program with school district C, the relevant community for the particular school, for purposes of computing the relevant minority school age population, is school districts A, B, and C.

For purposes of determining minority school age population, the Service will rely generally on statistics compiled by the Department of Health, Education and Welfare (HEW) on public school enrollment, unless the school furnishes acceptable statistics relating to its community showing both public and private school enrollment. The enrollment data used by HEW concerning the minority school age population of a public school district may be obtained from local school boards, which are required to maintain such information by HEW regulations.

.05 "Minority" is defined as including the following separate categories: blacks; Hispanics; Asians or Pacific Islanders; and, American Indians or Alaskan natives. These classifications are in accordance with guidelines of the Department of Commerce which are currently set forth at 43 Fed. Reg. 19,-269 (1978). The relevant minority for purposes of computing the percentage of minority student enrollment under this Revenue Procedure is the group or groups found to have been the object of discrimination in the court or agency adjudication, or in the public school desegregation proceeding. For example, if both blacks and Hispanics have been found in a court or agency adjudication to have been the object of discrimination, the appropriate percentage of minority students will be determined separately for blacks and for Hispanics.

SECTION 4. GUIDELINES

.01 *Schools adjudicated to be discriminatory.* Notwithstanding a prior adjudication of racial discrimination as to students, a school adjudicated to be racially discriminatory as to students will be considered to be now operated on a nondiscriminatory basis if the school can show that:

(a) the school currently has significant minority enrollment, as defined in section 3.03(b), *supra*; or,

(b) the school has undertaken actions or programs reasonably designed to attract minority students on a continuing basis. See section 4.03, *infra*, for examples of such actions or programs. Ordinarily, an adjudicated school will not be considered to be operated on a racially nondiscriminatory basis unless the school has enrolled some minority students.

.02 *"Reviewable schools."*—Notwithstanding the fact that a school is a reviewable school as defined in section 3.03, the school will be considered to have a racially nondiscriminatory policy as to students if the school can show that it has undertaken actions or programs reasonably designed to attract minority students on a continuing basis. See section 4.03, *infra*, for examples of such actions or programs.

.03 Actions and programs reasonably designed to attract minority students must convey clearly to the affected minority community that, notwithstanding the circumstances of the school's formation or expansion and the absence of a significant number of minority students, the school, in fact, is operating on a nondiscriminatory basis and minorities are welcome at the school. The level of actions and programs that are adequate may vary from school to school and depends on the circumstances of the school, including the level of minority student enrollment. Examples of actions and programs that may contribute to attracting minority students on a continuing basis include:

1. Active and vigorous minority recruitment programs, such as extensive public advertisements in media designed to reach the minority community, specifically inviting minority applicants; communication to minority groups and minority leaders in the community inviting minority applicants; personal contacts of prospective minority students; and, participation in local, regional, or national programs designed to develop new sources of minority recruitment for the school.

2. Publicized offering of tuition waivers, scholarships or other financial assistance, with emphasis on their availability for minority students; or, actual granting of such financial assistance to minority students.

3. Employment of, or substantial efforts to recruit, minority teachers or other professional staff.

4. Participation with integrated schools in sports, music, and other events or activities.

5. Special minority-oriented curriculum or orientation programs.

6. Minority members of the board or other governing body of the school.

The failure of such actions or programs to obtain some minority student enrollment within a reasonable period of time will be a factor in determining whether such activities are adequate or are undertaken in good faith.

SECTION 5. PROCEDURES FOR HANDLING SCHOOLS CURRENTLY RECOGNIZED AS TAX-EXEMPT

.01 *Schools adjudicated to be discriminatory.* The Service will propose revocation of exemption for schools adjudicated to be discriminatory which do not meet the guidelines of section 4.01, *supra*.

.02 *"Reviewable schools".* The Service will propose revocation of exemption for reviewable schools which do not meet the guidelines of section 4.02, *supra*.

.03 *Tax deductibility of contributions.* The Service will apply the provisions of Revenue Procedure 72-39, 1972-2, C.B. 818, in determining the tax deductibility of contributions made to adjudicated or reviewable schools.

.04 *General Guidelines.* Proposed revocations of exemption will be processed in accordance with the procedures set forth in Revenue Procedure 73-8, 1973-1 C.B. 754, and this Revenue Procedure. After exhausting its administrative remedies, the school may seek judicial relief.

In appropriate cases, the Service will consider deferring issuing notice of a final revocation of exemption to a school not meeting

the standards of this Revenue Procedure, if the school so requests and sets forth actions already taken and to be undertaken in good faith which demonstrate a racially nondiscriminatory policy in accordance with section 4 of this Revenue Procedure.

SECTION 6. APPLICATIONS FOR TAX-EXEMPT STATUS

.01 *School adjudicated to be discriminatory.* A favorable ruling or determination will be issued to a school adjudicated to be discriminatory only if it meets the guidelines of section 4.01, *supra.*

.02 *"Reviewable schools".* A favorable ruling or determination will be issued to a reviewable school which has commenced operation only if it meets the guidelines of section 4.02, *supra.* A favorable ruling or determination will be issued to a school with no record of actual operation only if the school's proposed operations can be described in sufficient detail to permit a conclusion that the school will not be classified as a reviewable school, or will clearly meet the guidelines of section 4.02.

.03 *General guidelines.* Applications for tax-exempt status will be processed in accordance with the procedures set forth in Revenue Procedure 72–4, 1972–1 C.B. 706, and this Revenue Procedure. A school which has either received an adverse ruling or determination or which has exhausted its administrative remedies may seek judicial relief.

SECTION 7. NATIONAL OFFICE APPEALS AND REVIEW

Applications for exemption and examinations of private elementary and secondary schools will be reviewed in the National Office under procedures established by the Assistant Commissioner (Employee Plans and Exempt Organizations). Under this procedure, appeals from adverse key district actions in these cases will be considered by the National Office rather than the Regional Directors of Appeal.

SECTION 8. EFFECTIVE DATE

In the case of schools adjudicated to be discriminatory, this Revenue Procedure will be effective on final publication for purposes of examinations and applications for exemptions. In the case of reviewable schools, this Revenue Procedure will be effective for purposes of examinations on and after January 1, 1980. For reviewable schools whose applications for exemption are pending on the date of final publication, but which do not meet the provisions of section 6 of this revenue procedure, the Service will, if requested by the school, defer any action on the application for exemption until January 1, 1980, to give the schools an opportunity to supplement its application to demonstrate compliance with section 6. Otherwise, for purposes of applications for exemption by reviewable schools, this Revenue Procedure will be effective on final publication.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 75–50 is amplified, and continues to be applicable to all private schools, whether or not affected by this Revenue Procedure.

Mr. JAVITS. Mr. President, I have 5 minutes of debate, and then I will be prepared to yield back the remainder of my time. Inasmuch as I am the proponent, I would like to finish the debate, if that is agreeable to my colleague.

Mr. HELMS. Certainly.

Mr. JAVITS. I thank the Senator.

I yield myself 5 minutes.

Mr. President, I am grateful to the Members who have supported my position. I am very grateful to my cosponsors.

I would like to spend a minute or two to answer the points which have been made.

I appreciate what Senator HELMS said so eloquently, that the people have created these schools; "with their own sacrifices and their own hands, have built these schools."

Mr. President, there is not a word in what I am trying to accomplish, not an implication, not a reference which would prevent these schools from functioning.

The only question is: Shall they have tax exemption? And tax exemption is support. That is all I am arguing. So the answer, in my judgment, is that where it runs counter to the public policy of the country, it is not entitled to tax exemption, and the law, it seems to me, is very clear on that score because the law defines what is to be tax exempt as "corporations, and any community chest funds or foundations organized and operated exclusively for religious, charitable, scientific, testing for the public safety, literary, or educational purposes."

And it is respectfully submitted that a school which discriminates on the ground of race is not a purpose encompassed within the law. That is why the IRS makes this regulation.

So, Mr. President, I wish to emphasize no one is eliminating any school in any way by voting for my amendment. But what you are doing is to prevent the private school from being used as a subterfuge in order to maintain racial discrimination which is contrary to the public policy of the United States.

Second, Mr. President, it is argued that we should not pass my amendment because all that the amendment which is in the bill does is to deal with a question for 1 year and in the meantime we have to study it. But that is committing Members to a position which in our judgment is highly inimical to the public policy and the morality of our country. We can study it right now. There is nothing to stop us.

And in answer to the argument that the IRS is usurping the right of Congress because it is writing a regulation, we can change any regulation—we have done it 1,000 times or more—by law.

Third, I wish I had here the stack of regulations of the IRS on taxes. We would not do anything else. We could not even finish it if we worked 24 hours a day for 365 days a year and did nothing else on the public business. I mean the thing is just ridiculous on its face.

Mr. President, we are deciding a great issue of public policy, whether or not the Government should lend itself to segregated private schools. I deeply believe we have no right to do that, and that is the purpose of my amendment.

Lastly, the question of schools, like Senator HELMS described, of Christian schools—now, I will tell the Senator frankly I do not know whether I visited a Christian school or not. I visited so many that I may have visited one. I doubt they would bar members of my faith from the visits. So I really cannot tell whether I have or have not.

Mr. HELMS. Mr. President, if the Senator will yield, he is welcome and I invite him now to go with me to North Carolina.

Mr. JAVITS. I assure the Senator he probably will get me for that.

Mr. President, the regulations which we are considering give protections to religious schools, saying that considerations will be given to any school taking into account all schools operated by the system within the community—this applies very heavily to Catholic schools—taking into account whether the schools within the community served designated geographical areas which designations are based on considerations other than race.

Finally, where there is no evidence that the school system is operated on a racially discriminatory basis, such as through the operation of a dual school system based on race, the schools would not be affected.

Mr. President, I ask unanimous consent that these regulations be printed in the RECORD.

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

Section 1. Purpose.

.01 This Revenue Procedure sets forth guidelines the Internal Revenue Service will apply in determining whether certain private schools have racially discriminatory policies as to students and therefore are not qualified for tax exemption under section 501(c)(3) of the Internal Revenue Code of 1954.

Sec. 2. Background.

.01 A school must have a racially nondiscriminatory policy as to students in order to qualify as an organization exempt from federal income tax. Revenue Ruling 71–447, 1971–2 C.B. 230. This requirement also applies to church-related and church-operated schools. Revenue Ruling 75–231, 1975–1 C.B. 158.

.02 Revenue Procedure 75–50, 1975–2 C.B. 587, sets forth certain affirmative record-keeping and publicity requirements along with other guidelines for determining whether schools have a racially nondiscriminatory policy as to students. Revenue Procedure 75–50 generally requires tax-exempt private schools to adopt formally a racially nondiscriminatory policy and to publicize that policy annually to the community.

.03 All private schools are subject to the requirement that they had a racially nondiscriminatory policy as to students in order to qualify for and retain tax exemption, and schools are subject to examination to verify the existence of that policy.

The question whether a private school has a racially nondiscriminatory policy as to students is based on all the applicable facts and circumstances.

If a school engages in any acts or practices that are racially discriminatory as to students, the school is not entitled to tax exemption even though it may otherwise comply with the provisions of Revenue Procedure 75–50 or this Revenue Procedure. For example, if there are overt acts of racial discrimination as to students the school is not entitled to federal income tax exemption.

.04 There are situations in which a school's formation or expansion at the time of public school desegregation in the community casts doubt on the existence of a bona fide racially nondiscriminatory policy. In such situations the mere assertion and publication of a nondiscriminatory policy may be insufficient evidence of a bona fide nondiscriminatory policy. In these cases it is appropriate to examine whether actions have been taken by the school to overcome the indications that the school was established to foster racial segregation and that minorities are not welcome at the school. See *Norwood* v. *Harrison,*

382 F. Supp. 921 (N.D. Miss. 1974), on remand from the Supreme Court, 413 U.S. 455 (1973); *Brumfield* v. *Dodd*, 405 F. Supp. 338 (E.D. La. 1975).

This Revenue Procedure sets forth guidelines to identify certain private elementary and secondary schools that are racially discriminatory, even though they claim to have a racially nondiscriminatory policy as to students.

.05 This Revenue Procedure applies only to private elementary and secondary schools, other than schools organized and operated solely for the education of the handicapped or the emotionally disturbed. For example, it applies to church-related and church-operated elementary and secondary schools, but does not apply to colleges and universities, pre-schools, nursery schools, or schools for the blind or the deaf.

Sec. 3. Definitions.

.01 A racially nondiscriminatory policy as to students means that: the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

Revenue Ruling 71–447. The Service considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin. Revenue Procedure 75–50.

.02 A school "adjudicated to be discriminatory" means any school found to be racially discriminatory as to students by a final decision of a federal or state court of competent jurisdiction; by final agency action of a federal administrative agency in accordance with the procedures of the Adminstrative Procedure Act, 5 U.S.C. 551, et seq.; or by final agency action of a state administrative agency following a proceeding in which the school was a party or otherwise had the opportunity for a hearing and an opportunity to submit evidence. The terms "final decision of a federal or state court" and "final agency action" mean actions or decisions from which no further administrative or judicial appeal can be taken.

.03 "Reviewable school" means a school (i) formed or substantially expanded at the time of public school desegregation in the community served by the school; (ii) which does not have significant minority student enrollment; and, (iii) whose creation or substantial expansion was related in fact to public school desegregation in the community. A school will not be treated as a reviewable school unless all three of the foregoing characteristics exist.

(a) A school will be considered formed or substantially expanded at the time of public school desegregation in the community served by the school if its formation or expansion takes place during any calendar year any part of which falls within the period beginning one year before implementation of a public school desegregation plan in the community (whether a court-ordered or voluntary plan) and ending three years after substantial implementation of such desegregation order or plan. "Voluntary plan" includes, for example, a written desegregation plan entered into with the Department of Health, Education, and Welfare (HEW), or with a state agency.

A school will not be considered to have substantially expanded during a particular calendar year if the increase in the maximum number of students enrolled at any time during that calendar year is 20 percent or less of the maximum number of students enrolled at any time during the immediately preceding calendar year. If the increase is more than 20 percent, a determination will be made whether the expansion is related in fact to public school desegregation, as described in section 3.03(c), infra, before the school will be treated as a reviewable school.

(b) Whether a school's minority student enrollment is significant depends on all the relevant facts and circumstances. Consideration will be given to special circumstances which limit the school's ability to attract minority students, such as an emphasis on special programs or special curricula which by their nature are of interest only to identifiable groups which are not composed of a significant number of minority students, so long as such programs or curricula are not offered for the purpose of excluding minorities. In giving such consideration, the Service will also take into account whether schools in similar circumstances are not limited in their ability to attract minority students.

In any event, a school will be considered to have significant minority student enrollment if its percentage of minority students is 20 percent or more of the percentage of the minority school age population in the community served by the school. For example, if 50 percent of the school age population in the community is minority, and the school enrolls 200 students, a school would not be "reviewable" if it had at least 20 minority students. (20 percent x 50 percent = 10 percent. 10 percent x 200 students = 20 students.)

If a particular school which is part of a system of commonly supervised schools would be treated as not having significant minority student enrollment under the foregoing provisions, it may nevertheless be considered to have a significant minority student enrollment if all the following conditions are met:

1. Taking into account all schools operated by the system within the community, the school system, in the aggregate, has significant minority student enrollment;

2. The schools within the community serve designated geographical areas, which designations are based on considerations other than race; and,

3. There is no evidence that the school system operates on a racially discriminatory basis, such as through the operation of a dual school system based on race.

(c) Ordinarily, the formation or substantial expansion of a school at the time of public school desegregation in the community will be considered to be related in fact to public school desegregation. However, notwithstanding this general rule, the Service will consider evidence that a school's formation or substantial expansion was not related in fact to public school desegregation in the community and that the school therefore is not a reviewable school. The determination that a school's formation or substantial expansion is not related in fact to public school desegregation must be based on objective evidence, taking into account all the facts and circumstances relating to the school's formation or expansion. The following are illustrative of facts which are relevant in making this determination, but these facts are not exclusive.

Facts tending to indicate that the formation or substantial expansion of a school was not related in fact to public school desegregation include the following:

(1) The students to whom the opening or substantial expansion of the school is attributable are not to any significant extent drawn from the public school grades subject to desegregation in the community served by the school. For example, the students may be drawn from other private schools, or from other areas not undergoing public school desegregation.

(2) The rate of expansion is not greater than the rate of expansion experienced by the school in years prior to the time of public school desegregation, as defined in section 3.03(a) of this procedure.

(3) The expansion is attributable to an increase in the school age population in the community.

(4) The expansion results from a merger of the school with another private school and neither of the schools is otherwise "reviewable."

(5) The expansion is attributable to a continuation of previous periodic expansion by adding grade levels as the school's enrollment in lower grades advance, and the school does not enroll a significant number of new students in the newly added grades from the public schools.

(6) The school was formed or expanded in accordance with a long-standing practice of a religion or religious denomination which itself is not racially discriminatory to provide schools for religious education when circumstances are present making it practical to do so (such as a sufficient number of persons of that religious belief in the community to support the school), and such circumstances are not attributable to a purpose of excluding minorities.

(7) At the time of formation or expansion, the school had some minority students, faculty, or board members.

Facts tending to indicate that the formation or substantial expansion of a school was related in fact to public school desegregation in the community include:

(8) The opening or substantial expansion of the school occurs in one or more of the same grades that are subject to public school desegregation.

(9) The students who enroll are primarily drawn from the public schools.

(10) The school occupies or utilizes former public school facilities made available to the school in the course of implementation of the public school desegregation plan.

(11) The school is a member of an organization which practices or advocates racial segregation in schools.

(12) The school, or its founders, officers, substantial contributors or trustees, have engaged in efforts to oppose desegregation of the public schools.

(13) The school in practice limits enrollment to students from a geographic area (or areas) with few or no minorities, and this limitation coincides with a public school desegregation plan that involves exchanges of students between such area or areas and one or more other areas that have a substantial school age minority population.

(14) Non-minority faculty members added to the school's staff at the time of its formation or substantial expansion are drawn primarily from the public school system subject to desegregation.

.04 The "community" served by the school means the public school district within which the school is located, together with any other public school district from which the school enrolls a substantial percentage of its student body. As an objective guideline, the Service will consider 20 percent a substantial percentage of its student body. Where a court desegregation order involves the mandatory assignment of students to or from any of such foregoing school districts, "community" includes all public school districts covered by the order, and the appropriate percentage of minority students will be determined with reference to all such districts. For example, if the school is located in public school district A, but draws 30 percent of its students from school district B, which is under a court-ordered busing program with school district C, the revelant community for the particular school, for purposes of computing the relevant minority school age population, is school districts A, B, and C.

For purposes of determining minority school age population, the Service will rely generally on statistics compiled by the Department of Health, Education and Welfare (HEW) on public school enrollment, unless the school furnishes acceptable statistics relating to its community showing both public and private school enrollment. The en-

rollment data used by HEW concerning the minority school age population of a public school district may be obtained from local school boards, which are required to maintain such information by HEW regulations.

.05 "Minority" is defined as including the following separate categories: blacks; Hispanics; Asians or Pacific Islanders; and, American Indians or Alaskan natives. These classifications are in accordance with guidelines of the Department of Commerce which are currently set forth at 43 Fed. Reg. 19,269 (1978). The relevant minority for purposes of computing the percentage of minority student enrollment under this Revenue Procedure is the group or groups found to have been the object of discrimination in the court or agency adjudication, or in the public school desegregation proceeding. For example, if both blacks and Hispanics have been found in a court or agency adjudication to have been the object of discrimination, the appropriate percentage of minority students will be determined separately for blacks and for Hispanics.

Sec. 4. Guidelines.

.01 Schools adjudicated to be discriminatory. Notwithstanding a prior adjudication of racial discrimination as to students, a school adjudicated to be racially discriminatory as to students will be considered to be now operated on a nondiscriminatory basis if the school can show that:

(a) the school currently has significant minority enrollment, as defined in section 3.03(b), supra; or,

(b) the school has undertaken actions or programs reasonably designed to attract minority students on a continuing basis. See section 4.03, infra, for examples of such actions or programs. Ordinarily, an adjudicated school will not be considered to be operated on a racially nondiscriminatory basis unless the school has enrolled some minority students.

.02 "Reviewable schools."—Notwithstanding the fact that a school is a reviewable school as defined in section 3.03, the school will be considered to have a racially nondiscriminatory policy as to students if the school can show that it has undertaken actions or programs reasonably designed to attract minority students on a continuing basis. See section 4.03, infra, for examples of such actions or programs.

.03 Actions and programs reasonably designed to attract minority students must convey clearly to the affected minority community that, notwithstanding the circumstances of the school's formation or expansion and the absence of a significant number of minority students, the school, in fact, is operating on a nondiscriminatory basis and minorities are welcome at the school. The level of actions and programs that are adequate may vary from school to school and depends on the circumstances of the school, including the level of minority student enrollment. Examples of actions and programs that may contribute to attracting minority students on a continuing basis include:

1. Active and vigorous minority recruitment programs, such as extensive public advertisements in media designed to reach the minority community, specifically inviting minority applicants; communication to minority groups and minority leaders in the community inviting minority applicants; personal contacts of prospective minority students; and, participation in local, regional, or national programs designed to develop new sources of minority recruitment for the school.

2. Publicized offering of tuition waivers, scholarships or other financial assistance, with emphasis on their availability for minority students; or, actual granting of such financial assistance to minority students.

3. Employmeent of, or substantial efforts to recruit, minority teachers or other professional staff.

4. Participation with integrated schools in sports, music, and other events or activities.

5. Special minority-oriented curriculum or orientation programs.

6. Minority members of the board or other governing body of the school.

The failure of such actions or programs to obtain some minority student enrollment within a reasonable period of time will be a factor in determining whether such activities are adequate or are undertaken in good faith.

Sec. 5. Procedures for handling schools currently recognized as tax-exempt.

.01 Schools adjudicated to be discriminatory. The Service will propose revocation of exemption for schools adjudicated to be discriminatory which do not meet the guidelines of section 4.01, supra.

.02 "Reviewable schools". The Service will propose revocation of exemption for reviewable schools which do not meet the guidelines of section 4.02, supra.

.03 Tax deductibility of contributions. The Service will apply the provisions of Revenue Procedure 72–39, 1972–2 C.B. 818, in determining the tax deductibility of contributions made to adjudicated or reviewable schools.

.04 General Guidelines. Proposed revocations of exemption will be processed in accordance with the procedures set forth in Revenue Procedure 73–8, 1973–1 C.B. 754, and this Revenue Procedure. After exhausting its administrative remedies, the school may seek judicial relief.

In appropriate cases, the Service will consider deferring issuing notice of a final revocation of exemption to a school not meeting the standards of this Revenue Procedure, if the school so requests and sets forth actions already taken and to be undertaken in good faith which demonstrate a racially nondiscriminatory policy in accordance with section 4 of this Revenue Procedure.

Sec. 6. Applications for tax-exempt status.

.01 Schools adjudicated to be discriminatory. A favorable ruling or determination will be issued to a school adjudicated to be discriminatory only if it meets the guidelines of section 4.01, supra.

.02 "Reviewable schools". A favorable ruling or determination will be issued to a reviewable school which has commenced operation only if it meets the guidelines of section 4.02, supra. A favorable ruling or determination will be issued to a school with no record of actual operation only if the school's proposed operations can be described in sufficient detail to permit a conclusion that the school will not be classified as a reviewable school, or will clearly meet the guidelines of section 4.02.

.03 General guidelines. Applications for tax-exempt status will be processed in accordance with the procedures set forth in Revenue Procedure 72–4, 1972–1 C.B. 706, and this Revenue Procedure. A school which has either received an adverse ruling or determination or which has exhausted its administrative remedies may seek judicial relief.

Sec. 7. National Office Appeals and Review.

Applications for exemption and examinations of private elementary and secondary schools will be reviewed in the National Office under procedures established by the Assistant Commissioner (Employee Plans and Exempt Organizations). Under this procedure, appeals from adverse key district actions in these cases will be considered by the National Office rather than the Regional Directors of Appeal.

Sec. 8. Effective date.

In the case of schools adjudicated to be discriminatory, this Revenue Procedure will be effective on final publication for purposes of examinations and applications for exemptions. In the case of reviewable schools, this Revenue Procedure will be effective for purposes of examinations on and after January 1, 1980. For reviewable schools whose applications for exemption are pending on the date of final publication, but which do not meet the provisions of section 6 of this revenue procedure, the Service will, if requested by the school, defer any action on the application for exemption until January 1, 1980, to give the school an opportunity to supplement its application to demonstrate compliance with section 6. Otherwise, for purposes of applications for exemption by reviewable schools, this Revenue Procedure will be effective on final publication.

Sec. 9. Effect on other documents.

Revenue Procedure 75–50 is amplified, and continues to be applicable to all private schools, whether or not affected by this Revenue Procedure.

Mr. JAVITS. Mr. President, they provide also that where there are special programs or special curriculum of interest only to identifiable groups which are not composed of a significant number of minority students, then so long as they are not offered for the purpose of excluding any minorities, they are permissible.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JAVITS. Mr. President, I yield myself an additional 30 seconds.

Mr. President, I believe that there is little question about the fact that all this does is to try to keep the stable door open, not to lock it after the horse is gone. It is an appropriations bill. Every argument made says give it profound consideration.

How do we give it profound consideration—by voting it on as a rider on an appropriations bill, or by letting it be legitimately and studiously considered by the appropriate legislative committee?

On every ground, Mr. President, I deeply believe that the Senate should strike this amendment from the bill.

Mr. President, I have just been advised that Senator MUSKIE wants to have a word, and if I could have the indulgence of my colleagues, I will yield him 2 or 3 minutes, but first I wish to say this:

This amendment which I am seeking to strike was sponsored in the other body by Representative DORNAN. I wish to make it crystal clear that I in no way am challenging Representative DORNAN'S views about segregation or civil rights, or his entire attitude toward the general question of school education.

This represents obviously from the debate on the floor a profound difference of view. I have deep convictions that I am right. He has deep convictions that he is right.

But I wish in no way to imply anything which slights him in terms of a thoroughly American and patriotic view toward this or any other question.

I yield 3 minutes to Senator MUSKIE. Is that sufficient?

Mr. MUSKIE. I will try to cover it in 3 minutes.

Mr. JAVITS. All right. I yield 3 minutes to the Senator from Maine.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may proceed for 1 minute without the time being charged to the distinguished Senator from Maine.

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

ORDER FOR RECESS UNTIL 9:30 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9:30 a.m. tomorrow morning.

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

ORDER FOR RESUMPTION OF CONSIDERATION OF H.R. 4393, TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no later than the hour of 10 a.m. tomorrow morning the Senate resume consideration of the pending measure.

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

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS, 1980

The Senate continued with the consideration of H.R. 4393.

UNANIMOUS-CONSENT AGREEMENT—MR. HELMS' AMENDMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the pending amendment Mr. HELMS may lay before the Senate his amendment and that no time be charged on the amendment during the remainder of this day. Of course, that amendment being the pending amendment when the Senate resumes consideration of the bill tomorrow upon the disposition of the Helms amendment, one way or the other, the Senate proceed, without further amendment, motion, or debate, to third reading——

Mr. BAKER. What was that?

Mr. ROBERT C. BYRD. Yes, on the disposition of the Helms amendment.

Mr. BAKER. That will knock out other amendments?

Mr. ROBERT C. BYRD. Any amendment to the Helms amendment.

Mr. BAKER. Oh, to his amendment.

Mr. ROBERT C. BYRD. On disposition of the Helms amendment and with the understanding that amendments may be offered to the Helms amendment, but upon the disposition of the Helms amendment as amended if amended the Senate proceed to the third reading of the bill.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Does the Senator have an amendment he wishes to call up tomorrow?

Mr. METZENBAUM. The Senator from Ohio is not certain whether he does have an amendment or not, but I do not want to preclude that possibility in the event the Helms amendment is adopted, and that is the only reason for my objection.

Mr. ROBERT C. BYRD. Very well. Could we agree, then, that Mr. METZENBAUM would have an opportunity to call up an amendment if he so desired upon the disposition of the Helms amendment after which the Senate would go to third reading. In the event he does not desire to call up an amendment, the Senate would go to third reading after the disposition of the Helms amendment.

I make that unanimous-consent request.

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

Mr. ROBERT C. BYRD. I thank all Senators.

That means then after the pending amendment is disposed of this evening, there will be no more rollcall votes, and I thank the distinguished Senator from Maine for his courtesy and patience.

Mr. MUSKIE. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, I am a longtime supporter of public schools and of the philosophy of a common educational experience for the majority in our Nation. But my support of this common and basic American tradition does not preclude my recognizing the essential role played by nonpublic schools in our Nation and our history. The pluralistic values which flourish in our society have been largely fostered through the contributions of nonpublic schools.

Private schools give a breadth to our national environment that is substantively and philosophically essential to our survival as an open society.

These schools provide an option for families who want to maintain and strengthen a religious faith—an option I exercised in my family. They provide an option to families who believe the maintenance of ethical values is an affirmative pursuit. And, conditions in some public schools have caused some of our people to conclude that private schools are an option for the basic education of their children.

I have been particularly impressed with the Christian school movement in the country today. I have had the opportunity to witness for myself the contributions of the dedicated men and women who work in this field. And I came away impressed.

They have helped maintain and enhance an environment in which our most basic traditional values are nurtured. They are continuing and expanding the American tradition of pluralism through their support of alternative schooling options.

To cite a specific example with which I am personally familiar, I have been strongly and most favorably impressed by the Bangor Christian School operated in Maine by the Reverend Herman Frankland. This institution is a vital component of our State's educational opportunities. It combines a depth of parental involvement and concern with an ability to reach and motivate students that is unique in my experience.

I would be strongly opposed to any actions by Congress or the executive branch which might undermine the kind of positive educational experience the Reverend Frankland has worked to establish.

In fact, last October I joined a number of my colleagues in conveying to the Internal Revenue Service my concern that legitimate private schools—operated without intent to discriminate—should not be forced to justify their existence by overly broad Government regulations.

My concerns in that respect remain undiminished.

But in that letter, I and my colleagues also reaffirmed our commitment to the equitable and effective enforcement of nondiscrimination guidelines as a condition of tax-exempt status.

I ask unanimous consent that the text of the letter in question be printed in the RECORD.

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

COMMITTEE ON APPROPRIATIONS,
Washington, D.C., October 14, 1978.

Attention E:BO.

Mr. JEROME KURTZ,
Commissioner, Internal Revenue Service, Washington, D.C.

DEAR COMMISSIONER KURTZ: In the Matter of Comments on Proposed Revenue Procedure on Private Tax-Exempt Schools, printed at 43 Fed. Reg. 37296, August 22, 1978.

The undersigned United States Senators have read and reviewed your Proposed Revenue Procedure on Private Tax-Exempt Schools, and wish to submit this letter as our comments on the proposed procedure.

Our initial comment is a simple congratulation to you and the Department of the Treasury for responding in a forthright and courageous manner to the proliferation of "white-flight" private schools established to circumvent desegregation plans. We feel most strongly that such institutions represent an improper response to reasonable desegregation efforts. The Federal government should neither encourage nor passively support the private or parochial schools created expressly to accommodate those opposed to racial desegregation.

Furthermore, we agree with the rationale expressed by the Federal courts, that underlies your proposed procedure. Federal tax exemptions and deductions under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), should not be available to institutions whose activities are contrary to the well-settled federal public policy to refuse governmental support for any form of racial segregation.

We believe, however, that your proposed procedure and guidelines for determining whether an individual school has racially discriminatory policies are overly broad, and could injure many institutions that are totally innocent of the anti-desegregation activities which the procedures are designed to reach.

The presumption in sections 3.03 and 4.02 of the proposed procedure, that racial discrimination by a school exists if it (1) was formed or substantially expanded at the time of desegregation of public schools and (2) has an "insignificant number of minority students", casts a very wide net that will undoubtedly bring in a large number of non "white-flight" schools. The listed actions which a school can take to rebut this presumption and to demonstrate "operation in good faith" simply do not take into account the complex situations of many innocent private and parochial institutions. The factors, in many cases, cannot be satisfied by, or

will cause undue hardship to, schools that do not practice racial discrimination.

Again, we commend you for your efforts to deal with this problem of major national concern, and hope that we can help you in formulating the most effective and fairest procedure to accomplish our mutual goal.

Sincerely,

THOMAS F. EAGLETON.
JOHN H. CHAFEE.
EDMUND S. MUSKIE.
HENRY BELLMON.
JAMES B. PEARSON.

Mr. MUSKIE. On the question of nondiscrimination, the law, the courts, and the Constitution are clear. Equal protection under law cannot be denied any American on the basis of race. That principle has been reaffirmed since the 1954 Brown against Board of Education decision and, in my mind, subsequent events have not weakened its force.

The basic principle of the essential worth of all human beings is enshrined in every major religious faith. And it is a cornerstone of our Constitution.

No less important to our national life is the fundamental protection accorded religious liberties under the Constitution. These protections have put into practice a principle we all recognize as crucial to any theory of civilized human life. They have strengthened our Nation.

Parents whose children are enrolled in religious schools are rightly concerned that their free choice of an educational institution should be protected against unwarranted intrusion by any Government agency.

Our Constitution guarantees that kind of protection.

And it is at that point that these two protections in the Constitution buttress each other. The denial of basic choices or opportunities to any individual or any group in our society is intolerable. And any Government action which sanctions such a denial is intolerable.

It is precisely because of the importance of maintaining equal protection for all Americans that I rise today in support of the Javits amendment to strike the language now in the bill.

The language now in the bill cannot override the Internal Revenue Service's obligation to uphold the law. And the fundamental law at stake in this instance centers on the question of equal protection. The Service is not being prohibited from intruding on religious liberties or systems of faith, because the Service has made no effort to move in that direction. In fact, in revising its regulations last year, the Service acted to meet the legitimate objections of those—including myself—who want to protect the role of private educational institutions.

Because the Service recognized that two fundamental liberties are involved in this instance, it took particular care to define and limit the scope of its efforts in pursuit of one goal so that it would not, inadvertently, intrude on the other.

Mr. President, we have the language which Senator JAVITS seeks to strike apparently in conflict between two fundamental liberties: equal protection of the laws and religious liberties.

When two fundamental liberties appear to conflict, we cannot elevate one consideration at the expense of the other. In this instance, the Service made an effort to balance the legitimate claims of both liberties and to reach a consensus which would offend neither.

But the language now in the bill seeks to elevate, in an absolute manner, the claims of one fundamental right over another, equally fundamental. Such rights are not divisible. Nor can one be granted at the expense of the other without danger to both.

It is on this basis that I am concerned about the implications of the language in this bill which would prohibit the Service from implementing its regulations.

The Service is operating under a court injunction to act affirmatively and deny tax-exempt status to schools that discriminate. The Supreme Court has declined to override that injunction. And the Congress has not chosen to do so.

If Congress believes that appropriate action in this field lies in some direction other than that taken by the Service, Congress should make the appropriate determination and point out the correct direction. We should not preempt the considered action of the Service on the basis of a rider to an appropriations bill.

In addition to pursuing its court-ordered mandate, the Service has acted to assure that its regulations would have little impact on the vast majority of the 18,000 private schools in the country. No Maine school, for instance, would be affected by these regulations. The Service has succinctly delineated a series of inclusive criteria which must be met before a school's tax status could even be reviewed.

The Service took this action in response to communications, such as this one in which I joined with my colleagues, that were sent to the Service expressing concern about the Service's then procedures and guidelines.

The flexibility in the revised regulations is not a license for agents to indiscriminately act against private schools. And the requirement for national office review of any action under the regulations helps insure that enforcement will be even-handed. The development of uniform standards and their uniform enforcement—which this regulation requires—provides a degree of certainty that most private schools welcome.

I will, accordingly, vote to delete the prohibitionary language from the bill. It serves neither the interests of religious liberty nor the goal of assuring equal protection to all our people.

I apologize to my good friend from New York for having been detained off the floor and being unable to come to the floor until this time.

Mr. JAVITS. Your friend from New York is delighted to see you at this time.

Mr. BAKER. Mr. President, the Senator from Iowa (Mr. JEPSEN) is necessarily absent today, because he is recuperating from a recent operation.

Since assuming his duties as Senator from Iowa, he has taken an active legislative interest in the IRS proposed revenue procedure on private tax exempt schools. The Senator had planned on making a statement in opposition to the IRS proposals, so in his absence, I ask unanimous consent that his remarks be printed in the RECORD.

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

STATEMENT BY SENATOR JEPSEN

The IRS has proposed a revenue procedure that would deny tax exempt status to those private schools that cannot prove to the liking of the IRS that they have not discriminated against minorities—whether or not there is any proven intention of discrimination. As the newly elected junior Senator from Iowa, it is my humble opinion that if we allow the Internal Revenue Service to implement their proposed revenue procedure on private tax exempt schools, we will have failed to perform our duties as popularly elected legislators. Throughout my campaign for the U.S. Senate, the one pervasive theme impressed upon me by the people of my State was that somehow this Congress just has to get a handle on the insensitive Federal bureaucracy no one elected and which is seemingly (in their eyes anyway) responsible to no one.

Their never ending pleas for help have for the most part been ignored. The Federal bureaucracy over the years has expanded tremendously in size, in power, and in arrogance. Federal bureaucrats have become a mandarin class, and this country has steadily transformed itself into a mandarin state.

This characterization is only an attempt by me to explain to myself how it is that non-elected officers have come by the power to decree that father-son banquets and all male elementary school choirs are no longer acceptable practices. It suggests to me, however, that if we, as duly elected legislators, are ever to regain the confidence of the people who sent us here, we must reaffirm our role as final arbiters of policy making in this country.

With this in mind, I would just like to add that in this particular instance. I believe that there is no room for compromise. The IRS' proposed regulations don't need to be revised, they need to die a sudden death, followed by a speedy but permanent burial.

The primary target of this "revenue procedure" is no secret. In the wake of public school integration, private, so-called "segregation academies" prospered in this country. Most of the estimated 3,500 such schools are in the south, but by no means are they limited to that region. These schools are generally regarded with disfavor in the courts and in public opinion, and to the extent that they foster racial segregation at the expense of educational achievement, it is unlikely that very many people would object too strenuously to the IRS' proposed attack. Not unexpectedly, however, the federal bureaucracy's quixotic efforts to eliminate some form of social injustice has entangled them in more fundamental and significant questions as to the proper role of the federal governing body in relation to the individuals who are to be governed.

Reasons for objecting to the IRS' new "revenue procedure" are not hard to come by. There is some concern that the guidelines may exceed the Service's authority to determine the requirements for exempt status. Whether one approaches this threshold question on the basis of statutory construction or constitutional limitations, the answer, at the very least, is still open to debate. The lack of a clear cut answer by the Supreme Court on this subject and the opinions of the Justice Department in a brief filed on May 10, 1977 on behalf of the IRS in the *Wright* v. *Blumenthal* case, which argues persuasively that the legality of such regulations was "extremely doubtful" should though, be cause enough for the IRS to withdraw their proposed procedure.

But for the sake of argument let us say that they do have the authority to issue these guidelines. What is it about these proposed regulations that strikes such a fear into the hearts of the governed? It seems that in its attempt to eliminate the enemies of integration, the IRS has spread a net so wide and so far that the very notion of "a distinction between private and government" as we understand it today is threatened with extinction.

This may sound a bit dramatic but it is not far from the truth. The revenue procedure defines two classes of schools: those "adjudicated to be discriminatory", and those that are "reviewable". Reviewable schools are those (a) which were formed or substantially expanded at the time of public schools desegregation at their community, (B) which do not have significant minority enrollment, and (c) whose creation or substantial expansion was related in fact to public school desegregation in the community. They are also presumed to be discriminating unless they have "undertaken actions or programs to attract minority students on a continuing basis."

These proposals, clearly constitute a back door attempt to impose affirmative action programs on heretofore "private" schools, and if the IRS succeeds in establishing this precedent, on other privately operated institutions and organizations. In short, they amount to nothing less than "indictment by computer" and will undoubtedly discourage the creation of other private entities.

One of the most cherished and respected principles of American jurisprudence is that one is presumed innocent until proven guilty. The IRS guidelines, however, turn this principle on its head, and instead, in their application to "reviewable" schools, establish an administrative presumption of illegality based upon a statistical deviation from a racial or ethnic norm conjured up by HEW. This fact alone is so repugnant to the basic American notion of fair play that the guidelines should fall to the ground and like Humpty Dumpty, never again to be put back together.

But there is other respected authority available which allows us to reach a similar conclusion—the Supreme Court decision last year in University of California Regents v. Bakke. In its opinion the court admonished us all not to impose racial goals, quotas, or other forms of race conscious relief in the absence of specific findings of past discrimination by the courts, Congress, or competent administrative tribunals. The basic thesis of the opinion was that racial or ethnic distinctions of any sort are "inherently suspect" and lacking a finding of "identified discrimination" there is no compelling interest that can withstand constitutional objection.

Thus, it seems clear to me that the numerical standards employed in the IRS' guidelines are of dubious validity, especially in light of an absence of any showing of a racially discriminatory purpose. It would behoove the IRS to take notice of the fact that many factors, other than an intent to discriminate, might account for a given school's establishment or expansion at a time of desegregation such as an already existent general dissatisfaction with the quality of public education, the banning of voluntary prayer in public schools, an availability of funds for private school expansion, or a need for such expansion because of community growth. In addition, the fact that upon its establishment or expansion and afterwards, a private school has an insubstantial minority enrollment can be accounted for on many grounds other than an intent to discriminate.

You know, as long as I can remember, there has been a consensus in this country that there are certain limits beyond which the power and the scope of the federal government could not extend. One aspect of this is the belief that the church and the home are areas in which the federal government could not intrude. No longer, it appears, because the IRS procedure specifically states that the requirement that a school must have a racially nondiscriminatory policy as to students in order to qualify as an organization exempt from federal income tax also applies to church-related activities and church operated schools.

As I alluded to earlier in my remarks, that the IRS even has the authority to implement the procedure is dubious indeed. Its claim rests on the tenuous assumption that the government "assists" tax exempt schools with money it does not collect by virtue of exemptions, i.e., it bestows some sort of positive benefit. Aside from the fact that taxation in this instance has probably never before been contemplated, the attitude of the IRS reflects an increasing tendency on the part of certain agencies and departments of the federal government to regard tax exemption as a privilege—a privilege to be enjoyed on the government's terms.

This then, to paraphrase a Washington Star editorial, is the vehicle by which the federal government can expand its already vast powers to compel others to conform to notions of social good proclaimed in Washington, not just as to race but as to other matters as well—"the assumption that, whatever private activity the IRS now does not tax, it, in effect, refrains from taxing." It is customary for the bureaucrats to deny the logical extremes to which their original ideas points, but anyone who has followed the growth of the federal government over the past two decades recognizes that those extremes somehow manage to appear as next year's policy initiatives.

The IRS' proposed procedure raises the very real possibility that the taxation of churches and church related activities might become rather commonplace in the future. This prospect is quite discomforting to say the least.

Firmly entrenched in this nation is the notion of separation of church and state. The first amendment to the Constitution is symbolic of our commitment as a people to this practice. Further evidence of this commitment is the fact that the civil rights statutes themselves specifically exempt from coverage churches and church related activities.

When First Amendment and Fourteenth Amendment rights conflict, especially in the area of tax exemption, the law and the courts have come down on the side of those seeking protection under the First amendment on the grounds that state involvement stemming from tax exemption amounted to no more than an expression of a governmental policy of "benevolent neutrality" towards religion.

At stake here is a very important principle. If we allow the IRS to impose numerical goals and affirmative action programs on private schools as a condition of maintaining their tax exempt status a precedent will have been set—a dangerous precedent at that. Once the lines drawn today are breached, where will the new lines be drawn? It isn't hard to conjure up the spectre of the IRS deciding to meddle in the affairs not just of schools, but of virtually every kind of tax exempt organization in the years to come in an attempt to exact compliance with freshly formulated notions of social or racial democracy. Private charities, scholarly institutions, hospitals, museums, and certain clubs all could be affected. And as I've suggested in this presentation, not even churches would be beyond the agency's reach.

I mentioned earlier in my remarks that Congress would be remiss if it did not take appropriate action in this instance. It is imperative that we as legislators regain the respect of those who sent us here. Congress is ultimately responsible for the laws that it passes, and we cannot pass the buck. The Federal bureaucracy is a juggernaut out of control. It is time for us to tame it once and for all.

In view of the above, I wish to associate myself with action taken by the House when it adopted the Dornan amendment. Here is an instance in which the Congress has responded quickly to prevent a government agency from becoming lawmakers. I hope that in the future, if no real regulatory reform has taken place, that Congress will see fit, as they say, to "take the bull by the horns" more often.

Mr. TSONGAS. Mr. President, I rise in support of the amendment offered by my colleague Senator JAVITS and ask to be associated with his remarks.

I ask unanimous consent that I be listed as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. TSONGAS. Mr. President, I am well aware of the controversy engendered by this issue. In my own State there are schools that have expressed their concern about the revised regulations proposed by the IRS to revoke the tax-exempt status of racially segregated private schools. Most private schools in my State, Mr. President, have no reason to fear these regulations because they are, in fact, in compliance with the law.

There has been a lot of confusion over this matter. In 1979 the IRS was ordered by the courts to cease granting tax exemptions to segregated academies. Since that time the IRS has lacked the enforcement mechanisms to execute this court order.

The revised regulations are simple, flexible, and unharmful to those schools that are not segregated. The proposed procedures apply to only two catgeories of schools: First, those schools adjudicated by the courts to be discriminatory, and second, those schools formed or expanded as a result of desegregation efforts of the public schools. All other schools are unaffected by these regulations.

Mr. President, this is a period of apparent retrenchment on civil rights. I have discussed before on the floor of this Chamber the backslide the civil rights movement has suffered in recent years. I ask my colleagues once again to support actively all efforts which will help us finally to realize equal opportunity for all. I urge my colleagues to join me in support of the amendment by Senator JAVITS.

Mr. LEVIN. Mr. President, I rise in support of the amendment before us offered by Senator JAVITS for a number of reasons.

First, the bill we are considering is an appropriations bill and it is not the place for substantive legislation to be adopted. The bill before us eliminates funds to implement certain provisions of the Internal Revenue Code as proposed by the IRS. The proposed IRS rules are vastly different from the ones proposed in August of 1978 which would have shifted the burden of proving a nondiscriminatory enrollment policy to all private schools in the land. The proposed regulations very carefully shift the burden of proof of nondiscrimination only in those cases where a school has been found guilty of racial discrimination or where three

specific facts are all present which indicate a reasonable likelihood of discriminatory intent.

While the IRS in August 1978 went beyond a reasonable interpretation of their statutory authority, the new rules are at least an effort on their part to do so and to comply with mandates of the Federal courts in their interpretation of the Constitution. Courts have found, most notably in the case of Green against Connally, that the practice of taxpayer subsidies for discriminatory schools is unlawful under the Constitution. If the IRS did not promulgate these new regulations, they would be in violation of the Constitution. The most recent IRS proposals are not a new law, but rather represent a more carefully focused enforcement policy.

For this Senate, in an appropriations bill, to attempt to remove the power of the IRS to carry out its substantive duty is misguided and premature. If we wish to change the Internal Revenue Code or the Constitution, there are appropriate ways to do so. This amendment restores funds which the IRS needs to enforce existing law and the Constitution as interpreted by our courts. That is all the amendment does. It does not endorse the underlying law or court decisions.

The way we exercise legislative power is as important as the substance of our actions. I hope we will adopt this amendment in order that the IRS can carry out its duties.

I would also hope that the opponents of this amendment would incorporate their concerns in appropriate bills to amend the Internal Revenue Code and that the appropriate committees would hold hearings on those bills so that the merits of the issues could be fully and properly considered in the normal legislative manner.

Mr. McCLURE. Mr. President, as we consider the Treasury, Postal Service, and general Government appropriations bill, I wish to reemphasize my support for both the Ashbrook and Dornan amendments that were overwhelmingly approved by the House during their consideration of this legislation. The Dornan amendment was subsequently approved by the Senate Appropriations Committee while the Ashbrook amendment was narrowly defeated by the same committee.

As background, last August the Internal Revenue Service proposed to eliminate the tax exemptions of private and religious schools that were not in compliance with IRS minority requirements. The proposed rulings were somewhat modified in February but substantively remained unchanged. To retain tax-exempt status under the proposed procedures, private schools would be required to undertake programs for minority preference in admissions and hiring. Extensive paperwork and inspections would be used to monitor eligibility for tax exemptions. Every private school would be presumed guilty of discrimination until it proved itself innocent. The end result, of course, would be that, if tax-exempt status were denied, most private and religious schools would face immediate closure.

Mr. President, I firmly believe that it is necessary for Congress to step in at this time to prevent the Internal Revenue Service from issuing this ruling. The IRS's actions in this area pose a threat not only to the parents, teachers, and students affiliated with private schools, but to every American concerned with the individual liberties outlined in the first amendment.

As Members of this body, an additional area of concern to all of us should be the usurpation of legislative power that the IRS's incursion represents. The IRS is issuing a policy statement which has the effect of statutory law. The question we all need to ask ourselves is, Who do we want making our laws, bureaucrats, or elected representatives?

The first educational institutions established in colonial America were under religious sponsorship. The schools continued to grow and flourish even when faced with the full establishment of a taxpayer-supported, free public education movement in the 19th century. Religious groups such as the Catholics and the Lutherans established large school systems especially in urban areas. In recent years, there has been a great growth in private schools, especially individual Christian and Jewish schools. While some of the large public school systems have had to close and consolidate schools, private educational institutions throughout the country have managed to overcome great difficulties including increasing expenses, recruitment of students, school personnel, and teachers. The growth of private education in the United States has resulted from a number of factors, including a dissatisfaction with the quality of education provided in public schools, a concern with the growing secularization of public education, and a view that religious educational institutions are part of an extension of the work of religion and religious people.

This right to the free exercise of religion is one that has historically been guarded by our Constitution and courts. The vast majority of private schools to be affected by IRS's proposed procedures are church related or religious schools. For some reason the IRS bureaucrats seem to have lost sight of the fact that religious groups also have important constitutional rights which must be respected.

Mr. President, in my opinion, the present difficulties with the IRS procedures point to the problems which arise when an administrative agency without authorization or guidance from Congress attempts to take it upon itself to resolve such sensitive issues.

This new procedure would require private and religious schools to justify their enrollment, hiring, and curriculum policies to the IRS or forfeit their tax exemption. I am unaware of any congressional mandate giving IRS authority to regulate these matters in private schools. Furthermore, the IRS procedure leaves the final determination of whether a private school is following "public policy" up to the IRS Commissioner, giving him the power of an "education czar" over private educational institutions. In my judgment, the IRS function is supposed to collect revenue, not regulate education.

I wish to emphasize that I am against racial discrimination in employment, education, or any other activity. But in this instance, the ugly specter of racism has been used as a smokescreen for usurpation of legislative authority by the IRS.

With respect to the House action on this issue, the Dornan amendment passed on the House floor by a division vote of 40 to 25. The amendment simply prohibits the IRS from receiving funds to implement the ruling in question. The Ashbrook amendment, which passed the House by a 297-to-63 margin, approaches the same problem from a slightly different perspective. It prohibits the IRS from formulating or carrying out any ruling that was not in effect prior to August 22, 1978, which is the date of the original IRS proposal.

Mr. President, I feel that both of these amendments need to be passed in order to keep IRS from both enacting undesirable social policy and usurping congressional authority. Neither of these amendments will prevent the IRS from implementing Revenue Procedure 75–50 which imposes detailed recordkeeping requirements upon tax-exempt private schools, by which they are required to submit data on the racial composition of their student bodies, faculties, and administrative staffs, as well as other pertinent information. With the use of this type of data, the IRS will still be able to continue denying schools their tax-exempt status on a case-by-case method which is the proper denial approach.

Finally, Mr. President, let me stress that neither of these amendments prevents Congress from acting in the future. Both the House Ways and Means Committee and the Senate Finance Committee have begun exploring legislative remedies in this sensitive area. Why permit unelected bureaucrats to do our work? What is more, I am confident that if we allow adequate time for Congress to act, sound social policy will result in a way fully protective of essential first amendment rights.

THE IRS AND PRIVATE SCHOOLS

● Mr. ROTH. Mr. President, I strongly support the two amendments restricting the powers of the Internal Revenue Service in the Treasury-Postal Services appropriations bill. The two amendments were added by the House and retained by the Senate Appropriations Committee. I commend the members of the Appropriations Committee for concurring with the House position, and I intend to oppose any attempts to delete these two amendments on the Senate floor.

The first amendment will prohibit the Internal Revenue Service from carrying out any ruling denying a tax deduction for a taxpayer making a contribution which the IRS deems to go to a church-operated school in lieu of a tuition payment.

If the IRS ruling is allowed to stand, many contributions to churches which operate schools may be denied a tax deduction.

The second amendment would prevent the Internal Revenue Service from implementing its proposed ruling affecting the tax-exempt status of private and parochial schools.

Mr. President, these amendments put a stop to the Internal Revenue Service's attempt to legislate through regulation.

The IRS is attempting to make substantive changes in our tax laws, changes which should be considered carefully by Congress.

The IRS bureaucrats are paid by taxpayers to administer the laws, not to make laws. Yet under the revenue rulings issued by the IRS, faceless bureaucrats would be granted broad and arbitrary powers over private and parochial schools.

The Internal Revenue Service's only job is to collect revenues.

It is not the job of the IRS to implement national social policy through regulations.

If the IRS believes changes are needed, it should submit a proposal to Congress for its consideration.

Therefore, I support the amendments to the Treasury-Postal Services appropriations bill preventing the IRS from implementing these two rulings, and I will oppose any attempts to strike these amendments.●

PRIVATE SCHOOL TAX EXEMPTION

● Mr. STENNIS. Mr. President, I oppose the amendment which would strike the so-called "Dornan Rider" to H.R. 4393. I strongly support the provisions of the pending bill which would, first, prohibit the Internal Revenue Service from carrying out any ruling denying a deduction for a tax plan making a general purpose contribution to a church operated school in lieu of a tuition payment, and second, prevent the Internal Revenue Service from implementing proposed revenue procedures concerning racial discrimination in private schools. These procedures were first published on August 22, 1978, and in the face of strong opposition were published in a revised form on February 13, 1979.

As originally proposed, the regulation stated that a prima facie case of discrimination by a school would arise from evidence that a school, first, was formed or substantially expanded at the time of desegregation of public schools, and second, has an insignificant number of minority students. The original regulation expressly stated that, in such a case, "the school has the burden of convincingly rebutting this prima facie case of racial discrimination."

While the regulation was toned down to some extent as a result of the February 9, 1979, reissuance of the proposed revenue procedure, the action was not sufficient to correct the fundamental flaw and inequity inherent in this regulation. While the Internal Revenue Service contends that the revision of February 9, 1979, restricts the scope of the regulation, it is nevertheless clear that it is still predicated on the assumption that the majority of American private schools are discriminatory and are thus fair game for IRS.

The House adopted floor amendments which would prohibit the IRS from carrying out its proposed ruling and the Senate Committee on Appropriations has concurred with the House action. I believe that equity and fair play requires these provisions should be retained in this bill.

It should be clear to the Senate, Mr. President, that the IRS has proceeded on the totally false assumption that the power to combat racial discrimination carries with it the power to nullify the exercise of such basic first amendment rights as parental rights and religious liberties. The result would be that racial minorities would be aided by tax laws while religious minorities would be placed in a special suspect and excluded class in the administration of the exemptions provided by those laws.

The Senate should be concerned over the assumption by IRS that the Congress has given it the plenary powers which are implicit in its proposed procedures. It can express this concern by defeating the Ribicoff-Javits amendment.

The issue of the tax status of private schools is a matter of far reaching social and educational significance. While the responsibility of the IRS is to enforce the tax laws, it should be allowed to expand its power in this sensitive area only when the legislative mandate and authority is clear and explicit.

The Senate should take the position that we have not vested the IRS with the power which it has attempted to exercise in this area. It is clear that we have not given IRS a blank check to proceed as its uncontrolled discretion dictates to deny the tax exemption status of private and religious schools which the Congress itself has not seen fit to deny.

The Ribicoff-Javits amendment should be defeated. Congress must and should act to prevent this dangerous practice of social engineering when it infringes on the free practice of religion and could damage very seriously the quality of education provided by the more than 3,500 private schools which operate and provide valuable services in this Nation.●

● Mr. LAXALT. Mr. President, as we consider the Treasury, Postal Service, and general Government appropriations bill, I wish to reemphasize my support for both the Ashbrook and Dornan amendments that were overwhelmingly approved by the House during their consideration of this legislation. The Dornan amendment was subsequently approved by the Senate Appropriations Committee while the Ashbrook amendment was narrowly defeated by the same committee.

As background, last August the Internal Revenue Service proposed to eliminate the tax exemptions of private and religious schools that were not in compliance with IRS minority requirements. The proposed rulings were somewhat modified in February but substantively remained unchanged. To retain tax-exempt status under the proposed procedures, private schools would be required to undertake programs for minority preference in admissions and hiring. Extensive paperwork and inspections would be used to monitor eligibility for tax exemptions. Every private school would be presumed guilty of discrimination until it proved itself innocent. The end result, of course, would be that, if tax-exempt status were denied, most private and religious schools would face immediate closure.

Mr. President, I firmly believe that it is necessary for Congress to step in at this time to prevent the Internal Revenue Service from issuing this ruling. The IRS's actions in this area pose a threat not only to the parents, teachers, and students affiliated with private schools, but to every American concerned with the individual liberties outlined in the first amendment.

As Members of this body, an additional area of concern to all of us should be the usurpation of legislative power that the IRS's incursion represents. The IRS is issuing a policy statement which has the effect of statutory law. The question we all need to ask ourselves, is, who do we want making our laws, bureaucrats, or elected representatives?

The first educational institutions established in colonial America were under religious sponsorship. The schools continued to grow and flourish even when faced with the full establishment of a taxpayer-supported, free public education movement in the 19th century. Religious groups such as the Catholics and the Lutherans established large school systems especially in urban areas. In recent years, there has been a great growth in private schools, especially individual Christian and Jewish schools. While some of the large public school systems have had to close and consolidate schools, private educational institutions throughout the country have managed to overcome great difficulties including increasing expenses, recruitment of students, school personnel, and teachers. The growth of private education in the United States has resulted from a number of factors, including a dissatisfaction with the quality of education provided in public schools, a concern with the growing secularization of public education, and a view that religious educational institutions are part of an extension of the work of religion and religious people.

This right to the free exercise of religion is one that has historically been guarded by our Constitution and courts. The vast majority of private schools to be affected by IRS's proposed procedures are church-related or religious schools. For some reason the IRS bureaucrats seem to have lost sight of the fact that religious groups also have important constitutional rights which must be respected.

Mr. President, in my opinion, the present difficulties with the IRS procedures point to the problems which arise when an administrative agency without authorization or guidance from Congress attempts to take it upon itself to resolve such sensitive issues.

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Finally, Mr. President, let me stress that neither of these amendments prevents Congress from acting in the future. Both the House Ways and Means Committee and the Senate Finance Committee have begun exploring legislative remedies in this sensitive area. Why permit unelected bureaucrats to do our work? What is more, I am confident that if we allow adequate time for Congress to act, sound social policy will result in a way fully protective of essential first amendment rights.●

Mr. HELMS. I yield myself such time as I may require, and I assure Senators it will be for only a couple of minutes.

Mr. President, let us be very clear on what is involved here. Repeatedly proponents of the amendment offered by the Senator from New York have referred to schools which "discriminate." That is not the case. What we are talking about is the Internal Revenue Service bureaucracy legislating, making purely an arithmetical judgment, based on whatever irrelevancy the IRS decides to conjure up.

The IRS claims discrimination when no discrimination exists. They have no evidence—just arithmetic. I am reminded of the time that our former distinguished colleague from North Carolina, Senator Ervin, confronted a similar situation involving hospitals. Some bureaucrat had decided that a group of hospitals did not have a patient racial ratio satisfactory to that bureaucrat. So Senator Ervin said:

Well, I guess we had better go out and make some folks sick and put them in the hospital to satisfy the bureaucrat.

This Senator is simply saying that the IRS has no right to infringe upon the responsibilities of the churches of this country which choose to operate the schools.

In that connection, Mr. President, I ask unanimous consent that the full text of a resolution adopted at and by the Southern Baptist Convention on June 14, 1979, at Houston be printed in the RECORD at this point.

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

RESOLUTION

Whereas, revenue procedures have been proposed by the Internal Revenue Service which deny tax-exempt status to private schools—including those owned and operated by churches—unless they can prove that they do not discriminate on the basis of race in their admissions policies, and

Whereas, these procedures affecting the enrollment of church schools rest on broad grounds of public policy rather than on specific statutory authorization, and

Whereas, many schools operated by a particular church or association of churches form an integral part of the total religious mission of the church or association, and

Whereas, many of these schools were created by churches primarily to serve the religious as well as the educational needs of their own membership, and

Whereas, the actions of the Internal Revenue Service in this instance violate the constitutional guarantees of separation of church and state and the free exercise of religion,

Be it therefore resolved by the Southern Baptist Convention in its 1979 annual meeting in Houston, Texas that:

1. We reaffirm our historic position in support of the separation of church and state, the right of the church alone to define its own religious mission, and the right of a church to establish schools as a part of that mission without the aid of the state, hindrance by the state, and threats of loss of tax-exempt status for following that religious mission, and

2. We request that the Baptist Joint Committee on Public Affairs, while being sensitive to our position on racism, work vigorously to maintain the separation of church and state, to protect the free exercise of religion, and to oppose specifically the Internal Revenue Service's proposed intrusions into church owned and operated schools.

Mr. HELMS. I would just emphasize, Mr. President, the two resolving paragraphs:

Be it therefore resolved by the Southern Baptist Convention in its 1979 annual meeting in Houston, Texas that:

1. We reaffirm our historic position in support of the separation of church and states, the right of the church alone to define its own religious mission, and the right of a church to establish schools as a part of that mission without the aid of the state, hindrance by the state, and threats of loss of tax-exempt status for following that religious mission, and

2. We request that the Baptist Joint Committee on Public Affairs, while being sensitive to our position on racism, work vigorously to maintain the separation of church and state, to protect the free exercise of religion, and to oppose specifically the Internal Revenue Service's proposed intrusions into church owned and operated schools.

Mr. President, that just about says it all. A lot of people around this country are going to be watching the vote of the Senate on this question. I submit that the amendment by the Sentaor from New York, who is my friend, should be rejected.

I am willing to yield back my time if the Senator wishes to yield back his time.

Mr. JAVITS. Mr. President, I will take just 30 seconds to say this: I thoroughly agree with the Senator from North Carolina that millions of Americans will be watching this vote, and I hope they are rewarded by watching the Senate adhere to morality and public policy on this very key and very sensitive issue.

I am ready to yield back my time.

Mr. HELMS. Mr. President, I must say, also in 30 seconds, that it depends on the definition of morality. I contend that what the IRS is doing, and has been doing is lacking in morality. The Senate will have to decide who is right.

Mr. JAVITS. Mr. President, I yield back my time.

Mr. HELMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from New York. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Iowa (Mr. CULVER), the Senator from Alaska (Mr. GRAVEL), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. JEPSEN), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Utah (Mr. HATCH). If present and voting, the Senator from Oregon would vote "yea" and the Senator from Utah would vote "nay."

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 31, nays 54, as follows:

[Rollcall Vote No. 256 Leg.]

YEAS—31

Baucus	Heinz	Proxmire
Bellmon	Javits	Ribicoff
Boschwitz	Kennedy	Riegle
Bradley	Levin	Sarbanes
Burdick	Matsunaga	Stafford
Chafee	Melcher	Stevenson
Church	Metzenbaum	Tsongas
Cranston	Moynihan	Weicker
Eagleton	Muskie	Williams
Glenn	Nelson	
Hart	Pressler	

NAYS—54

Armstrong	Exon	Percy
Baker	Ford	Pryor
Bentsen	Goldwater	Randolph
Biden	Hayakawa	Roth
Boren	Heflin	Sasser
Bumpers	Helms	Schmitt
Byrd, Harry F., Jr.	Hollings	Schweiker
Byrd, Robert C.	Huddleston	Simpson
Cannon	Humphrey	Stennis
Chiles	Jackson	Stevens
Cochran	Johnston	Stewart
Cohen	Kassebaum	Talmadge
Danforth	Leahy	Thurmond
DeConcini	Long	Tower
Dole	Lugar	Wallop
Domenici	McClure	Warner
Durenberger	Morgan	Zorinsky
Durkin	Nunn	
	Packwood	

NOT VOTING—15

Bayh	Hatfield	Mathias
Culver	Inouye	McGovern
Garn	Jepsen	Pell
Gravel	Laxalt	Stone
Hatch	Magnuson	Young

So Mr. JAVITS' amendment (UP No. 522) was rejected.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. HELMS. Will the able Senator yield?

Mr. CHILES. I am glad to yield to the distinguished Senator from North Carolina.

Mr. HELMS. I thank my friend. I know that he and his subcommittee have done an immense amount of work on this bill and he and his colleagues deserve great credit.

May I ask the chairman of the Treasury Subcommittee if his panel considered the proposed appropriations to fund the American Arts Gold Medallion program?

Mr. CHILES. The Senator from North Carolina will be pleased to know that the committee recommended $10,067,000 for the coming fiscal year to begin production and distribution of the gold medallions. I know that he was the author of the original Gold Medallion Act of 1977 which led to the passage of the gold medallion legislation last year.

Mr. HELMS. I thank the Senator, and I am glad that the committee saw fit to include this sum in the bill. If I may ask the Senator one or two further questions about this program and how these funds will be used it will be most helpful. First, although the revenues from the sales of the medallions will not be included in the budget figures, is it not true that the sale of the medallions will produce revenues for the Federal Government of over $300 million in fiscal 1980?

Mr. CHILES. The Senator is correct. One million ounces of gold will be sold in the form of medallions and it is expected that they will be priced at a figure equal to the free market gold bullion price, plus the cost of production—about $10 per piece.

Mr. HELMS. Will the Senator comment on whether his committee asked the Treasury Department if consideration was given to increasing the production and sale of the medallions above the minimum required by law?

Mr. CHILES. I respond to the Senator that minimum time was available for the committee to discuss this issue, but as I recall, the clear intent of the Senate when it passed the Gold Medallion Act during the last Congress was to provide a U.S. produced gold piece that would compete with the Krugerrand and other so-called bullion gold pieces. Obviously, the market for such pieces is far greater than 1 million ounces per year.

Mr. HELMS. Am I correct that my good friend from Florida agrees that the demand for the medallions is far greater than 1 million ounces per year?

Mr. CHILES. As the Senator from North Carolina knows better than I, it would depend entirely on how the medallions are marketed, as well as on the prospective demand for a gold bullion piece.

Mr. HELMS. I think the distinguished Senator is right that it depends on the marketing plan, and I have had some observations on that plan. The distinguished Senator from Idaho (Mr. McCLURE) recently commented on an article that I contributed to the Coin World newspaper on this subject. I felt that the Treasury might not be living up to the spirit of the law by limiting the production and sale of the medallions to only 1 million ounces. As the Senator knows, the Treasury will not be marketing the medallions until June 1, 1980. It seems to me that there should be flexibility in the Treasury plan so that if the American public wishes the sales to be expanded they should be expanded.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. CHILES. Will the Senator yield?

Mr. KENNEDY. Will the Senator yield for 15 seconds?

Mr. HELMS. I yield.

The PRESIDING OFFICER. The Senate is not in order. Senators will please refrain from discussing matters in the well and proceed to the cloakrooms if they wish to continue conversations.

The Senate is not in order.

The Senator from North Carolina.

Mr. HELMS. Mr. President, I desire to yield such time as may be required by the distinguished Senators from Massachusetts, New Hampshire, New York, Montana, and anybody else.

Mr. ROBERT C. BYRD. Mr. President, I do not quite like to see it done that way, I might say to the distinguished Senator from North Carolina. He can yield to whomever he wishes at the moment, but I would like to get unanimous consent that Mr. LEVIN be permitted to lay down an amendment tonight and that it be disposed of before the amendment by the Senator from North Carolina. I believe it will be acceptable by the committee.

Mr. CHILES. It will be acceptable.

Mr. HELMS. I understand, but the Chair did recognize me.

Mr. ROBERT C. BYRD. The Senator has not called up his amendment yet.

Mr. HELMS. That is correct.

Mr. ROBERT C. BYRD. If that is agreeable, Mr. President, Mr. LEVIN will be allowed to lay down an amendment tonight. In the morning it will be disposed of and then Mr. HELMS will call up his amendment.

The PRESIDING OFFICER (Mr. BURDICK). Is there objection? The Chair hears none. Without objection, it is so ordered.

Mr. HELMS. The distinguished majority leader does not desire that I call up my amendment tonight?

Mr. ROBERT C. BYRD. No. Mr. LEVIN will lay down his amendment tonight, which will be accepted by the committee tomorrow. Then Mr. HELMS will call up his amendment, and then Mr. METZENBAUM will have the privilege of calling up an amendment if he so desires, after which the Senate will go to third reading of the bill. Is the Senator agreeable?

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

Mr. ROBERT C. BYRD. Will the Senator not do that? Will the Senator not do that? I will protect him.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business and that Senators may speak up to 5 minutes therein.

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

THREE MILE QUESTIONS ANSWERED

Mr. HELMS. Mr. President, in the weeks following the accident at the nuclear powerplant at Three Mile Island, scores of citizens wrote me to express their concerns. I also heard from numerous citizens who felt that the major news media had blown the matter out of all proportions.

Jane Fonda and Ralph Nader are among those who are leading the demand that the United States close down all nuclear power facilities. Both have been quoted in the media frequently and extensively. Both have appeared on television on countless occasions.

I am not a scientist. I have not been prepared to refute what I consider to be their play on the emotions of the American people.

But, Mr. President, a few weeks ago, I received a statement from Dr. Edward Teller, the distinguished scientist who is probably the world's foremost nuclear authority. Dr. Teller was born in Hungary, educated in Germany and came to the United States in 1935. He worked extensively on nuclear developments during and after World War II. He led the earliest efforts to ensure the safety of nuclear power reactors and to achieve clean power generation.

In recent years he has concentrated increasingly on the varied aspects of the coming energy shortage, and has argued

for utilization of every feasible form of energy.

Mr. President, Dr. Teller has answered almost all the questions that have come to my mind in the aftermath of Three Mile Island.

Mr. President, I ask unanimous consent that Mr. Teller's statement, entitled "I Was The Only Victim Of Three-Mile Island," be printed at this point in the RECORD.

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

I WAS THE ONLY VICTIM OF THREE-MILE ISLAND

On May 7, a few weeks after the accident at Three-Mile Island, I was in Washington. I was there to refute some of the propaganda that Ralph Nader, Jane Fonda and their kind are spewing to the news media in their attempt to frighten people away from nuclear power. I am 71 years old, and I was working 20 hours a day. The strain was too much. The next day, I suffered a heart attack. You might say that I was the only one whose health was affected by that reactor near Harrisburg. No, that would be wrong. It was not the reactor. It was Jane Fonda. Reactors are not dangerous.

Now that I am recovering, I feel compelled to use whatever time and strength are left to me to speak out on the energy problem. Nuclear power is part of the answer to that problem, only a part, but a very important one.

I have worked on the hydrogen bomb and on the safety of nuclear reactors. I did both for the same reasons. Both are needed for the survival of a free society. If we are to avoid war, we must be strong and we must help to generate the progress that makes it possible for all nations to grow and prosper.

And what is the greatest present-day threat to the prosperity and even the survival of nations? A lack of energy. Both developed and developing nations are threatened.

The citizens of the United States have just begun to recognize the impact of the world's growing energy shortage. Gasoline lines, electrical brownouts and higher prices are minor irritants. They are nothing compared to what may lie ahead. In a struggle for survival, politics, law, religion and even humanity may be forgotten. When the objective is to stay alive, the end may seem to justify the means. In that event, the world may indeed return to the 'simpler' life of the past, but millions of us will not be alive to discover its disadvantages.

When our existence is at stake, we cannot afford to turn our backs on any source of energy. We need them all. When it comes to generating electricity, we especially need nuclear power. Contrary to what Nader and Fonda, and their friends such as Sternglass, Wald and Kendall, would have you believe, nuclear power is the safest, cleanest way to generate large amounts of electrical power. This is not merely my opinion—it is a fact. Due to the lessons learned at Three-Mile Island, the nuclear way of generating electricity will be made even safer.

I have attempted to respond briefly to some of the questions which people ask about nuclear power. The problems that these questions raise are problems because of political indecision or public fear. Technically, they are non-problems, because the dangers they imply either do not exist or else we have the know-how to solve them. I am absolutely convinced of this, after a lifetime of work as a nuclear scientist.

I was once asked how I would like for my grandson, Eric, to think of me and my life's work after I am gone. Eric is nine years old. He is a terrible guy—he beats me at the game of "GO." I am enormously fond of him, but I have not given much thought to what he will someday think of my life's work. I have given a great deal of thought to whether he will be alive in the next century, and whether he will be living in freedom or in slavery. If he is living under communism, he will know I was a failure.

I believe that we have reached a turning point in history. The anti-nuclear propaganda we are hearing puts democracy to a severe test. Unless the political trend toward energy development in this country changes rapidly, there may not be a United States in the twenty-first century.

The President has recognized the danger of the energy shortage. As yet, he has given only some of the answers. I think—I hope—that democracy has enough vitality to evaluate the risks and to recognize the great benefits of nuclear power to human health and well-being, and to the survival of our free society."

Q. Can a nuclear reactor explode like an atomic bomb?

A. No. Energy cannot increase fast enough in the reactor. Therefore, it is absolutely impossible for a nuclear power plant to explode like a bomb. For this to happen the laws of nature would have to be repealed.

Q. What is the risk of nuclear power compared to other forms of producing electricity?

A. It is far safer than coal or hydroelectric power, but all three are necessary to meet our need for energy. It may sound strange to say it, because coal has been around so long, but we know more about controlling radiation than we do about controlling the pollutive effects of burning coal. And, of course, a dam has no backup system to protect those who live below it. Indeed many of these people have lost their lives and more their homes.

Q. I live within 50 miles of a nuclear power plant. What are my chances of being injured by a nuclear accident?

A. About the same as being hit by a falling meteor.

Q. What about the effect of an earthquake on a nuclear plant?

A. At the first sign of a tremor, the reactor would shut down automatically. Also, reactors are built to withstand enormous structural damage. The only man-made structures I can think of that are more stable are the pyramids of Egypt.

Q. Is it true that we still have no satisfactory ways to dispose of nuclear wastes?

A. No. Ways do exist. What we have not had is a decision by our government on which way to go. Waste disposal is a political problem, not a technical problem.

Q. How much radioactive waste materials are produced by nuclear plants?

A. At the moment, about 12½% of our electricity is generated by nuclear power. If all of it were produced this way, the wastes from these plants over the next 20 years would cover a football field to a depth of about 30 feet. To dispose of this waste a mile underground would add less than one percent to the cost of electricity.

Q. How dangerous is the release of low-level radiation from a nuclear power plant?

A. If you sat next to a nuclear power plant for a whole year, you would be exposed to less radiation than you would receive during a round-trip flight in a 747 from New York to Los Angeles. Let me put it another way: The allowable radiation from a nuclear plant is five mrems* per year. In Dallas, people get about 80 mrems per year from the natural background of buildings, rocks, etc. In Colorado, people get as much as 130 mrems per year from the natural background. Therefore, just by moving from Dallas to Boulder you would receive ten times more radiation per year than the person gets who lives next to a nuclear power plant.

Q. How much radiation were the people around Three-Mile Island exposed to during the accident?

A. Let me put it this way. Your blood contains potassium 40, from which you get an internal dose of some 25 mrems of radiation in one year. Among the people not working on the reactor, a handful may have gotten as much radiation as 25 mrems.

Q. Should "spent" nuclear wastes be reprocessed to save the plutonium and other by-products?

A. Yes. Plutonium, for example, is as valuable as the original uranium fuel, because of its potential use to produce still more energy. In the end, reprocessing is needed to make nuclear energy abundant and lasting.

Q. Is there a danger that the plutonium produced by nuclar reactors might be stolen by terrorists and used to construct home-made nuclear explosives?

A. I believe that reactor products can be properly safeguarded from terrorists. This can be much more easily done than the guarding of airplanes. Also, any terrorist who puts his mind to it can come up with ways to terrorize a population that are less dangerous to himself than handling plutonium. The answer is not to get rid of the reactors—let's get rid of the terrorists.

Q. Will the expansion of nuclear power by other countries enable them to produce nuclear weapons?

A. Unfortunately, yes. This is already happening. Two-thirds of the reactors in operation in the free world today are outside the United States. Since we can't stop other nations from building nuclear plants or weapons, what we must do is find better solutions to international problems. An energy-starved nation is much more likely to make and use nuclear weapons as a last resort to survival. The only way to prevent that is to see to it that there is enough energy to go around, and to strengthen cooperation and confidence among the nations.

Q. What have we learned from the accident at Three-Mile Island?

A. Two things. First, that nuclear reactors are even safer than we thought. Despite many human errors and a few mechanical failures at Three-Mile Island, the damage was contained. No one was killed, or even injured. We have also learned that a lot can be done by better educated, better paid and more responsible reactor operators, and by a more efficient display of the state of the reactor by modern instrument panels.

Three Mile Island has cost $500-million, but not a single life. We must pay for safety and, even after we have paid for it, nuclear energy is the cheapest source of electrical power. It is most remarkable that in the case of nuclear energy we are paying for our lessons in dollars, not in lives.

*A "mrem" is an appropriate unit used to make comparisons.

NINETY-YEAR-OLD JIM LUITWEILER RAISES QUESTION OF LEADERSHIP

Mr. HELMS. Mr. President, I have a 90-year-old friend down in Tryon, N.C., who is just as bright, alert and well-informed as he was 60 or 70 years ago. And that is saying a lot, because Mr. Jim Luitweiler's entire career has been nothing short of remarkable.

Senators may recall that it was Mr. Luitweiler who came to Washington a couple of years ago to provide valuable

testimony at the time the Senate was debating the giveaway of the Panama Canal. The late Senator James B. Allen invited Mr. Luitweiler to come and testify before the Subcommittee on the Separation of Powers, which Senator Allen chaired.

I remember the day well. Spokesmen for the administration, and others favoring the giveaway of the Panama Canal, had repeatedly claimed that the United States had never owned the canal. Even the President involved himself in that misrepresentation.

So there came Jim Luitweiler, who had been an official of the U.S. Government at the time the United States bought and paid for the land in Panama just after the turn of the century. In fact, Jim Luitweiler had been in charge of negotiating the purchase of the hundreds of tracts of land.

In conjunction with Mr. Luitweiler's testimony, Senator Allen had located the deeds to the land. Those deeds, and other relevant documents, had been stored in some Government warehouse years ago. When these documents were brought into the subcommittee hearing room, they filled several enormous wood crates, each about 4 feet square.

One by one, the crates were pried open by security men, and examined in the presence of newsmen, Senators, and others present at the hearing.

That was the last we ever heard of the administration's claim that the United States had never owned the Panama Canal property. However, news coverage of that hearing was scant. As I recall, one television network used a 60-second story; the others used nothing. The Washington Post, and other newspapers which favored the giveaway of the Panama Canal did not even mention Jim Luitweiler's testimony, nor the contents of the wood boxes in which the deeds had been stored.

I mention all of this, Mr. President, because a few weeks ago, I ran across a remarkable letter written to the editor of the Thermal Belt News Journal at Columbus, N.C. The editor is a fine young man named Mike O'Neal. The letter? It was written by my friend, Jim Luitweiler. The heading on the letter was, "Year of Crisis: Question of Leadership?"

Mr. President, I ask unanimous consent that Mr. Luitweiler's letter to the editor be printed at this point in the RECORD. I commend it to my colleagues, and to others who read the RECORD.

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

YEAR OF CRISIS: QUESTION OF LEADERSHIP?

To The Editor:

1979 is a year of crisis. The shadow of the Russian Communist Bear looms over the world.

While listening to the debate over the new SALT II treaty that is supposed to limit the growth of armaments of Russia and the United States, we should be aware of what these two world powers stand for. Whatever limits are agreed upon will still leave these giant nations with enough weaponry to destroy each other. Any major conflict would probably leave them as mere skeletons of their former selves. The human race might survive, but it would take centuries for the world to recover from such cataclysm.

Consider what symbolizes their respective ideologies—two well known monuments: America's Statute of Liberty in New York Harbor and Russia's Berlin Wall, dividing East and West Germany. The Statue of Liberty: For a century this colossal statue of a woman holding aloft a lighted torch 300 feet above the water-front has symbolized what America has stood for to the rest of the world. Cradled in the woman's left arm is a tablet with the date July 4, 1776, and at her feet are the broken shackles of tyranny. Inside the pedestal is a bronze plaque with the sonnet written in 1883 by an American poetess, which closes with these words:

"Give me your tired, your poor,
Your huddled masses yearning to breath free,
The wretched refuse of your teeming shore,
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!"

Despite Russia's pronouncements of being the liberator of people from the tyranny of imperialism, has there ever been a Statue of Liberty erected on her soil? No, there has not. But there has been erected—The Berlin Wall: It is a symbol to the world of what Russia stands for. After the defeat of Germany in World War II, the allies allowed Germany, at Russia's bidding, to be split in two. The eastern half became Communist East Germany and the western, free West Germany. Immediately as the borders were established, 2,700,000 Germans migrated from the new East Germany to West Germany. Whereupon the Russians had a high masonry wall erected separating the two Germanies and dividing the old capital (Berlin) into East and West Berlin.

From the start, until now, this wall has been manned by armed soldiers with orders to shoot men, women and children who attempted to flee East Germany by climbing the wall or tunnelling under it. Many have lost their lives in a fruitless effort to escape East Germany.

Returning to the American scene, for more than three centuries immigrants from all over the world have streamed through our ports and fanned out over the continent to create the strongest and richest nation on earth. Their descendents are now sitting in the halls of Congress to determine our future.

Are these representatives imbued with the spirit of the Declaration of Independence, which begins with this sentence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness".

Or have they been brain-washed with the Marxist philosophy that government owes eveyone a living; and to take from them that hath and give to them that hath-not? Nothing accomplishes this better than inflation and the printing press its most useful instrument. With it paper money can be spawned like falling leaves in the autumn winds.

We are confronted with an energy crisis that is disrupting vacation plans and our journeys to and from work, and forcing us to park our cars in long lines at the gas stations. As one hears accounts of the ire this has aroused against OPEC and the oil companies one is reminded of the vicious kicks given to a chair that has tripped one in his living room!

One even hears the Creator blamed for putting the oil under the Arabian desert, overlooking that the Creator did put under the feet of Americans five times as much coal as the equivalent of Saudi Arabia's 165,000,000 barrels of oil reserves! Our own government has so fouled up the economic machinery with its bureaucracies and environmentalists that this coal will doubtless remain there for along time!

Fortunately, there is something that our government can do right now to cut the energy Cordian knot while Congress is taking its time to unravel the red tape holding up the development of our coal and other resources.

One can pinpoint the onset of the present energy crisis: the fall of the Shah of Iran and the setting up of an anti-American Moslem regime. The American administration's first reaction made sense: dispatching an aircraft carrier to the Persian Gulf to insure that the gateway to the Middle East oil fields remain open for our tankers to bring out our needed oil. But someone got weakkneed when it was suggested this might annoy the Russians! So the carrier was turned around and steamed idly in circles. One is reminded of Kennedy's faux pas in the Bay of Pigs fiasco which allowed Castro to rise to power. And Castro has thumbed his nose at us ever since!

If our Congressmen have the backbone of their forefathers there is an opportunity to correct this grevious mistake. Out in this Middle East area, so vital to our need for Arabian oil, there is a little shiekdom (Oman), no larger than the State of Kansas, which commands the 40 mile wide channel of the Strait of Hormuz, through which have been passing half the world's oil tankers. It has its own oil fields producing 350,000 barrels of oil per day, yielding this little nation one and a half billion dollars of yearly income. Its ruler is a highly educated young man of 38, schooled in Britain's military academy (Sandhurst).

He has the best standing army on the Arabian peninsula, on which he has spent 40 per cent of the country's $1½ billion annual income. So far he has stood off the Soviet's 2000 Cuban stooges and Russian and East German "advisers" deployed in next-door Marxist South Yemen.

In an interview with the Magazine Time's Cairo correspondent printed in the June 4th issue—he asks for America's help to draw the line against the Soviet's involvement in this area. He has guts! One is reminded of Pope John's return to his native Poland in defiance of the Communist rulers of that country.

Do we have leaders in Washington to match these two men's guts? The Russians have a way of backing off from a serious confrontation with adversaries who mean business. They know full well that if Pope John is assassinated in Poland the whole Catholic world will be on their backs. No country has been more astute in avoiding needless risks than the Russians. Can we move quickly enough to counter a serious move of Russia from across the border in South Yemen into Oman, before Russia slams the gate shut on the Persian Gulf?

A companion move should be to assure that our Panama Canal remains in our hands by refusing to implement the Torrijos treaties.

By assuring the continued flow of oil from the Persian Gulf, and Alaskan oil through our Canal to our Eastern seaboard, we will take care of American energy needs while we are developing self-sufficiency on our own continent.

Bear in mind that the Arabs need to sell their oil to us and Europe as much as we need to buy it. Once they see America taking decisive measures to cooperate with them in keeping their oil flowing they will regain lost confidence in America's integrity.

Above all I should like to see a Congressman of Lincoln's stature rise on the floor of the House this month and paraphrase his Gettysburg address:

"200 years ago our forefathers brought

forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. It is now for us in this House to resolve that this nation, under God, shall have a new birth of freedom, and that government of the people, for the people, by the people, shall not perish from the earth."

EDUCATION AND THE GOVERNMENT

Mr. HATCH. Mr. President, a theme of so much controversy that has been generated in recent years has been that of Government attempting to impose its own notions of educational virtue upon parents, local schools, and private educational institutions. The apparent result, as recently summarized by Neal Pierce in the Washington Post, is that only 60 percent of American high school students can name a war in which "State's rights" was an issue, only 40 percent known what NATO stands for, only 38 percent realize that voters can split their party choice between Presidents and Members of Congress, only 25 percent can correctly cite the oceans along which Oregon and New Jersey are situated, and only 3 percent can correctly identify Alaska and Hawaii as the last two States to join the Union. College board scores reveal similar levels of academic achievement in other areas of the curriculum.

I ask unanimous consent to have printed at this point in the RECORD two excellent articles on different aspects of the assault by Government upon private control of education. In the first, Dallin Oaks, the President of Brigham Young University, assesses Government regulation of higher education from a first amendment viewpoint. In the second, Stephen Arons, a professor of legal studies, explores the issue of State versus familial control of the educational process.

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

GOVERNMENT REGULATIONS OF HIGHER EDUCATION

Through a variety of laws and regulations, the federal government has now undertaken to direct and supervise some portion of almost every aspect of higher education. An over-statement? Consider the record.

Our principal academic functions involve faculty, students, curriculum, and research. We now have regulations affecting faculty hiring, compensation, and retirement. We have rules governing student admissions, financial aids, confidential records, and placement. Government supervision of university research is familiar, principally because of funding patterns.

Thus far we have no official specification of curriculum, but Congress threatened to enter that field a few years ago when it seriously debated requiring certain course work for all medical students. The proponents of the Title IX sex discrimination regulations failed in their attempt to require official approval of texbooks to eliminate sexist instructional material, but textbook and curriculum review became a reality last year for one educational organization. The Department of Justice obtained a consent decree which compelled the American Institute of Real Estate Appraisers to delete from the seventh edition of its textbook on appraisal certain offensive statements about the economic significance of a racially changing neighborhood, and to make similar modifications in its other instructional materials, courses, and teaching techniques.

The Title IX Regulations specify requirements on the relative adequacy of facilities and equipment, on access to academic programs, on the relative funding and adequacy of extracurricular activities such as athletics, and on how the institution must relate toward outside organizations accused of discrimination. Proposed student aid regulations just published in the Federal Register prescribe financial criteria to which institutions must adhere. So far we have no regulation of fund raising, but Congressman Wilson's proposed legislation awaits action in Congress.

Most of higher education acquiesces in government regulation of higher education not because of agreement with the principle of government direction but because of agreement with the content of the regulations or the goals they seek to achieve. How shortsighted! Let us all take leave of expediency for a time and consider the principle of government regulation of higher education.

We should be clear at the outset that the subject of overregulation of education is not a partisan political issue. Most of the enabling legislation was enacted with bipartisan support, and the abuses of executive agencies are traceable to Democratic and Republican administrations. The least objectionable rules are those enacted by Congress. The main offenders are the departments of the federal executive branch, especially H.E.W., the Labor Department, and the Internal Revenue Service. State regulation is also beginning to be a more significant problem for higher education, such as by licensing or accrediting measures and by curricular or other attempted supervision of private colleges and universities. Even some private accrediting bodies, through their role in certifying institutions for government programs, are seeking to exercise a quasi-official regulatory power. Finally, the men and women involved in the regulatory effort are almost entirely people of goodwill who are sincerely striving to attain what they consider to be legal and appropriate objectives. Some are uneasy about exercising authority over educational institutions, but many others are just ignorant or indifferent toward the consequences of the rules they administer.

I. Objections to Government Regulations.

Most of the familiar criticisms of government regulations apply to higher education.

1. Government regulation is financially burdensome. The government's own Commission on Federal Paper Work estimated last year that federal paper work cost more than $100 billion a year, which is about $500 for each person in the country. The Commission said that "a substantial portion of this cost is unnecessary."

2. Different rules duplicate and overlap one another. For example, there are 17 different agencies writing Equal Employment Opportunity regulations, and 439 different federal statutory authorities bearing on postsecondary education.

3. The rules are confusing and ambiguous. Thus, the H.E.W. Student Assistance Agency had a student loan application, a supplement to the application, and an addendum to the supplement to the application.

4. Many of the regulations are meddlesome and trivial. An OSHA manual lectured farmers how to avoid slipping on cow manure. Last December, with a fanfare of self-righteous publicity, Secretary Califano announced that H.E.W. had caught 49 school districts and colleges that had failed to disclaim sex discrimination by filling out the required Title IX certification. The list included the two-room school house in Bynum, Montana, the 62-student school district in Chapman Ranch, Texas, and a smattering of small colleges, most of them church-related. More than half of the schools on the hit list said they had never received H.E.W. money. No matter. All were condemned before the nation and threatened with a cutoff of their funding.

5. Some rule-making efforts are incredibly ignorant. For instance, about two years ago the Veterans Administration issued extremely burdensome regulations which ignorantly assumed that all colleges and universities took daily class attendance.

6. We are also offended by the hypocrisy in some regulatory programs. Fortune magazine exposed discriminatory hiring in the Federal Equal Employment Opportunity Commission. H.E.W. recently defended sex discrimination in the Social Security Act because its elimination would be financially burdensome. Earlier, H.E.W. had conveniently overlooked the enormous financial burden it imposed on educational institutions in its handicapped and Title IX sex discrimination regulations.

7. Some regulatory efforts are also inconsistent. This is a particular hazard of anti-discrimination laws, since laws that seek to eliminate discrimination against one group can have the effect of promoting discrimination against another. Thus, the recent law that seeks to prevent age discrimination blunts the effect of affirmative action programs to offset racial and sex discrimination. A rule prohibiting compulsory retirement at age 65 tends to freeze the work force in its present composition, thus sharply reducing the number of job vacancies that affirmative action programs could use to cure the effects of past racial and sex discrimination.

8. Finally, government laws and regulations are often ineffective or counterproductive. As Senator Muskie observed a few months ago, our government has "grown so large and ineffective that it is suffocating the very goals it seeks to achieve."

II. An approach to the Problem.

So, what is to be done about objectionable government regulation? The question arises at an awkward time. Costs have skyrocketed with inflation, and revenues—including earnings from endowments—have not kept pace. Taxpayer revolts portend further difficulties. The last Minter and Bowen study shows that the number of private colleges in a precarious financial position increased from one-fifth to over one-third last year. Institutions faced with the prospect of closing their doors find it necessary to seek some form of federal financial assistance even if it will be accompanied by objectionable regulation. Beggars can't be choosers.

Granting that some form of federal financial assistance is necessary to help many small colleges survive, we must still work to minimize the government regulation accompanying that assistance. I will suggest a six-point program. The first three points are brief and should be self-evident. The fourth and fifth points, which concern the structure and content of government regulations, require more elaboration. The sixth point proposes concerted action.

Our first step—in many ways the most painful—should be self-regulation. We must identify and eliminate abuses that would otherwise be used to justify government regulation. Most government regulatory efforts pursue worthy goals. Those who would resist them need to offer an acceptable private alternative.

Our second step should be to perpetuate and increase incentives for charitable giving to educational institutions. We must also resist any attempts to predicate government controls on the benefits that flow to educational institutions and oher recipients of such charitable gifts.

Our third step should be to oppose government assistance that comes in the form of unrestricted and other direct grants, such as categorical assistance, cost of education allowances, and capitation grants. The prospect of unacceptable federal controls attached to direct assistance—once denied by

some—became abundantly clear in 1976 when Congress empowered the Secretary of H.E.W. to withhold capitation grants from medical schools that refused to accept foreign transfer students in the numbers prescribed by Congress. To minimize the prospects of government regulation we should favor indirect assistance such as grants or loans to students, or other indirect assistance like the imaginative tuition advance fund proposal or the currently debated tuition tax credit.

III. Some Needed Distinctions in Laws and Regulations.

As a fourth step, laws and regulations affecting higher education should be drafted to incorporate three important but currently missing distinctions. First, lawmakers or regulation writers should exclude education from certain rules that are generally applicable to other organizations. Second, they should exempt private institutions from some of the body of rules otherwise generally applicable to public instituions. As corollaries, the extent of regulations should bear some relationship to the magnitude of government financial assistance, and should not be premised upon the receipt of assistance by students. Finally, from the laws and regulations otherwise appropriate for private colleges and universities, rulemakers should carve out appropriate exceptions to accommodate the special constitutional freedoms guaranteed to institutions sponsored and controlled by churches.

I will now explain why I think these three distinctions are needed.

A. The Special Position of Education.

Educators should not oppose all government laws and regulations affecting higher education. In some respects an educational institution is relatively indistinguishable from other employers. Thus, I believe the government can legitimately lump educational institutions with factories and other employers for purposes of assuring employees a safe place of work and a financially secure savings and pension fund.

But there are respects in which government regulation should not lump the business of education with retailing, manufacturing, and other business activities. The market for ideas is sufficiently different from the markets for goods and services that education should receive different treatment from government regulators when the issue is the manner in which the business is conducted. Thus, the Food and Drug Administration may prescribe standards for prescriptions, but H.E.W. should not prescribe standards for textbooks or the college curriculum.

As the custodians and transmitters of our culture—secular and sacred—educational institutions need a special degree of insulation from government interference. The First Amendment, which contains special guarantees for freedom of speech, press, and religion, recognizes that special status. Unfortunately, the laws enacted by Congress and the regulations promulgated by various agencies in the past two decades have generally failed to make any distinction between educational institutions and all other corporations being regulated. I believe that this indiscriminate lumping is the root cause of educators' outcry against government regulation. Most educators do not reject all government regulation. They only reject the idea that regulations otherwise applicable to all businesses and employers should automatically apply to education.

Education has and should have a favored position in our society, like the media, the churches, and other custodians of First Amendment freedoms. We must help lawmakers see the need to minimize interference with the stated purposes and academic freedoms of colleges and universities and their personnel, public and private. No general law or regulation should be made applicable to education without a specific finding that this is essential to accomplish its purposes and that it will not impair essential educational freedoms.

B. The Special Status of Private, Independent Education.

In order to preserve our pluralistic system of education, lawmakers and regulation-writers should distinguish between the regulation that is appropriate for publicly sponsored and directly tax-supported institutions on the one hand, and the lesser regulation that can be justified for private independent institutions on the other. This is consistent with the traditional constitutional distinction between "state action," which is subject to constitutional and other legal restraints, and "private action," which is presumptively free of such restraints.

Unfortunately, current laws and regulations rarely distinguish between state-sponsored and independently sponsored institutions. If they make any distinction at all it is between institutions that are "federally assisted programs" and those that are not. But the independent sector gets little benefit from this distinction when the definitions in the regulations are written—as they usually are—so broadly that virtually every institution in the country is a federally assisted program. As a result, a small independent college making a conscientious effort to avoid any kind of direct public assistance is formally subject to the same regimen of regulations as public institutions and the great research universities—public and private—that receive millions in tax support.

The height of absurdity in ignoring the distinction between public and independent educational institutions came in the recent law forbidding mandatory retirement at age 65. In view of the Supreme Court's recent decision that Congress has no power to prescribe minimum wages for state employees because federal direction of the terms of state employment would violate state sovereignty, it seems reasonably clear that the federal law forbidding compulsory retirement at 65 is unconstitutional as applied to state colleges and universities. And so we have the spectacle of an Act of Congress that directs the terms of retirement for independent colleges and universities but not public ones.

Scholarly comments and public debate about the Bakke case have also ignored the essential difference between public and independent institutions. This voluminous literature generally seems to assume that the Bakke decision governs the admission practices of all of higher education. But Bakke involved a public institution, and independent colleges and universities should have greater latitude in student admissions. An independent institution not receiving any direct assistance from tax appropriations should be free to have preferential admissions—even the kind of quotas the Bakke case outlawed for the University of California—to benefit racial and other minorities, if they choose to do so. The Bakke case does not hold to the contrary. Granted, this kind of latitude may be abused in some instances. But if private parties lack the freedom to make wrong decisions, they lack freedom indeed.

C. Relating the Amount of Regulation to the Magnitude of Government Assistance.

Current regulatory practice is also deficient in failing to utilize the principle of de minimus, so that the receipt of a nominal amount of federal financial assistance would involve little or no regulatory consequences. Furthermore, applicable regulations should be graduated in some proportion to the amount of government assistance received, so that private institutions would have options on the amount of government regulation to which they would be subject by the receipt of different kinds and amounts of public assistance.

There is an immense variety in the amount of government assistance received by various independent institutions. My 1975 survey of 93 private colleges showed that two of the 93 were so anxious to avoid government ties that they would not enroll a student who was receiving a guaranteed loan, a BEOG, or any other type of government assistance. Twenty-three others (25 percent) enrolled such students, but refused all government grants, contracts, or other direct financial assistance to their institutions. Twenty-eight institutions (30 percent) received what I would call nominal assistance—some, but less than 2 percent of their annual budget. Another twenty-eight (30 percent) received significant aid—over 2 percent but less than 10 percent of their budgets. Fourteen other institutions (15 percent) received assistance amounting to 10 percent or more of their budgets.

As matters stand today, laws and regulations pertaining to higher education fail to distinguish between the massively supported research institution and the aggressively independent small college. A small college president and I complained about this fact to a prominent United States Congressman and were shocked to have him reject our complaint out of hand because, he said, "there are no more private institutions; they all get millions of dollars from the federal government like Columbia." Can it be that our Congressmen and agency officials are really this ignorant of the composition of higher education? Their laws and regulations are written as if they were. The law need not be so blunt an instrument, except in the hands of the malicious, the ignorant, or the indifferent.

D. Student Assistance As A Basis for Regulation.

We also must seek to assure that government regulation of independent institutions is not premised upon the receipt of government financial assistance by their students. Otherwise, the critical distinction between public and independent is easily bypassed. So far as I am aware, Congress has never passed a law allowing agencies to regulate an educational institution solely on the basis of the receipt of assistance by its students. The Title IX regulations and the handicapped regulations both rely on this basis for regulations, but I am hopeful and confident that they will not survive challenge in court.

H.E.W. is apparently conscious of the weakness of its position. On May 19, 1978 an H.E.W. official sent a letter to all colleges and universities in the United States, stating that each would have to sign a new agreement "in order to be able to participate" in student assistance programs this fall. The agreement commits the institution to comply with all of the Title IX sex discrimination regulations and with all of the handicapped regulations. If these regulations validly apply to the institutions in question, why must H.E.W. insist that they agree to abide by them? And if these regulations are partially invalid—as several courts (discussed hereafter) have already held—how can a government agency justify compelling institutions to agree to comply with them?

H.E.W.'s May 19th letter is a high-handed threat to disqualify students from assistance programs funded by the federal government in order to coerce their colleges and universities into agreeing to observe agency regulations of doubtful validity. I submit that such extortion is unworthy of our government.

E. The Favored Status of Church-Related Institutions.

The final distinction that needs to be observed in the regulation of higher education

pertains to the special constitutional status of those independent institutions sponsored and supported by churches. There are almost 800 such institutions, nearly half of all the independents. Many, though not all, pursue a distinctive religious mission. Thus, it is said that at least 120 religiously affiliated colleges and universities asked for religion-related exemptions from the Title IX regulations.

By requiring that colleges and universities treat pregnancies and abortions like any other illnesses and by forbidding them from considering the marital status of their employees or students, the Title IX regulations pose a direct conflict between government regulatory initiative and private institutional and religious freedom. The Title IX regulations made provision for religious exemptions, but they were deficient in making them dependent upon application to H.E.W.

A federal court recently provided a persuasive reminder of the strong legal position of the church-related college. After receiving a complaint of sex discrimination at Mississippi College, a Baptist institution, the Equal Employment Opportunity Commission sought a subpoena to require the college to submit information on its employees and employment practices. A federal district court sustained the college's refusal to comply. The Civil Rights Act permits a church-related college to give employment preference to persons of its own faith. The court also ruled that official review of a genuine church-related college's employment practices would involve the sort of government entanglement with religious organizations that the Constitution forbids. In addition, even if the Commission only intended to conduct a surface investigation "the mere possibility of an EEOC investigation inhibits the college from preferring Baptist faculty members in instances subject to the Commission's scrutiny." Consequently, EEOC was precluded from even investigating the charge of sex discrimination in that case.

And what of those independent institutions not sponsored by churches? I submit that they should also have some constitutional protection against government action like the Title IX regulations, which seek to prevent colleges from taking positions on matters of value such as marriage and morals. The government should not be able to erase the moral implications that many attach to sex-related behavior like abortion, homosexuality, or sex relations outside of marriage. Otherwise, our government is, in effect, sponsoring an unconstitutional establishment of irreligion or amorality. There must be constitutional protections available to protect the value positions of non-church-related independent educational institutions willing to go to the trouble and expense of developing them.

IV. Being More Discriminating About Anti-discrimination.

My fifth point concerns the content of anti-discrimination laws and regulations affecting higher education. I contend that lawmakers and regulation writers should be more discriminating in their anti-discrimination. Some of the most important anti-discrimination laws and regulations are seriously deficient in failing to take account of the different nature of the discriminations they outlaw.

For example, the provisions of a law or regulation forbidding racial discrimination are not necessarily sound and workable when applied across the board for outlawing sex discrimination. Thus, in the Fair Housing Act of 1968 Congress enacted a complicated legal matrix forbidding the consideration of race, color, religion or national origin as a criteria for action in any transaction in the housing industry, including buying, selling, leasing, constructing, advertising, brokering, financing, maintaining and improving. The pervasive prohibitions of this law made good sense when applied to racial discrimination. But in 1974, with hardly any clarifying legislative history, Congress inserted the word "sex" into this matrix of prohibitions without any apparent consideration of the fact that in relation to some types of housing transactions, sex discrimination is qualitatively different from the other forbidden discriminations. This is why the courts, which have made race an impermissible classification for official action, have declined to do the same for gender. Thus, the interests of privacy and decorum make sex an appropriate matter for consideration in the context of apartment living arrangements.

This bad law-making led to the ridiculous situation in which the Department of Justice threatened to file suit against Brigham Young University and various off-campus landlords for sex discrimination because we had a cooperative program to assure that single men and women were housed in separate apartments and in separate buildings or wings of buildings. Each off-campus apartment in our community typically accommodates six students. To accomplish our policy the cooperating landlords, of course, consider the sex of the prospective occupants when they assign single students to the various apartments. But in its literal language—not illuminated to the contrary by any legislative history—the amended anti-discrimination law seems to make it illegal for anyone to consider the sex of any renter in fixing the terms, conditions, or privileges of any rental arrangement. No one was very comfortable with the ridiculous implications of the government's position, and after some helpful ridicule by the media—notably the New York Times, the Los Angeles Times, and syndicated writers George Will and James J. Kilpatrick—we found a way to settle the controversy on terms that permitted BYU and the landlords to continue their practices as to single students. But the issue should never have arisen in the first place. Congress should have been more discriminating about anti-discrimination.

The increasing inclusion of the word "religion" in antidiscrimination formulas provides another example. Prohibitions against discrimination on the basis of religion are appropriate as to public institutions. It would be unconstitutional for a state institution to consider religion in its hiring or promotion. Our Constitution commits us against a religious test for public employment. But when a church sponsors and supports a college or university, it should surely have the right to consider the religious belief or practice of the students it admits and those it employs to achieve its institutional objectives. The amended Civil Rights Act grants that privilege as to employment, but some government agencies and private groups, including some accrediting bodies, persist in challenging religious discrimination as if it were to be judged by the same legal and moral standards as racial discrimination.

V. Theories For Judicial Review.

In my sixth and final point I urge that colleges and universities band together to lobby against unsound and unworkable laws and regulations, and to challenge illegal regulations in court. This cooperative effort should include more careful advance attention to the implications of proposed rule-making and more determined opposition to illegal rules already enacted. Any who doubt the need for greater combativeness in this matter should consider how far we have gone in government control of higher education in the quarter-century from 1952 to 1977. It is past time to challenge this trend, which, if not arrested, will soon transform all of our educational institutions into a colonial empire of the federal bureaucracy.

Fortunately, the most obnoxious federal regulations are clearly vulnerable to judicial challenge.

The first deficiency in recent law-making on higher education is Congress' tendency to pass a law without clear content or clarifying legislative history, thus delegating its law-making function to the executive branch. Congress did this, for example, in its sweeping prohibition of discrimination against the handicapped, which includes no legislative provision or meaningful legislative history to define the "handicapped" who were the subject of this legislation. By this means, the operative concept upon which we are required to make far-reaching changes in employment and other practices and to expand millions of dollars in capital improvements is a vague generality that must be given meaning by an executive agency not responsible directly to the Congress or the electorate. The same vagueness was employed in the Education Amendments Act of 1972, whose sweeping prohibition of sex discrimination was applicable to programs supported by "federal financial assistance," but which gave no definition of this critical jurisdictional term. Such delegation is subject to judicial challenge.

Even easier to challenge are the principal defects in recent regulations, including those instances in which the agencies have promulgated regulations that go beyond the statutory authority granted by Congress, being to that extent illegal. H.E.W. did this in the Title IX sex discrimination regulations. The law outlaws discrimination on the basis of sex "under any education program or activity receiving Federal financial assistance . . ." That straightforward language embodies an appropriate principle: no education program or activity receiving federal financial assistance shall discriminate on the basis of sex. The reference to "education program or activity" obviously focusses the requirement on certain constituent elements of a university, college, or school. Congress obviously meant to impose its requirement selectively—not on an entire institution.

But that was not the basis on which H.E.W. acted when it issued its regulations. Secretary Weinberger's covering letter shamelessly declared that the law "forbids sex discrimination in any educational institution receiving federal assistance." And the official H.E.W. explanation of the coverage of the regulations—confirmed in its recently reaffirmed position on the coverage of intercollegeiate athletics—states that they apply "to all aspects of all education programs or activities" of an institution "which receives federal funds for any of those programs." If H.E.W. succeeds in this attempt to extend its regulatory authority over every program or activity of all institutions that receive or benefit from any federal financial assistance in any individual program or activity, H.E.W. will have accomplished a direct bureaucratic repeal of the limiting language enacted by Congress.

Fortunately, what one court called the "patently overbroad" coverage of the Title IX regulations is not surviving judicial examination. All four federal district courts that have considered the scope of these regulations have ruled that they were not valid in their attempt to govern employment practices in a recipient institution. All four cases reasoned that the Title IX regulations are invalid to the extent that they attempt to forbid sex discrimination as to institutional programs or activities that are not the direct recipients of federal financial assistance.

The handicapped regulations under Section 504 of the Rehabilitation Act of 1973 attempt the same overbroad regulations as Title IX, and they are subject to the same legal objection. Because of similar statutory language the handicapped regulations can only be valid as to programs or activities that are the direct recipients of federal financial assistance.

More recently, the Office of Education has proposed new requirements to regulate institutional refund policies under the Guaranteed Student Loan Program. In a prompt

and angry response the normally mild American Council on Education, speaking for ten educational associations, charged that the Office of Education "does not have the legal authority" to issue such regulations, that they were published "in direct and knowing disregard of the expressed intent of Congress," and that they constituted "an arbitrary, unwarranted, and illegal intrusion by the Office of Education into the internal administrative policies of the institutions." I am heartened to see the major educational associations raise their voices in protests long overdue.

The number of colleges and universities that have been willing to testify on proposed legislation or comment on proposed regulations has been small, and those which have been willing to go to court to oppose illegal laws, regulations and practices has been smaller still. It is heartening to see an increasing number of institutions which recognize the vital issue of independence and are willing to put their time and resources on the line to defend it. I am encouraged by the organization and recent actions of the National Association of Independent Colleges and Universities. That organization should be supported in its efforts to promote independence and urged to be even more vigorous.

Finally, we must work in the courts and through skillful counsel to develop First Amendment protections that will shield institutions of higher education from the regulatory excesses of government. As I have described elsewhere, there are significant constitutional foundations for the protection of education. The Supreme Court stated recently by way of dictum that "the right of freedom of speech and press includes not only the right to utter or to print, but . . . indeed the freedom of the entire university community." This statement and earlier holdings rejecting the regulation of private education provide raw materials to use in constructing a secure constitutional barrier to protect the freedom of educational institutions and their personnel.

I contend that government authorities need to be just as careful about regulating schools, colleges, and universities as they are about interferences with newspapers, public meetings or any other delivery mechanism for the products of free speech. As the essential transmitters of our culture and as the source, teacher, and practitioner of values in our society, schools, colleges and universities must be assured a wide range of freedom for their activities of discovery, advocacy, and practice. But if that principle is to be impressed upon the bedrock of our constitutional law, colleges and universities must have the will to oppose regulatory excesses in court and they must be willing to provide the resources of time and money necessary to provision the long struggle to develop constitutional doctrine.

IS EDUCATING YOUR OWN CHILD A CRIME?

(By Stephen Arons)

During the summer of 1977, Peter and Susan Perchemlides planned a home-instruction curriculum for their eight-year-old son, Richard. There was nothing unusual or difficult for them in this task, for these well-educated parents had taught their two oldest sons at home some years earlier. In early September of that year, the plan for Richard's home instruction was submitted for approval to the local superintendent of schools as required by state law. Eight months later, on April 6, 1978, complaints were issued in the District Court of Hampshire County in western Massachusetts against the Perchemlides for failure to send Richard to school. Dr. Perchemlides, a Ph. D. in biochemistry, had been accused of the crime of educating his own son.

The struggle between the Perchemlides family and the public school authorities of Amherst, Massachusetts, is not yet over; but the reactions of the parties, their attorneys, and the local press already show that the issue of state control over child-rearing practices touches the deepest feelings and values of American families and evokes the harshest of institutional reactions from the school system. In the narrowest sense, one economically poor but culturally advantaged family is simply seeking to educate their child within the family fabric and according to their perceptions of his needs. In a larger sense, however, the Perchemlides are asking whether there is room in America for dissent in the education of children.

The Perchemlides came to the Amherst area in 1975, drawn by the quiet beauty of the rolling hills and small farms spreading east from the Connecticut River. In their view, the academic institutions that set the tone for the area—the University of Massachusetts and Amherst, Hampshire, Smith, and Mt. Holyoke colleges—and the tolerant and progressive reputation of the schools and families in town would all contribute to the health and development of the family. This move was a substantial change from life in Boston where Peter had been first a research fellow at Massachusetts General Hospital and later a research associate at the Harvard University Medical School. Upon arrival in Amherst, Richard was enrolled in the second grade at a local elementary school, Mark's Meadow, run in conjunction with the University of Massachusetts' School of Education. The oldest two of the family's five children were enrolled in the public school system as well, and everything seemed promising.

But now the family is locked in a bitter battle with the Amherst School Department over Richard's education. Both sides claim they are acting in the child's best interest; and while neither side ascribes the actions of the other to self-interest or personal malice, there is apparently no compromise possible. At bottom, the struggle is over which side can justifiably express and seek to pass on to Richard its own values and world view, its own politics.

Looking back over the first year of what was to become a seemingly interminable controversy, Richard, now nine and a half, recalled his reactions to the one year he spent in the public school. "If you did something wrong, everyone would laugh. You had to do it just so, and it was boring to do it that way." Perhaps this is the meaning of the story his mother, Susan, tells about Richard's reaction when asked at school to provide a caption for a drawing of a woman in fancy clothes waving at someone. Richard reportedly thought it was "a working-class woman all dressed up to go somewhere she didn't get to go to much," but was afraid that if he said this the school counselor "wouldn't like us and our family." He simply replied, "I don't know."

The home education plan drafted by the Perchemlides is based on not only their earlier experience in educating the older boys at home, but also on their own views of natural and social order, and most pointedly by their reaction against the values, philosophy, and practices of the Amherst School Department. The curriculum document itself is extensive, containing page after page of detailed plans in such areas as language arts, earth science, ecology, music, mathematics, nutrition and health, and physical education, including a two-mile jog each day. The document has been reviewed by numerous education experts and found to be sound. Dr. David Campbell of the University of Pittsburgh School of Education, a consultant to public and private schools on curriculum and methodology, and the author of several books and over 40 articles, found the Perchemlides' program to be "the equivalent of a first-rate private academy both in its tutorial system and in . . . the curriculum."

When the family first raised the issue of home instruction with the Amherst Superintendent of Schools, Donald Frizzle, it apparently caught him by surprise. When asked later what his initial reaction had been, he commented, "I'd never been asked that before, and I had no particular procedures that I would normally just follow." Frizzle gave the family a form ordinarily used by the school department for private school approvals and told them to do the best they could with it. Meanwhile, he began a search for clarification of his legal powers and duties. Massachusetts compulsory attendance law requires that every child between the ages of six and 16 attend a public school or a private school approved by the local public school board, or be "otherwise instructed in a manner approved in advance by the local superintendent or school committee." The problem was not only that there were no prepared forms and procedures for the approval of home education plans, but that neither Frizzle nor the school committee had standards for making such approvals.

The Perchemlides' request for approval of home instruction is not, of course, the first time that a legal battle has been necessary to determine the relative power of government bureaucrats and individual families over the education of children. Over half a century ago, the U.S. Supreme Court declared unconstitutional one of the most blatant attempts by government to control value inculcation of children through schooling. In 1922, the state of Oregon had passed legislation requiring all children to attend public schools only. In declaring that the "child is not the mere creature of the state," the high Court ruled it a violation of fundamental constitutional liberties for a state to seek to "standardize . . . children by forcing them to accept instruction from public teachers only." Since 1925, the Pierce case has become a force for the maintenance of parental liberty in education, yet even in that case the Court implied that some regulation of education by the state was within constitutional bounds.

Two years later, the Supreme Court further narrowed the circumstances in which a state may restrict parental power over a child's education. The government was prohibited from eliminating alternatives to public school and also from regulating those alternatives so extensively as to make them identical to the public school. In the 1927 case of Farrington v. Tokushige, the legislature of Hawaii had unsuccessfully defended a set of private-school regulations which encompassed teacher qualifications, the content of textbooks, and a teachers' pledge to "direct the mind and studies of pupils in such schools as will tend to make them good and loyal American citizens." As with the Pierce case, the Court in Farrington was quashing a kind of jingoistic know-nothingism that was common in the 1920s' fear of diversity.

In the last 50 years there have been only two major cases that further delineate the limits of government power to control education through regulation of alternatives to public schooling, both of which have had a religious basis. In 1972, members of the Amish community of Wisconsin refused to send their children to any school after the eighth grade, claiming that the worldly, competitive, materialistic values of school undercut the communal religious values embodied in the Amish society's living church. The Court, in Wisconsin v. Yoder, upheld the Amish parents' act of conscience and invalidated the Wisconsin compulsory attendance law as applied to them. The case made clear that the Amish definition of education

as learning-through-doing was sufficient to meet any legitimate government interests in education.

The Perchemlides suit differs substantially from the Amish case in that the Perchemlides do not claim a religious basis for their convictions about family values and interpretation of the meaning of life, making them conscientious objectors without religious identification. It differs also in that rather than challenging the compulsory attendance law, the family seeks instead to comply with that part of its provisions in Massachusetts which makes home instruction a right. The crucial issue on this point is whether the government may so regulate a legislatively sanctioned alternative to public schooling that its distinctive quality is eliminated or contorted. Since 31 other states permit home instruction in fulfillment of compulsory education laws, the scope of legitimate government regulation is of central importance.

The second major school regulation case was Whisner v. Ohio in 1976. Although it, like Yoder, relied on religious claims, the federal court in Whisner ruled that the government may not use even a system of minimum standards in the regulation of nongovernment schooling if the result is to effectively eliminate real alternatives to the public school. In spite of the negative view that both Court and Constitution have taken toward government monopoly on education, the desire to hang on to power seems to have prompted the Amherst school authorities to claim "absolute discretion" in passing upon home education plans and to dismiss the parents' plan and values as "pet educational theories."

Confronted with a unique local case and a body of legal doctrine that is forceful but not detailed, Superintendent Frizzle and his staff seem to have been genuinely confused about how to react. Perhaps it was beyond their experience to be confronted with a family that insisted on defining what was best for their child's education. But the kind of process that the school department established to deal with this situation is an indication that they perceive a threat to professional power and government control of education in the Perchemlides' request. From interviews, depositions, and internal memoranda, the picture emerges that the school authorities meant to avoid a straightforward conflict.

At the outset, the superintendent asked for the submission of a written home-education plan but did not give any standards which the parents would be required to meet. Considering that failure to meet the school department's criteria could expose the family to criminal sanctions and even, ultimately, to the seizure of their son by the State Welfare Department, this vagueness would itself be enough to merit legal condemnation as a denial of due process. Upon submission, the plan was turned over to the school department staff for evaluation. Later, the superintendent was to claim that the standards of judgment were those mentioned in the statute for the approval of private schools, namely, that the program "equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town." Just what this equivalence really meant has never been specified, but counsel for the family, Wendy Sibbison and James Disceglia, knew it could not literally mean "the same as" the public schools or the *Pierce, Farrington,* and *Whisner* cases would have to be overruled.

The school department offered a four-inch-thick sheaf of papers purporting to describe the curriculum of the school system. Was it this to which the parents had to make their plan equal? Frizzle replied, "The burden is on the person who wants to do this." But do the parents have to equal every detail of this curriculum? No, but the parents could not be told which aspects they had to match "because that would be an invasion of their values and policy." They must "do what they feel is proper"; then judgment would be passed.

As it turned out, that judgment was passed on the proposed program on October 7, 1977, when the Perchemlides were notified that their plan had been rejected. Although each of the four grounds on which the plan was denied was based on lack of information, the family was not asked for further details. Neither was the family ever confronted with the negative opinions of the school department's experts or given a chance to refute or counter them prior to the decision. The reasons themselves are part of the roller coaster of confusion created by the school department. Although the plan is for home instruction, and such instruction is a right under state statutes and court decisions, the superintendent disapproved of the plan in part because it provides no "group experiences." The school department was unaware that a 1967 New Jersey case, *N.J. v. Massa,* dealt with just this issue, ruling that "to hold that the statute requires equivalent social contact and development would emasculate this alternative and allow only group education, thereby eliminating private tutoring for home education."

The superintendent also objected that the family had made no indication that they had the "training or background appropriate to the task you propose to undertake." Although Frizzle publicly admits his respect for the family's home life and for Peter's "immense intelligence" and "deep philosophical thinking," he notes that a Ph.D. does not necessarily know how to teach children. Yet the family had educated the two oldest sons, Greg and Steven, at home for four years; they were then enrolled in Amherst public schools where they received A's and B's their first year.

After their plan was rejected, the family sought a review of the case before the school committee, whose power is concurrent with that of the superintendent. Here the standards become still more confusing and contradictory, and the procedure becomes still more Orwellian. The school committee met five times to discuss the case. At the first meeting, the family was present with counsel, but no hearing was held because the school committee found it necessary to request additional curriculum information from the Perchemlides and to seek legal counsel on their powers in this matter. The committee subsequently received both sets of information, but never notified the parents or their attorneys of the meetings at which all the facts were to be considered, the expert opinions heard, and the witnesses examined. Considering that the parents might still suffer criminal penalties and lose their son to the state, proceedings before the school committee resembled the Star Chamber. The family had no notice of hearing, no counsel present, no opportunity to present its own expert witnesses about the quality or philosophy of the curriculum they proposed, no opportunity to cross-examine or even hear the witnesses who testified their plan was unacceptable, no knowledge of the standards being applied, and, ultimately, no statement of the reasons for the school committee's December 16, 1977 denial of their request.

During all this time, the Perchemlides continued to educate Richard at home, trying to undo what they viewed as the damage done by Richard's year in the Amherst public school. Richard, like the rest of the family, was under intense and increasing pressure as a result of the conflict with the school authorities. After a year in the spotlight, Richard would admit that he "liked being recognized." "But," he was quick to add, "I like even better just staying at home."

After the school committee's denial of the family's "appeal" and its refusal on January 30, 1978 to reconsider, the school department began to increase the pressure on the family. Up to this point, the superintendent had seen no need to "jam the law on them" and had never really questioned the sincerity of their teaching efforts or the adequacy of their home environment. In fact, in a deposition taken during this past summer, Frizzle admitted that he had implicitly approved the home instruction plan before.

Between threats, negotiations, and a general reluctance to set the wheels of the criminal law in motion, it was not until April 6, 1978, that criminal charges were finally brought against the Perchemlides under the state truancy statute. The family's lawyers, working virtually without pay because Peter was unemployed and Susan was a full-time student, immediately filed a civil suit seeking to halt the criminal prosecution, to force the school authorities to formulate standards for approval of home education plans, and to approve the family's plan pursuant to such standards.

The family's suit contends that the school committee's standards for approval of home education must be minimal. Since the family's rights of privacy, conscience, and belief are at risk in government regulation of education, the suit seeks to require that any regulation of the right of home education in Massachusetts be justified by a compelling state interest. Most important, the Perchemlides call for an end to the practice by which education standards and truancy laws are used to impose the educational philosophy and political and cultural values of the school bureaucracy upon individual families.

The case now rests before the Superior Court where, at this writing, the school authorities still seek to prevent a public hearing of the facts by taking the position that the parents have no claim and should therefore be dismissed from the court. The criminal charges have been dismissed because of the pending civil suit, but they could be renewed if the family is unsuccessful at trial. It seems unlikely that the matter will reach an out-of-court settlement or even end with the Superior Court.

It is ironic that this case should develop in the Commonwealth of Massachusetts, which considers itself the birthplace of universal education and the cradle of individual liberty in America. As the case moves beyond the personal struggle of one family and one school bureaucracy, it seems increasingly to ask whether something has happened in the development of public education to bring it into conflict with the principles of individual liberty and free and vigorous dissent upon which our Constitutional order rests.

One might have thought that this contradiction was put to rest in 1925 when the *Pierce* case denied the legitimacy of a government monopoly of schooling. One might also think the matter was settled in Massachusetts in 1897 when the state's highest court interpreted the compulsory education statute to allow home education and enunciated the purpose of compulsory education to be "that all children shall be educated, not that they shall be educated in any particular way." The issue refuses to go away.

Perhaps it is the growth of government-operated schools as self-justifying bureaucracies which highlights the parents' perception of their differences from public school ideology and moves them to resist. And perhaps the absence of more such resistance is explained by the flattening of cultural diversity and personal individuality that is left in the path of the public school steamroller. At any rate, the Perchemlides have brought forth out of their personal life, and at substantial personal risk, a serious question.

For over 100 years, Americans have assumed that education decisions are properly the province of the political majority. For

50 years, we have admitted the danger of such an assumption only when dissenters could ascribe their views to some organized religious theology. The Perchemlides seek nothing more than their due under a state statute which creates the right of home education. But their actions have turned our assumption into a question. Can a politically democratic and individually robust society afford to allow majority control of value inculcation in schooling, or does the freedom to learn, to form beliefs, and to develop personal consciousness free of government coercion need the same protections as the freedom of speech and religion?

FEDERAL EMPLOYMENT AND THE CONSTITUTION

Mr. HATCH. Mr. President, of relatively recent origin has been the notion that Federal employees hold a constitutionally-protected property right in their employment, and that such employment cannot be denied them, whatever the reason, in the absence of extended procedural and due process safeguards. As described by one observer, the Constitution is today viewed by a majority of the Supreme Court as a "sort of super-Pendleton Act, extending the civil service laws to even those aspects of government employment untouched by the statutes themselves."

The procedural and evidentiary obstacle course that must be circumvented in order to dismiss even the most incompetent and careless public employees has created in such employment a measure of job security virtually nonexistent in the private sector—a consideration never weighed in computing "comparability" between public and private sector job benefits. As a result, not only must the public suffer from a less efficient Government than they might otherwise expect, but conscientious public sector employees are tarnished. The civil service reforms approved late in the 95th Congress were, in part, prompted by the difficulty in removing public employees from their positions.

The Washington Post recently carried an informative debate on the propriety of Federal jobs as "property" of the individuals occupying them. Robert M. Kraus, editor of the Washington Monthly—from which the Post reprinted his article—states the case in opposition to this concept, while Louis Fisher, a specialist with the Library of Congress, argues in its defense.

I ask unanimous consent that the Washington Post articles on this subject be printed in the RECORD at this point.

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

WHEN A JOB BECOMES 'PROPERTY', IT'S HARD TO FIRE A CIVIL SERVANT

(By Robert M. Kaus)

Sometime last January, a radical proposal landed on the desks of Stuart Eizenstat's aides in the Old Executive Office Building. It was a draft "decision memo" on civil service reform—the "centerpiece" of President Carter's reorganization plans and the main vehicle for his efforts to "increase government's efficiency by placing new emphasis on the quality of performance of federal workers."

The memo, prepared by the Civil Service Commission and the Office of Management and Budget, certainly fit the president's requirements, particularly in the critical area of removing "non-performing" employes. To replace the byzatine structure of hearings, notices and appeals to which civil servants were then entitled, the memo proposed a simple procedure: employes could be dismissed by the concurrence of three supervisors—the one who initiated the discharge, a higher-up and a third supervisor experienced in deciding such disputes. If these three agreed that an employe wasn't performing up to snuff, the employe would be fired, then and there, with only a limited right of appeal for "substantial procedural error."

Despite the proposal's fairly dramatic potential for improving bureaucratic performance, some of Eizenstat's aides were troubled. For one thing, the memo surely would provoke opposition from federal employe organizations. But bargaining with the unions was to be expected, and there was even some virtue in starting the negotiations from a tough position. No there was another, trickier problem—the proposal might be *unconstitutional.*

Simon Lazarus and Steven Simmons, two lawyers on the Domestic Council, were particularly disturbed by this possibility. They called in some legal scholars and the Justice Department. Yes, came the answers, there were indeed constitutional difficulties. While the decisions of the Supreme Court were fuzzy, they appeared to require that every civil servant be given a full-pledged trial-type hearing before he could be finally discharged. Armed with these opinions, Lazarus and Simmons successfully led a push to change the draft proposal. By the time the decision memo reached Carter's desk, the right to an evidentiary appeal had been restored.

After the White House sent this revised proposal to Congress, and at each stage in the bill's passage into law, what had happened in the Executive Office Building happened again. Those who wanted to make it less difficult to fire incompetent civil servants not only had to negotiate with the employe unions, and their congressional champions, but with an unseen third party—the Supreme Court.

During the House-Senate conference, for example, Rep. William Ford (D-Mich.) repeatedly and effectively argued that unless more protections for employes were added, the whole reform package would be threatened. "The very first case of any consequence is going to be in the courts," Ford warned the conferees, "and then Scotty [Civil Service Commission Chairman Alan "Scotty" Campbell] is going to be sitting with a death row over there of thousands of cases waiting to see what the Supreme Court is going to do."

By the time the bill became law, the provisions for firing unproductive civil servants had expanded to become a complex three-stage pyramid of procedural hurdles: First, an employe is entitled to 30-day notice of the "adverse action," and a chance to rebut the charges against him. Then, if he wants, he is entitled to a trial-type hearing before the new Merit Systems Protection Board (MSPB), at which his agency must demonstrate that "substantial evidence" supported the decision to fire. Finally, the discharged employe can seek review of the MSPB's ruling in a federal appeals court.

DUE PROCESS CLAUSE

So, if you're expecting the new civil service reforms to create, as Carter put it, "a climate in which managers may discharge nonperforming employes," don't hold your breath. It's easier now to fire a civil servant, but one shudders to think how long an employe with the right kind of lawyer could prolong the appeal of a discharge under the new system.

The administration hopes, at best, for a 60-day "turn-around" between the date of firing and the decision of the MSPB. The board that performed the MSPB's function before the recent reorganization, however, took an average of 168.9 days to decide each case. And that's just the appeal to the MSPB. Tack a 30-day notice in front of that, and a trip through the clogged federal appeals court at the end, and you've still got a system under which supervisors will be asking themselves, "Is it worth a year or more of my time trying to fire this guy?"

What the history of the civil service bill shows is that the main obstacle to changing this system is no longer the Congress, or even the unions—it's the courts. It was the threat of unconstitutionality—of judicial veto, as it were—that scared Carter's aides and supporters into watering down their reforms.

The part of the Constitution that caused all the trouble is the due process clause, which says that the government shall not "deprive any person of life, liberty or property without due process of law." Just reading the provision, you might not think it was designed to protect civil servants. But, knowing the need for judges to elaborate on the Constitution's purposefully vague language, you might speculate that firing a federal employe would be construed, in some esoteric way, to be a deprivation of, er . . . liberty? The liberty to engage in a profession perhaps—"the right to type," you know, that sort of thing. You would be wrong. Firing a federal civil servant does not per se deprive him of "liberty" under the due process clause. What a civil service job is, in modern constitutional theory, is property.

Today, law students know they are well on their way to "thinking like lawyers" when this strained reading of the Founding Father's words begins to make sense. Forty years ago, however, the average attorney would have stared back is disbelief at anyone who told him that a federal job was property, just like a plot of land. It took a lot of ambitious thinking, and a bit of history, before the idea became second nature.

But if two men have to take credit for the spectacular growth of the constitutional job rights of government workers, they would probably be Sen. Joe McCarthy and Charles Reich (the latter better known as author of the '60s bestseller, "The Greening of America.") Let's start with McCarthy.

GREAT LIBERAL VICTORY

Prior to the 1950s, the law on firing government employes was fairly simple: the government could constitutionally fire an employe without jumping through any procedural hoops. Moreover, the government employe worked—as far as the Constitution was concerned—at the will of his superiors; he could even be sacked solely because of his political inclinations. These principles were neatly summed up in Oliver Wendell Holmes' 1892 statement that a policeman "may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."

All that changed during the McCarthy era, as red-hunters searched the government payrolls for communists and their sympathizers. A generation of liberal lawyers was weaned on the struggle against the persecution of these employes, and it was a great liberal victory when, in 1956, the Supreme Court stopped the dismissal of a New York college teacher who had been fired for taking the Fifth Amendment at a federal loyalty inquiry.

In presuming that this act was an admission of guilt, the Court said, the state had failed to afford the teacher the "due process" required by the Constitution. The Court didn't specify, in terms of the language of the due process clause, just what the teacher had been deprived of—was it life, liberty or property? But this was no time for con-

ceptual nicety, and over the next decade "due process" was repeatedly invoked in attempts to save the careers of officials charged with subversive leanings. Taking away someone's government job had become a serious constitutional matter.

In 1964, Reich entered the picture. He was troubled by the growing importance of government largesse—from welfare payments to broadcast licenses to admission to the bar, the well-being of more and more Americans seemed to depend on what their country could do for them. In a sweeping and original article, Reich described this growing dependence as a threat to individual liberty.

His solution was to restore the status of the individual citizen by giving him constitutional rights to the largesse he received. Significantly, the right on which Reich seized as his model was the property right, and he argued that all manner of government benefits should be "property" under the due process clause, with elaborate procedures (the "due process") required before the benefits could be withdrawn. Just as 10 acres and a mule had been the basis for individualism in earlier times, Reich reasoned, so his "new property" could preserve individual freedom in the "joyless landscape of the public interest state."

Surprisingly, while Reich noted that the government accounted for 20 percent of all jobs, and that many other jobs depended on government contracts, he didn't put much emphasis on protecting the interests of government workers. Instead, he concentrated on cases, like cutoffs from welfare benefits, in which the injustice of arbitrary government action seemed overwhelming.

But Reich's article fell on the receptive ears of a booming civil rights industry, whose whole raison d'etre was finding more and more ingenious applications for new constitutional theories like Reich's. Law reviews—student-run journals that are the primary outlets for American legal scholarship—soon converted Reich's proposal into an abstract legal formula capable of almost unlimited application.

The courts, wrote one eager law reviewer, should "regard life, liberty and property as encompassing everything of which a person can be deprived, and hold that a person has a claim within the ambit of the due process clause whenever governmental action has accrued to his detriment." All that you needed to make a "new property" right was some action by the government that was hurting somebody, and liberals had a field day finding injustices that could be cured by application of this recipe.

MORE CAUTIOUS AT FIRST

The Supreme Court was a bit more cautious in its approach, but after a few years of exhortation by the legal journals—and after a few of the law students who had written those articles had served their tours of duty as assistants to the Justices—the Court started creating a series of "new property" rights. Welfare payments, of course, were first on the list, with the Court ruling in 1970 that a state couldn't remove a recipient from the rolls without first giving him a chance to prove his eligibility at a quasijudicial hearing. From welfare the Court moved on to drivers' licenses, which became "property" under the due process clause in 1971.

These decisions were well-received by the legal profession's avant-grade. But, the law reviews noted, there were still some areas where the new formula hadn't been applied. For example, what could be more important to an individual than his government job? "Given the modern emphasis on protecting individuals against significant inflictions of harm," one commentator complained, "why have the courts excluded public employes from the expanded panoply of the due process clause?"

In 1972, the inevitable happened. A political science professor at a Texas state college was dismissed, and he sued to get his job back. The job, the teacher said, was his "property," and the state shouldn't have been able to take it away without giving him, in effect, a mini-trial at which he could dispute the grounds for dismissal. The Supreme Court was unanimous in its agreement. In deciding that a government job could be "property," the Court handily cited as legal precedent the McCarthy-era cases that had reinstated employes in the name of "due process." But there was a key difference between those cases and the "new property" theory. In the 1950s, the courts had protected employes who had been fired for exercising some constitutional privilege, like the right against self-incrimination. The new rule applied indiscriminately to every deprivation of the "property interest" in a job. Whether you were discharged because you were a red, or because you slept at work, you were constitutionally entitled under the "property" doctrine to "due process."

Two years later, in *Arnett* v. *Kennedy*, a divided Court extended this "property" right to include the jobs of federal civil servants. At the same time, the Court announced its intention to guarantee those employes their "due process" even if the Congress chose to cut back on the procedures required in the statutes. A discharged employe, the Court majority implied, could demand a full inquest, with lawyers, testimony and cross-examination, if he chose to fight his dismissal.

Arnett is the case that gave civil service reformers in the Carter administration the biggest headaches. In effect, it presented them with a choice: give all employes the right to cumbersome trial-type hearings, or risk passing a law that would be struck down by the Court. In fact, the threat of *Arnett* was so great that it was successfully used to attach a provision in the White House's bill that dared to go so far as to deny employes a hearing if there were no factual disputes to hear.

Since the effect of *Arnett* has been to help gut the most important piece of legislation Congress addressed last term, we have good reason to question the wisdom of that decision—and of the property rationale that underlies it. In private business, after all, the courts are quite willing to say that being fired isn't the end of the world for an employe—at least no court has yet ruled that the Constitution requires private employers to go through evidentiary hearings to determine if each and every discharged is justified. Why, when the government is doing the hiring and firing, is the situation so different that lawyers and judges should fall all over themselves with constitutional concern?

NEW LAYER OF RED TAPE

In retrospect, the crusade for the federal employe's job rights appears to have been, at best, misguided—particularly from the point of view of the liberal lawyers who led it. The net effect of their efforts was to add a permanent layer of red tape to the bureaucracy, and to hamper the ability of the government to perform all the regulatory and redistributive functions liberals care about.

Even to civil libertarians, government employment is beginning to look like one area where the Court got carried away by the "new property" fad. Prof. Laurence Tribe, a liberal defender of judicial activism, admits concern over "attempts to squeeze public office-holding into the mold of private property entitlements." He notes a "thoughtful reconsideration" of the issue by Prof. William Van Alstyne, who concludes, "There is something abrasive and offensive, something anachronistic, in the idea that public sector positions can be appropriately described as the property of the individual status holder."

This "thoughtful reconsideration" has so far eluded the Court. Instead, even after *Arnett*, the justices preferred to see the Constitution as a sort of super-Pendleton Act, extending the civil service laws to even those aspects of government employment untouched by the statutes themselves.

The absurd culmination of this attitude came in *Elrod v. Burns*, a 1976 case in which the Supreme Court imposed its version of the "merit system" on the venerable patronage machine of Chicago—and, incidentally, on all the other state, local and federal government institutions that had previously avoided the bureaucratic arteriosclerosis of the civil service.

Burns was a minor functionary in the office of the Republican sheriff of Cook County, Ill. As a bureaucrat in a patronage system, he could only expect to retain his job as long as his party remained in power. And, when the voters of Chicago elected a Democratic sheriff named Elrod, Burns was fired—as everyone knew he would be.

This time, though, the Supreme Court stepped in. Such patronage dismissals, Justice Brennan said in his opinion, were unconstitutional; they penalized Burns for expressing his Republican sympathies. The civil service ideal—that government service should be free from all political risk—had come to Cook County. Henceforth, according to Brennan, even political appointees at Burns' level could only be fired for "good cause."

But the Court, we may imagine some astute law review editor pointing out, had yet to extend this principle to its ultimate application. That will happen the day the justices rule that a losing candidate for reelection can successfully sue to get his office back. After all, how could the courts allow him to be deprived of his valuable government job simply because of the views he expressed in a campaign?

PROTECTING CIVIL SERVANTS: THERE ARE REASONS AND PRECEDENTS FOR DEFINING JOB RIGHTS AS PROPERTY

(By Louis Fisher)

In his article in the Dec. 24 Outlook, Robert M. Kaus weaves a grandiose theory to show how court decisions have frustrated civil service reform efforts. Because of such decisions as Arnett in 1972, which he says helped "gut the most important piece of legislation Congress addressed last term," civil servants continue to have access to hearings, notices and appeals before losing their jobs.

When his article was first printed in The Washington Monthly, it had a title that made his theme especially provocative: "How the Supreme Court Sabotaged Civil Service Reform." Kaus takes special delight in ridiculing the proposition (recently invented, he says) that a job with the government, because it is "property," requires protection under the due process clause of the constitution. His crabbed analyses about the judiciary, removal powers, the civil service act and property rights merit a rebuttal.

Kaus claims that the property issue is of recent vintage. "Forty years ago," he writes, "the average attorney would have stared back in disbelief at anyone who told him that a federal job was property, just like a plot of land." He traces the job-property relationship to the sensational exploits of Sen. Joe McCarthy in the 1950s and to an article by Charles Reich published in 1964.

It should not take too much training in the law (even for an average attorney 40 years ago) to recall Marbury v. Madison, handed down in 1803. Chief Justice Marshall held that the president had discretion over an office until an appointment is made, but that thereafter "his power over the office is terminated in all cases, where by law the officer is not removable by him. The right to the office is then in the person appointed,

and he has the absolute, unconditional power of accepting or rejecting it." Congress had given Marbury's office a tenure of five years. Marbury had a legal right to serve for that period. He did not get the job, but Marshall's decision gave early evidence that a federal job could constitute a property right. It also suggested that Congress could circumscribe the president's removal power through statutory restrictions.

"Prior to the 1950s," we learn from Kaus, "the law on firing government employes was fairly simple: the government could constitutionally fire an employe without jumping through any procedural hoops. Moreover, the government employe worked—as far as the Constitution was concerned—at the will of his superiors; he could even be sacked solely because of his political inclinations."

Not so. The record prior to the 1950s is decidely different. Has he forgotten about the Pendleton Act of 1883? Or the job-property linkage in the case of U.S. v. Perkins, in which the Supreme Court in 1886 agreed that a naval cadet engineer could sue for pay in the Court of Claims? The secretary of the navy had discharged him without a showing of deficiency in any examination. He had been dismissed not for misconduct under any provision of law, nor had he been sentenced by court martial (statutory procedure). Thus he was still in office and entitled to the pay attached to it. Procedures existed at that time to prevent arbitrary dismissals.

The Lloyd-LaFollette Act of 1912 established some more "procedural hoops" to protect federal employes. While members of the classified civil service could be removed "for such cause as will promote the efficiency" of the agency, they were entitled at least to (1) reasons given in writing, (2) notice of the action and of any charges preferred against them, (3) a copy of the charges and reasonable time to file a written answer, with affidavits, and (4) copies of the agency's decision.

Examination of witnesses, trial and hearing were not required by statute, but could be furnished at the discretion of the official directing the removal.

It is false to say that a federal employe could be "sacked solely because of his political inclinations." A distinction is needed between employes under the civil service and officials appointed with the advice and consent of the Senate. Certainly protection against political dismissals has been available for civil servants. Even presidential appointees have access to some protection. Franklin D. Roosevelt tried to get rid of William Humphrey, a federal trade commissioner, by asking him to resign for these reasons: "I do not feel that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission." Humphrey, placed on the commission by Republican presidents, had openly sided with the business interests. This effort to remove him for policy and political reasons failed in the courts. In this case, decided in 1935, FDR's right of removal was limited to the statutory grounds established by Congress.

The claim that federal employes could be sacked for political reasons ought to remind us of Congress' attempt, in 1943 to prohibit the payment of public salaries to three individuals described by a subcommittee chairman as "irresponsible, unrepresentative, crackpot, radical bureaucrats" and affiliates of "communist-front organizations." The Supreme Court, in 1946, struck down that use of legislative power because it inflicted punishment without a judicial trial and therefore violated the Constitution's prohibition against bills of attainder.

Procedural protections are not the monopoly of the courts. In 1950, before Joe McCarthy began to make headlines, Congress passed legislation to allow certain agencies to suspend civilian employes whenever "necessary in the interest of national security." Once suspended, however, permanent employes had access to these procedurel safeguards before removal: (1) a written statement of the charges within 30 days after suspension, stated as specifically as security considerations permit; (2) an opportunity within 30 days to answer the charges and to submit affidavits; (3) a hearing, at the employe's request, by an agency authority constituted for that purpose; (4) a review of the case by the agency head or designee prior to a decision adverse to the employe is made final, and (5) a written statement of the decision.

This statute applied only to national-security dismissals. Removals of other civil servants were circumscribed by even more stringent procedures.

SECURITY CASES OF THE 1950'S

Kaus indicts the judiciary of the 1950s for impeding the government's right to fire employes. As a result of McCarthy's hunt throughout the federal payroll for communists and their sympathizers, a "generation of liberal lawyers was weaned on the struggle against the persecution of these employes . . ." Kaus says that the concept of due process was repeatedly invoked by the courts "in attempts to save the careers of officials charged with subversive leanings. Taking away someone's government job had become a serious constitutional matter."

First, the decisions were meant to save more than "careers." Reputations were at stake. Reputation has long been considered more precious than ordinary forms of property. The idea that property includes a person's name was recognized by the Supreme Court in 1891, in the case of Brown Chemical. Unambiguously the court stated: "A man's name is his own property, and he has the same right to its use and enjoyment as he has to that of any other species of property." Property has always been more than "a plot of land," as Kaus would define it.

Personal reputations are destroyed when the government dismisses officials as alleged security risks. Courts properly insist on procedural standards and constitutional rights for those accused of betraying their country. To be excluded from public employment on grounds of disloyalty, as the Supreme Court noted in 1952, becomes "a badge of infamy." To be dismissed under that cloud devastates a workers opportunity not only within the federal government but in the private sector as well.

Kaus points out that the courts in the 1950s protected employes "who had been fired for exercising constitutional privilege, like the right against self-incrimination." This is a pinched interpretation. Much more vital principles were preserved. The courts refused to let the government depend on "faceless informers" for their evidence. Employes accused of disloyalty were entitled to confront and cross-examine their anonymous accusers. Otherwise, the government should drop the charges. Many of the informants had not even made their damaging statements under oath.

The principles of free speech and free association were also part of this battle in the 1950s. Federal judges suspected that employes were being fired not for wrong conduct but for "wrong views." Someone subscribed to the wrong magazine. Someone else had a wife who associated with the wrong group. Dismissal for wrong thoughts, some judges concluded, had nothing to do with protecting the security of the United States. It had a lot to do with undermining First Amendment freedoms.

Congress could have curbed these court decisions through its power to limit appellate jurisdiction. Bills were introduced to remove the Supreme Courts authority to review the Federal Loyalty-Security Program. Congress considered removing the employe's right of confrontation and cross-examination. Some legislators proposed the application of summary suspension powers to all nonsensitive federal jobs. All of the efforts failed. There was broad agreement, then, in Congress as well as the courts, that employes accused of disloyalty were entitled to carefully delineated procedures.

"NEW PROPERTY" ORIGINS

Kaus correctly assigns to Charles Reich a major influence in the growth of the "new property" rights. Reich's article in 1964 argued persuasively that, with the growth of governmental regulation and benefits, reaching deeply into the private sector, citizens were more in need of procedural safeguards. Doctors should not be deprived of their medical license, for instance, or taxi drivers their medallion, without predictable and enforceable procedures.

Beginning around 1970, the courts began handing down a series of decisions that dramatically broadened the rights of individuals affected by governmental decisions. In his handling of these cases, I think Kaus misses their significance.

He states that the Supreme Court prohibited a state from removing a recipient from the welfare rolls "without first giving him a chance to prove his eligibility at a quasi-judicial hearing," but the issue in *Goldberg v. Kelly* was of larger moment. The purpose was not to allow someone to prove eligibility but to assure that once a recipient qualifies for assistance, he has a right to receive benefits so long as he continues to satisfy the legal criteria. State officials should not be allowed to capriciously terminate benefits. While the government has an interest in conserving fiscal and administrative resources, that cannot outweigh the procedural rights of a recipient to produce evidence in rebuttal before termination occurs.

"From welfare," Kaus writes, "the court moved on to drivers' licenses, which became 'property' under the due process clause in 1971." Is this such an absurd result? The State of Georgia had suspended the driver's license of a clergyman without first considering whether he was at fault in an accident. The Supreme Court recognized that a driver's license may be essential in the pursuit of a livelihood. The state should not take it away without determining that a judgment is at least likely against the licensee. Like the Goldberg holding, the state must have some rational basis for discontinuing a benefit. Without recourse to reason you will have government run by erratic and whimsical officials.

Kaus discusses the 1972 decision that applied property to job rights. A professor at a Texas state college, after being dismissed, sued to get his job back. According to Kaus, the Supreme Court's "new rule applied indiscriminately to every deprivation of the 'property interest' in a job. Whether you were discharged because you were a red, or because you slept at work, you were constitutionally entitled under the 'property' doctrine to 'due process.'"

Let's cut through this extravagance. The professor in the Texas case had been employed for 10 years in the state college system. During his last four years he was reappointed under a series of one-year contracts, until in 1969 the Board of Regents voted not to offer him a new contract. Although a press release by the regents charged him with insubordination, he did not receive an official statement of the reasons for the nonrenewal. Nor did he have an opportunity for a hearing to challenge the basis for their action.

The court held that the mere absence of an explicit tenure provision did not foreclose the possibility that he had a "property" interest in reemployment. He was entitled to prove his contention that a de facto policy existed, arising from rules and understand-

ings officially promulgated and fostered by the college. Such proof would obligate college officials to grant a hearing, at his request, to enable him to learn the ground for his nonretention and to challenge their sufficiency. This is a far cry from the court applying a new rule "indiscriminately" to every job interest. This point is underscored by the case of a professor of political science in Wisconsin who was told prior to the end of his first full year that he would not be rehired. No reason was given. The Supreme Court said that neither his "liberty" nor his "property" under the 14th Amendment had been deprived.

Kaus misreads these decisions by concluding that a civil servant's removal does not deprive him of "liberty" under the due process clause.

Consider the "property" of someone whose wages are garnished. A finance company in Wisconsin instituted an action against a woman and her employer. She was not given notice. She had no opportunity to be heard prior to the seizure of her wages. The Supreme Court was asked in 1969 whether there had been a taking of property without procedural due process. With only one justice dissenting, the court struck down the prejudgment garnishment procedure, stating that as a practical matter it might "drive a wage-earning family to the wall."

Another garnishment case, decided by the court in 1972, concerned a Connecticut law under which a finance company had garnished the savings account of a woman without notice or hearing. A lower court decided that it lacked jurisdiction because the case involved "property" rights rather than "personal" rights (over which the court would have had jurisdiction).

In sharp language the Supreme Court repudiated that distinction. The dichotomy between property rights and personal liberties, said the court, was a false one. The illuminating language of the court deserves quotation in full: "Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right, whether the 'property' in question be a welfare check, a home or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other."

WHISTLEBLOWERS' RIGHTS

From Kaus we learn that the Carter administration searched for a simple way to remove "nonperforming" employes. As a substitute for the "byzantine structure" of hearings, notices and appeals, White House staff toyed with the idea of dismissing federal workers on the concurrence of three supervisors: "the one who initiated the discharge, a higher-up and a third supervisor experienced in deciding such disputes."

Simple indeed! But what would this streamlined system do to the likes of Ernest Fitzgerald, the Air Force procurement specialist who lost his job after telling Congress the truth about cost overruns on the C5A aircraft? After nearly four years of litigation, the Civil Service Commission ruled that Fitzgerald had been improperly dismissed and should be reinstated. Under the efficient method contemplated by the Carter administration, it would have been an easy matter for the Air Force to find three officials (or 3,000 officials) willing to dump Fitzgerald.

Congress has long expressed an interest in preserving a civil servant's right to contact legislators and their committees. This right dates back to the Lloyd-LaFollette Act of 1912 and is protected today by Section 7102 of Title 5. Should the administration be allowed to fire employes who have the audacity to tell Congress the facts? I think also of the climate under the Nixon administration, when employes were being penalized for carrying out laws that the White House wanted to terminate (without involvement by Congress). The Constitution directs the president to "faithfully execute" the laws, but sanctions were applied against civil servants who honored that mandate.

The Civil Service Reform Act of 1978 attempts to protect the rights of "whistleblowers." Among the list of prohibited personnel practices are reprisals against any employe who discloses information which the employe believes to be a violation of any law, rule or regulation, or which evidences mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety. This invitation to bureaucratic openness does not apply to disclosures specifically prohibited by law or information specifically required by executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

I turn at last to Kaus' treatment of Elrod v. Burns, which he says brought the "civil service ideal—that government service should be free from all political risk—to Cook County, Ill." The decision did no such thing. The five justices could agree on only one point: that a nonpolicymaking government employe cannot be discharged, or threatened with discharge, from a job that he is satisfactorily performing on the sole ground of his political beliefs. While this narrows the application of patronage, it does not eliminate it. Surely it does not mean that government service is "free from all political risk." Policymaking employes (and, indeed, the court stumbled trying to define that category) may be fired for political reasons, as may non-policymaking employes who perform unsatisfactorily. The decision, whatever its defects, is not as broad as Kaus construes it.

PROPERTY RIGHTS WRIT LARGE

Kaus ends his piece with an apocalyptic warning that the courts, in their ceaseless appetite to reinterpret the Constitution, will "rule that a losing candidate for reelection can successfully sue to get his office back." We need not pursue this speculation to insist on a definition of property that goes beyond "a plot of land."

Certainly there is nothing bizarre about connecting job rights with property. When John Locke spoke of property, he meant life, liberty and estate—not simply the latter. By property he meant that which men have in their persons as well as in their goods. Everyone had a property in their labor and in the work of their hands. Property rights and personal rights were inextricably mixed.

In Federalist 10, Madison stated that the most important function of government was not the protection of property. Rather, the "first object of government" was to protect the faculties that give rise to property. It is no accident that the Constitution authorizes Congress to promote science and the arts "by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

In an essay published in 1792, Madison elaborated on the meaning of property. A man had property in his opinions and in the free communication of them. He possessed property in his religious opinions, in the safety and liberty of his person and in the "free use of his faculties and free choice of the objects on which to employ them." Conscience was for Madison the "most sacred of all property." For that reason it was a greater violation to invade a man's conscience than to invade his home. Madison captured the essential tie between property rights and human rights by making this profound observation: "In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights."

Madison was not alone in his broad conception of property. His contemporaries realized that the freedoms and liberties of America were essential parts of property. Property conveys a multitude of rights which have little in common except that they are exercised by persons and enforced by the state. These rights must operate in tandem, not in isolation.

First Amendment freedoms depend on procedural safeguards that protect privacy and reputation. Privacy relies on Fourth Amendment restrictions on searches and seizures. One's reputation may have to rest on the Sixth Amendment right of confrontation. Free speech would be a barren concept if its exercise meant the loss of employment.

What would these values amount to if the government could fire employes and terminate benefits with the concurrence of a few officials? With what logic does anyone so outraged by bureaucratic incompetence decide to entrust, without any procedural safeguards, such astonishing power to bureaucrats?

WAGE-PRICE GUIDELINES

Mr. DOLE. Mr. President, I had intended to offer an amendment which would have prevented the administration from using funds in this appropriations bill in connection with withholding Government contracts as a means of enforcing compliance with voluntary wage-price guidelines.

I have decided not to offer this amendment so that judicial proceedings may continue to completion.

GUIDELINES WILL NOT WORK

It is clear that President Carter's wage and price guidelines have not worked and will not work. The guidelines cannot be administered fairly; they distort economic indicators and they retard economic growth. In essence, they serve as a floor, rather than a ceiling, for wage and price increases, thereby doing little to hold the line on these increases. But most importantly, in attempting to treat only the symptoms of inflation, high wages and prices, they distract us from the real cause of inflation—the fiscal and monetary policies of the Government. Until we in the Congress realize that Government is the primary cause of inflation, the problem will always be with us.

CARTER HAS MADE GUIDELINES MANDATORY

Faced with the failure of his "voluntary" guidelines, the President has, in effect, made them mandatory by invoking the possibility of contract denials for noncompliance. President Carter and his advisers are trying to punish the victims of inflation, the wage earners and consumers, rather than the perpetrator of high inflation, which is poor economic policy.

SUPREME COURT GRANTED AUTHORITY

The Supreme Court recently let stand a circuit court ruling that the President had the authority to apply these procurement sanctions. Now that the courts have granted the White House the legal authority to withdraw contracts from noncomplying businesses, it apparently intends to proceed to punish several companies. But, to quote the Washington Post, such enforcement "will not work in

the atmosphere of hostility and confrontation that the administration generates by punishing some, but only a prominent few, of the violators."

It is unconscionable that the current administration would lay the blame for our economic woes on the average American rather than tackle the tough questions that face our Nation.

CARTER MUST ATTACK REAL CAUSES OF INFLATION

It is my hope that by prohibiting the President from withholding Government contracts, Congress can force the President to abandon his wage and price guidelines and begin to demonstrate leadership in finding a lasting solution to our economic problems.

What must be changed is the Government's attitude with respect to inflation. To effect that change, bold, tough decisions must be made and forceful leadership that fully understands our economic dilemma must be provided. Actions such as balancing the budget, reducing Government spending, and eliminating the regulatory shackles burdening business are needed.

I had planned to offer this amendment to hasten the much-needed relief for those Americans suffering undue hardship because of poor policy decisions. Once the judicial process is complete, I intend to offer my amendment to future legislation. I hope that others in the Senate will join me in this effort.

Mr. President, I ask unanimous consent to have the amendment printed in the RECORD.

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

SEC. . None of the funds appropriated by this Act shall be available for the payment of salaries or expenses incurred in connection with the withholding of Government contracts to enforce compliance with voluntary wage-price guidelines.

DEATH OF SAMUEL I. NEWHOUSE

Mr. MOYNIHAN. Mr. President, I rise today to lament the death of a distinguished New Yorker, Mr. Samuel I. Newhouse. On Wednesday, August 29, of last month, Mr. Newhouse passed away; and in his passing America lost one of its truly distinguished guardians of freedom.

Mr. Newhouse was the son of immigrant parents, and his legacy is, indeed, an especial tribute to our Nation which welcomes those who would wish to enjoy the freedoms that our country offers. Thus it is most appropriate that Mr. Newhouse should have honored those freedoms himself by his assiduous devotion to a free press.

His career spanned the great transition that took place in American journalism, and he both reflected and contributed to this transition in an important manner. He forthrightly recognized the responsibilities that we associate with a free press, and sought to nourish and guard them in an unparalleled manner. At one point, he publicly acknowledged this when he stated that—

Only a newspaper which is a sound business operation can be a truly free, independent editorial enterprise, able to do the best possible job for the community.

As a newspaper owner, Mr. Newhouse recognized that diverse communities had diverse interests and, therefore, he did not attempt to set editorial policy but rather allowed, in fact encouraged, an editorial pluralism to prevail.

Mr. Newhouse's interests were not simply limited to his newspapers, for in his active work as a philanthropist he displayed an appreciation of the rich variety of American life that is possible. In my State of New York his generosity was of major assistance to Syracuse University, where he played a leading role in establishing the S. I. Newhouse School of Public Communications, and to Lincoln Center, where he was of generous assistance to the Mitze E. Newhouse Theatre, to mention only two examples.

I myself had the distinct pleasure of being associated with him when President Johnson appointed him to the Advisory Committee for the Medal of Freedom. S. I. (as he was called by those of us who knew him) was very much taken with this task; and he devoted the time, energy, and astute judgment to it that we had learned to expect. The medal fluorished during his tenure on the committee, and as I stand here today I should like to observe that the irony of it all is that this great American—a man committed to the preservation of the freedoms which are the lifeblood of our Nation—never received the medal himself.

JUDGE WILLIAM B. JONES

Mr. MELCHER. Mr. President, the Nation lost one of its finest Federal judges on July 31, with the death of Judge William B. Jones. Judge Jones was appointed to the the Federal bench for the District of Columbia in 1962. He was the court's chief judge from July 1975 to March 1977. At the time of his death he was still serving as a senior judge.

Recognized by his judicial colleagues as an outstanding trial judge, William B. Jones was acclaimed by the legal profession as tough but fair, a judge whose opinions were scholarly and well researched, and notably evenhanded in his decisions.

Born in Iowa in 1907, Judge Jones graduated in 1929 from Notre Dame where he played football under Knute Rockne. Later coaching Notre Dame freshmen he attended law school there receiving his law degree in 1931.

Montanans claim Judge Jones as their own. He came to Montana in 1932 to begin his law practice and coach the Carroll College football team in Helena. He served as a special assistant State's attorney general from 1935 to 1937. He then came to Washington, D.C., to work in various Government assignments and entered the private practice of law as a member of the law firm of Hamilton and Hamilton for 16 years prior to his appointment to the bench. Judge Jones was former president of the John Carroll Society and the Friendly Sons of St. Patrick.

Montanans knew and loved "Bill" Jones for his humor, his integrity, and his unfailing friendliness. He was a loyal and active leader of the Montana State Society. A devoted husband and father, and a professional of the highest integrity, his counsel and guidance will be missed by all of us.

We extend our deepest sympathy to his wife, Alice, and daughter, Barbara, of Washington, D.C.

THE JOHN F. KENNEDY LIBRARY

Mr. TSONGAS. Mr. President, the John Fitzgerald Kennedy Library will open on October 20. This memorial to President Kennedy celebrates his spirit, vision, compassion, and statesmanship. The Presidential library at Columbia Point in Boston's Dorchester community will allow thousands of people to experience more fully the essence of the man who was our 35th President.

With my colleagues' consent, I ask unanimous consent to have printed in the RECORD two essays about the Kennedy Library. The first is by Ian Menzies, a columnist for the Boston Globe; the second is by Robert Garrett, art critic for the Boston Herald American. I hope they will encourage my colleagues to join with many thousands of Americans in visiting this inspiring, important center of scholarship and remembrance.

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

[From the Boston Globe, July 16, 1979]

MEMORIAL TO A PRESIDENT WHO LOVED THE SEA

(By Ian Menzie)

It is a rather simple building, its style flowing from the contrasting geometry of its curves and angles which converge and rise in sweeps of bare, white-faced wall.

But the site gives the new John Fitzgerald Kennedy Library a magnificent presence and mood centered within the soaring, buttressed, glass-enclosed pavilion which looks across the harbor and the islands to the distant horizon, the new frontier, that a youthful, buoyant President once offered those who shared his years.

Architect I. M. Pei has designed a lighthouse, a beacon, in the modern idiom, but kept it traditionally austere and thereby caught the drama of the site, creating a unique memorial to a man who loved the sea and ships.

This presidential library at the outermost edge of Dorchester's Columbia Point will prove to be a very different presidential library from others, as the public will discover when it officially opens Oct. 20.

There is a mood here that couldn't have been found in Cambridge where at one time everyone felt the library should go.

This is a site by itself. Neither UMass Boston nor the Columbia Point housing project intrudes. It is even a lonely site, exposed to gales as well as sun. From the shelter of the glassed pavilion, one will be able to watch the flood tides lap the seawall only a few score feet away.

It is clear already, even from a brief unfinished preview, that one will not just feel the presence of Jack Kennedy here, but feel it intimately. It will be visceral, which it

wouldn't have been, couldn't have been, in Cambridge or even Charlestown.

His sailboat Victura, which lay off the Hyannis compound, will rest between pavilion and sea, and a lighted, working beacon will arc seawards as an aid to mariners.

One has to imagine the impact, too, of first going through the museum and seeing so many of his personal belongings. There will be his rocking chair, a replica of his White House office, recordings of his voice. Then suddenly this soaring pavilion with its breathtaking panorama of city and sea, sky and islands. It cannot fail to touch the emotions, make one think, yet through the sadness, still see the horizon.

It has taken 16 years to bring the memorial library to being, but the wait now seems not to have been in vain. We have here something special, of which the nation, Boston and Dorchester can be rightly proud.

The thousands of schoolchildren and others who gave their dimes and dollars to make this memorial possible will not be disappointed.

And the scholars and students who visit the archives should now feel a far greater sense of what this John F. Kennedy was all about; what was really meant by Camelot.

Although the building is nine stories high, the public will use only the first two floors. On the fourth floor there will be a research room for scholars.

Certain decisions of public interest have not yet been made by the General Services Administration, which will take over when the library opens.

Will there, for instance, be benches along the waterfront walk between the seawall and the glassed-in pavilion? There should be.

Will there be a restaurant? There should be, and on the expansive terrace known as the West Plaza. The library is a long way from downtown Boston or any restaurants and children get hungry and older people tired.

Two other suggestions for the library trustees and GSA to consider. A real effort should still be made, as originally proposed, to moor a PT boat of the type Jack Kennedy commanded in World War II beside the seawall. Such boats are still available and a cut could easily be dredged to the seawall from the Neponset channel.

Finally, an additional elevator should be installed to take the public directly to the roof of the main building. The view of the city and its setting, the city of John F. Kennedy, from that vantage point is magnificent.

From nowhere else, not even Boston's tall buildings, is the view of the harbor islands and the waters surrounding them so intimate and so attractive.

[From the Boston Herald American, June 17, 1979]

KENNEDY LIBRARY: MORE THAN A BUILDING, IT'S AN EXPERIENCE

(By Robert Garrett)

From South Boston, you look across Dorchester Bay at the John F. Kennedy Library on Columbia Point, and you wonder. What is the relation of this building to a martyred President whose public mythology is unmatched in modern history?

Sixteen years after Kennedy's death, it is still difficult to see the man clearly—the unofficial saint of folklore merges fuzzily with the politician who walked this earth.

Fifteen years after a memorial library was first planned, and following a bitter debate over the original site at Harvard, it is now nearly completed. The white, shining $12 million memorial which will open in September is in its own way as enigmatic as the Kennedy mystique—at close range a striking building, certainly, but one which in its shifting geometric forms resists instant analysis.

I. M. Pei, the world-renowned architect who designed it, is fond of discussing another of his buildings, the new wing of the National Gallery in Washington, as a building not just to look at but "to experience." After a walk through the construction site, it is possible to predict the same for the Kennedy Library.

The centerpiece will be the Memorial Pavilion, 115-feet high glass box in which light plays off against the geometry of the 10-story building which it interests.

The pavilion is the ultimate enigma. People will end a tour through a sub-level exhibit area of Kennedy memorabilia, and come into this soaring space. They will have to draw their own conclusions. For certain, they will look at the view. What will they see? A dramatic and oddly contradictory panorama. To the east is a quiet view of Thompson's Island, to the northwest the Boston skyline, and immediately in front of them the Columbia Point housing projects, many of these sorry buildings boarded in explicit admission of a failed social program. The visitors to this austerely elegant memorial will see an imperfect world in which the idea of Camelot does not quite fit.

The building is bound to rekindle the curiosity about every aspect of Kennedy's life which has smouldered all these years, not to mention the unflagging public scrutiny of the rest of the clan.

In the archives on the upper floors, the presidential papers and other material will doubtless help scholars sift through the Kennedy years, and evaluate that period against the troubled years that followed.

But inevitably, and above all, the building will serve as a tourist mecca for the expected 750,000 visitors a year, a concrete and glass shrine which will provide permanent focus to those strains of inquisitiveness and hero worship so deeply embedded in the American public.

Simply put, the design is an interplay of triangle, rectangle and circle. The triangle is the 10-story, three-sided, pre-cast concrete main building. On bay side of this structure is the rectangular glass box. A circular dome houses two theaters, and a curving wall delineates an outdoor plaza.

Pei and his associate Ted Musho have in their design to side-step the issue of personality cult. This is a monument—as you approach it from the U. Mass. campus the imposing facade unequivocally tells you that, and the isolation of the building on the tip of Columbia heightens that effect.

But it is a monument which pulls its punches (and even feints behind an unnecessarily complicated system of walls and perimeter structures). The Greek-columned Lincoln Memorial in Washington is the epitome of an old-fashioned monument, expressing a straight-forward idealism in its symmetry and massive weight. On the other hand, the Kennedy Library is architecture aware of the realities of contemporary democracy. It embodies a new sense of restraint, even ambiguity.

Depending on your vantage point as you stroll the grounds, the forms impose themselves and then unexpectedly cut away at sleek angles. The library has the cool appeal of abstract sculpture. It is a structure which manages to avoid the worst sins of buildings which seem impressed with themselves, and for the truth of that themselves, and for truth of that statement one need only to gape back at the Mussolini Modern style of architecture embodied by the U. Mass. campus.

The history of how the library finally got off the drawing board is a woeful parable of architecture buffeted by heavy seas. If the post-Kennedy era was a time of lost innocence in the life of the nation, the planners of the library suffered their own disillusion.

When the widow of the President commissioned I.M. Pei in 1964, she explained that her choice was appropriate because the well-known architect, like her late husband, had not as yet reached his full potential. But the magic charms of Camelot dissolved in a nasty imbroglio in which Cambridge residents protested the project at J.F.K.'s beloved Harvard. They accused Pei of overweaning monumentalism in his initial design of a huge glass pyramid, and said the library would hopelessly glut the already congested traffic in the area.

During those years Jacqueline Kennedy underwent the transformation to the Jackie O. celebrated on magazine covers, and the library struggled through five design changes. Finally, in a dignified huff, the Kennedy family designated the new site.

"It was such a relief when that was resolved," Pei recently commented from his New York office. "Now it became a pure design problem of solving the functional needs, and the symbolic needs."

The task of arranging the exhibition space and helping the Kennedy family to choose particular items fell to the New York firm of Chermayeff and Geismar. Included in the display that will be installed this summer are a large number of photographs, documents and memorabilia from the Kennedy past, the White House rocking chair, the President's collection of scrimshaw, the coconut shell on which the marooned PT 109 skipper Kennedy inscribed a message for help. The presidential yacht Victura will be docked nearby. ("We kept out of the library a lot of things not directly related to his personality or to the presidency," said Ivan Chermayeff, "eliminating suits he wore or plates the family may have eaten off of, that kind of kitsch stuff.)

It was Pei's job to devise a monument which would handle large numbers of people—and somehow offer them an experience qualitatively different from a visit to a fancy shopping mall. Pei is a proven master at tailoring stylish solutions to the requests of prominent clients (in recognition of which he recently won the Gold Medal of the American Institute of Architects).

Boston, of course, is Pei's city, from the triumphant design of the Hancock Tower, to the master plan he oversaw for the Government Center, to such widely varied projects as the Christian Science Center, the Green Building at MIT and the new wing for the Museum of Fine Arts currently under construction.

If the Kennedy Library is an architectural success when it is completed, it will be thanks to I. M. Pei's talent for dealing with a prodigious riddle.

SHOULD WE BAIL OUT CHRYSLER?

Mr. PROXMIRE. Mr. President, I ask unanimous consent that an article which appeared throughout the country by James J. Kilpatrick, entitled "Should Taxpayers Bail Out Ailing Chrysler Corporation? No Way" be printed in the RECORD.

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

SHOULD TAXPAYERS BAIL OUT AILING CHRYSLER CORP.? NO WAY!

(By James J. Kilpatrick)

WASHINGTON.—The Chrysler Corp. has asked the American people for a billion dollars in tax relief. The answer has to be, no. Absolutely not. No way.

That is only part of the answer that ought to be made. Some relief needs to be devised for the half-million American workers whose jobs depend directly or indirectly upon Chrysler's staying in business. A word of commiseration is in order for individuals and pension funds with Chrysler investments. In those communities where Chrysler is a major employer, we ought to recognize that serious hardships may be in store.

When every appropriate expression of sym-

pathy and regret has been voiced, I revert to what seems to me an inescapable conclusion. If the taxpayers consent to bailing out Chrysler, the country's 10th-largest corporation, there will be no way under moon or sun to stop with Chrysler. The hardships that would be faced by reorganization in bankruptcy of No. 20 or No. 30 would be different only in diminishing degree.

It would be an exercise in pure fiction, at this late date, uncritically to glorify the "free enterprise system" in the United States. The ritual homage that is constantly paid to "the marketplace" carries a fulsome ring. Longfellow's village blacksmith is moldering in the grave, and his spreading chestnut tree is made of plastic now. For more than 100 years, governmental programs have subsidized essentially private industries; to this day scores of small towns offer tax-free incentives to factories that might bring payrolls to boost the local economy.

Yet the structure of an enterprise system remains. Concepts and principles and values remain. Flawed as it most surely is, our capitalistic system is the freest in the world; it is a marvelously productive system that has brought our people a high standard of living. Sound public policies should try to strengthen the system, not to bring it to its supplicant knees.

One of the principles of the system is that an enterprise—any enterprise—rests lightly upon two floating piers: the possibility of profit, and the risk of loss. Standing in the marketplace, business managers can see forever: to unlimited success in one direction, and if they will but turn around, to unlimited failure in the other. The whole structure is undermined if the possibility of failure is removed. We thus abandon the real world and play childish games instead. "Everybody has won," cried the Dodo, "and all must have prizes."

Since Chrysler's appalling second-quarter losses were revealed two weeks ago, analysts have been discoursing learnedly on reasons for the company's plight. Management did not soon enough foresee the market for a subcompact. Management kept unprofitable facilities going for much too long. As the smallest of the Big Three, unlike Ford and General Motors, Chrysler was unable to achieve bearable per-unit costs of meeting safety and environmental requirements. Debt service mounted inexorably. And so on.

And so on, and so on. Reasons abound. The bottom line for 1978 and 1979 is a prospective loss of three-quarters of a billion dollars. Hard-hearted as it may appear, I would argue that it simply is no business of the taxpayers, through the federal treasury, to keep this leaking enterprise afloat. This is not like Penn Central, where an ailing publicly regulated railroad could be reorganized; neither is it like Lockheed, which involved a loan guarantee to an essential defense contractor; neither is it to be compared to the City of New York, a municipal corporation.

This is not to contend that government should stand coldly aloof while Chrysler goes into a Chapter X reorganization under the Bankruptcy Act. Much could be done to relieve the auto industry as a whole of demands for design changes that carry high costs and low benefits. Tax relief of general application, not aimed at Chrysler alone, might improve the situation.

But if Chrysler can't stay in the race against Ford, GM, Japan and Germany, call in the lawyers, cut the losses and bring in a salvage crew.

Mr. PROXMIRE. Mr. President, there has been tremendous pressure on Members of Congress to approve a bailout. A number of prominent lobbying firms have been hired by Chrysler. The banks will be entreating us to take them off the hook. It is going to be a very tough one to resist. I do hope the Senators will give this matter their most serious consideration.

Mr. Kilpatrick asked the proper question: Where do we stop? If we bail out Chrysler, we shall have to bail out everyone. I hope the Senators will give this article consideration.

THE GENOCIDE CONVENTION IN A NUCLEAR WORLD

Mr. PROXMIRE. Mr. President, in the 20th century, we have rapidly and blindly created a nuclear world. We have created a world in which it is easy to destroy one another, easy to act on our basest desires. In such a world, international standards of decency assume heightened importance. Nations must learn to rally together—peacefully—to preserve the rights and dignity of man.

The Senate has a treaty before it that is a prime example of international cooperation in a nuclear world. I refer to the Genocide Convention.

The purpose of the treaty is clear. Quite simply, the treaty seeks to outlaw the crime of genocide. The purpose is honorable. The treaty endeavors to establish a humane standard for human action. Furthermore, the purpose is relevant to a nuclear world. The treaty is a signal to all people and all nations that in a world where premeditated destruction is hardly unimaginable, genocide is universally condemned.

Mr. President, the Genocide Treaty cannot apply to the past. It cannot erase the fact that millions of people died in death camps as victims of genocide just 35 years ago.

But the treaty does apply to the future.

It can help to bring moral pressure to bear on those who even consider applying the technology that is available today as instruments of genocide.

In a nuclear world, we need a unified effort to preserve man's most valuable right—the right to live. We need the Genocide Convention.

Mr. President, I urge my colleagues to seek prompt ratification of the Genocide Convention.

MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 10, August 16, August 20, August 27, and August 28, 1979, received messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received on August 10, August 16, August 20, August 27, and August 28, 1979, are printed at the end of the Senate proceedings.)

REPORT ON AERONAUTICS AND SPACE—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 94

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 13, 1979, received the following message from the President of the United States, which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

I transmit this report on the Nation's progress in space and aeronautics during 1978. This report is provided in accordance with section 206 of the National Aeronautics and Space Act of 1958 as amended (42 U.S.C. 2476).

Included in this report are statements of policy designed to maintain American space leadership. This report concentrates on the most significant Federal space and aeronautical activities. These emphases have enabled us to reduce the amount of detail and number of separate agency program descriptions.

JIMMY CARTER.

THE WHITE HOUSE, *August 10, 1979.*

REPORT ON THE FEDERAL MINE HEALTH PROGRAM—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 95

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 17, 1979, received the following message from the President of the United States, which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I transmit herewith the 1978 Annual Report of Health Activities under the Federal Coal Mine Health and Safety Act of 1969.

The Report, prepared by HEW's National Institute for Occupational Safety and Health, Center for Disease Control, Public Health Service, describes the coal mine health research conducted by the Institute, as well as the Institute's medical examination program for coal miners required by the Act.

I recommend that, in order to save HEW staff resources and time, the statutory reporting requirement for this Report be changed from once every year to once every three years. All of the information contained in this Report is available to Congress during annual appropriations and oversight hearings, and HEW will inform Congress immediately of any scientific breakthroughs in the field.

JIMMY CARTER.

THE WHITE HOUSE, *August 16, 1979.*

REPORT OF DEFERRALS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 96

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 17, 1979, received the following message from the President of the United States, which was referred to the Committee on Appropriations, the Committee on the Budget, the Committee on Labor and Human Resources, the Committee on Foreign Relations, and the Committee on Environment and Public Works, jointly, pursuant to order of January 30, 1975:

To the Congress of the United States:

In accordance with the Impoundment

Control Act of 1974, I herewith report four new deferrals of budget authority totalling $204.5 million. These items involve economic support fund assistance for Egypt, the White House Conference on Aging, the National Alcohol Fuels Commission, and the National Commission on the International Year of the Child.

The details of the deferrals are contained in the attached reports.

JIMMY CARTER.

THE WHITE HOUSE, *August 16, 1979.*

REPORT ON DEFERRALS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 97

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 27, 1979, received the following message from the President of the United States, which was referred to the Committee on Appropriations, the Committee on the Budget, the Committee on Labor and Human Resources, the Committee on Foreign Relations, and the Committee on Finance, jointly, pursuant to order of January 30, 1975:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three new deferrals of budget authority totaling $30.1 million. These items involve human development services in the Department of Health, Education, and Welfare, emergency refugee and migration assistance in the Department of State, and the National Commission on Social Security.

The details of the deferrals are contained in the attached reports.

JIMMY CARTER.

THE WHITE HOUSE, *August 27, 1979.*

REPORT ON EMPLOYMENT AND TRAINING—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 98

Under the authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 27, 1979, received the following message from the President of the United States, which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I am transmitting to you the 17th annual report pertaining to employment and occupational requirements, resources, uses, and training, as required by section 127(a) of the Comprehensive Employment and Training Act (CETA) Amendments of 1978.

This *Employment and Training Report of the President* also includes a report on how social services, vocational education, and other programs administered by the Secretary of Health, Education, and Welfare are being integrated into State and local CETA activities, as required by section 127(b) of the 1978 CETA Amendments; a number of special reports that respond to additional reporting requirements in the amended CETA; a report on services for veterans, as required by the Vietnam Era Veterans' Readjustment Assistance Act; and a response to the requirements of section 4(f) (2) (B) of the Full Employment and Balanced Growth Act of 1978.

JIMMY CARTER.

THE WHITE HOUSE, *August 27, 1978.*

PROPOSED FEDERAL PARTICIPATION IN THE INTERNATIONAL EXPOSITION ON ENERGY—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 99

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 28, 1979, received the following message from the President of the United States, which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

In accordance with statutory requirements, I am transmitting to you my proposal for Federal participation in the International Exposition on Energy to be held in Knoxville, Tennessee from May through October 1982. The Congress has already received an FY 1980 budget amendment request, in the amount of $20.8 million, to support Federal participation. The Department of Commerce is submitting the authorizing legislation as well.

It is my determination that Federal participation is in the national interest. The Exposition will provide for an international exchange of ideas on energy development, innovative energy technology, energy conservation, solar energy, synthetic fuels and other subjects important to the national interest. Moreover, the Exposition will stimulate tourist travel to the United States, thereby improving our balance of trade, promote international cultural exchange and accelerate capital growth and investment in the Knoxville area.

My proposal includes all statutory requirements:

(1) assurance that the Exposition meets all criteria for recognition and has been recognized;

(2) a statement that the Exposition has been registered by the Bureau of International Expositions on April 27, 1977; and

(3) a plan prepared by the Commerce Department and other interested departments for Federal participation.

The plan for Federal participation provides for construction of a pavilion and preparation of energy-related exhibits.

I urge that this plan be given prompt and favorable consideration by the Congress.

JIMMY CARTER.

THE WHITE HOUSE, *August 28, 1979.*

REPORTS BY THE UNITED NATIONS JOINT INSPECTION UNIT—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 100

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 28, 1979, received the following message from the President of the United States, which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

In accordance with Section 301 (e) (3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2221), I am transmitting herewith copies of the reports issued by the United Nations Joint Inspection Unit during 1978.

JIMMY CARTER.

THE WHITE HOUSE, *August 28, 1979.*

FEDERAL WHITE COLLAR PAY ADJUSTMENT—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 101

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 31, 1979, received the following message from the President of the United States, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

Under the Pay Comparability Act of 1970, an adjustment in Federal white collar pay will be required on October 1, 1979.

I have reviewed the report of my Pay Agent and the recommendations of the Advisory Committee on Federal Pay relative to a pay adjustment. Their findings indicate that an average 10.41 percent increase, at a cost of about $6 billion, would be required to achieve full comparability with the private sector.

However, pay comparability for Federal civilian employees and the military must be viewed in the light of the current economic situation. Inflation continues to be the single greatest threat to our economy and is a national problem of foremost concern. In considering last year's Federal pay increase, I relied heavily on the pay standards the Administration was considering to guide decisions of all employers in determining pay increases. I am continuing that practice for this year's increase.

Accordingly, under the authority given to me by the Pay Act to propose an alternative pay adjustment which I consider appropriate in the light of "economic conditions affecting the general welfare," I have determined that an alternative plan consisting of an overall 7 percent increase and a partial exemption from the full effect of the limitation for the lowest-salaried civilian employees is appropriate for the Federal increase. This increase will be within the pay standard being developed by the Council on Wage and Price Stability that will apply to all employees in the country for 1980. It is somewhat higher than the increase anticipated by my 1980 budget. However, last January when my budget was submitted, we expected significantly lower rates of inflation than we have actually experienced. I believe that the loyal and outstanding service given to the country by the Government's civilian and military personnel warrants recognition of that changed

circumstance and of the new pay standards for 1980.

Accordingly, I strongly urge the Congress to support the alternative plan which is attached.

JIMMY CARTER.

THE WHITE HOUSE, *August 31, 1979.*

MESSAGES FROM THE THE HOUSE RECEIVED DURING THE RECESS

Under authority of the order of the Senate of August 3, 1979, the Secretary of the Senate, on August 7, 1979, received a message from the House of Representatives, reporting that the House has passed S. 275, an Act for the relief of Leah Mi Cohen, with an amendment in which it requests the concurrence of the Senate.

The message also reported that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 929. An act for the relief of Eun Kyung Cho and Hei Kyung Cho;

H.R. 946. An act for the relief of Maria Estela Sims;

H.R. 1153. An act for the relief of Nyoman Rahmawati;

H.R. 1163. An act for the relief of Gladys Venicia Cruz-Sanchez;

H.R. 1486. An act for the relief of Dang Petersen;

H.R. 1628. An act for the relief of Susan Katherine Adamski;

H.R. 1753. An act for the relief of Sergio and Javier Arredondo;

H.R. 1968. An act to direct the Secretary of Agriculture to convey certain lands in Clear Creek County, Colorado, to Harold and Doris Harlan;

H.R. 2098. An act for the relief of Antonio Rivera Aristizabal;

H.R. 3094. An act to authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes;

H.R. 3142. An act for the relief of Michael Carl Brown;

H.R. 3146. An act for the relief of Patrick A. and Wayne L. Thomas;

H.R. 3218. An act for the relief of Rebecca Sevilla DeJesus;

H.R. 3319. An act for the relief of Jose Quintana Dominguez Sendejas;

H.R. 3434. An act to amend the Social Security Act to make needed improvements in the child welfare and social services programs, to strengthen and improve the program of Federal support for foster care of needy and dependent children, to establish a program of Federal support to encourage adoptions of children with special needs, and for other purposes; and

H.J. Res. 367. A joint resolution to authorize and request the President to proclaim the week of September 16 through 22, 1979 as "National Meals on Wheels Week".

HOUSE BILLS AND JOINT RESOLUTION REFERRED DURING THE RECESS

Under authority of the order of the Senate of August 3, 1979, the following bills and joint resolution were referred as indicated:

H.R. 929. An act for the relief of Eun Kyung Cho and Hei Kyung Cho; to the Committee on the Judiciary.

H.R. 946. An act for the relief of Maria Estela Sims; to the Committee on the Judiciary.

H.R. 1153. An act for the relief of Nyoman Rahmawati; to the Committee on the Judiciary.

H.R. 1163. An act for the relief of Gladys Venicia Cruz-Sanchez; to the Committee on the Judiciary.

H.R. 1486. An act for the relief of Dang Petersen; to the Committee on the Judiciary.

H.R. 1628. An act for the relief of Susan Katherine Adamski; to the Committee on the Judiciary.

H.R. 1753. An act for the relief of Sergio and Javier Arredondo; to the Committee on the Judiciary.

H.R. 1968. An act to direct the Secretary of Agriculture to convey certain lands in Clear Creek County, Colorado, to Harold and Doris Harlan; to the Committee on Energy and Natural Resources.

H.R. 2098. An act for the relief of Antonio Rivera Aristizabal; to the Committee on the Judiciary.

H.R. 3094. An act to authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 3142. An act for the relief of Michael Carl Brown; to the Committee on the Judiciary.

H.R. 3146. An act for the relief of Patrick A. and Wayne L. Thomas; to the Committee on the Judiciary.

H.R. 3218. An act for the relief of Rebecca Sevilla DeJesus; to the Committee on the Judiciary.

H.R. 3319. An act for the relief of Jose Quintana Dominguez Sendejas; to the Committee on the Judiciary.

H.R. 3434. An act to amend the Social Security Act to make needed improvements in the child welfare and social services programs, to strengthen and improve the program of Federal support for foster care of needy and dependent children, to establish a program of Federal support to encourage adoptions of children with special needs, and for other purposes; to the Committee on Finance.

H.J. Res. 367. A joint resolution to authorize and request the President to proclaim the week of September 16 through 22, 1979, as "National Meals on Wheels Week"; to the Committee on the Judiciary.

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.)

REPORT ON DISEASE CONTROL PROGRAMS—MESSAGE FROM THE PRESIDENT—PM 102

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I transmit herewith the Report to the President on Disease Control Programs.

This report was prepared by the Department of Health, Education, and Welfare in accordance with P.L. 94–317, the "National Consumer Health Information and Health Promotion Act of 1976."

JIMMY CARTER.

THE WHITE HOUSE, *September 5, 1979.*

MESSAGES FROM THE HOUSE

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 12:16 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

S. 1146. An act to extend for three fiscal years the authorizations for appropriations under the Safe Drinking Water Act; and

H.J. Res. 244. Joint resolution to authorize and request the President to issue annually a proclamation designating the first Sunday of September following Labor Day of each year as National Grandparents Day.

The enrolled bill and joint resolution were subsequently signed by the Acting President pro tempore (Mr. LEVIN).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, September 5, 1979, he presented to the President of the United States the following enrolled bill:

S. 1146. An act to extend for three fiscal years the authorizations for appropriations under the Safe Drinking Water Act.

REPORTS OF COMMITTEES SUBMITTED DURING THE RECESS

Pursuant to the order of the Senate of August 3, 1979, the following reports of committees were submitted on August 9, 1979:

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with amendments:

S. 493. A bill to promote the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto, and for other purposes (together with additional views) (Rept. No. 96–307). Referred, pursuant to the order of February 26, 1979, jointly to the Committee on Finance to consider title V only, and to the Committee on Environment and Public Works for not to exceed sixty calendar days, and that such committees are required to file separate reports.

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment:

S. 1398. A bill to establish energy efficiency standards for industrial equipment (Rept. No. 96–308).

HEALTH PLANNING AND RESOURCES DEVELOPMENT AMENDMENTS OF 1979—CONFERENCE REPORT

Mr. JACKSON, from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 544) 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; which was ordered to be printed (Rept. No. 96–309).

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Special Report entitled "Second Monetary Policy Report for 1979" (together with additional views) (Rept. No. 96–310).

Pursuant to the order of the Senate of August 3, 1979, the following reports of committees were submitted on August 24, 1979:

By Mr. MUSKIE, from the Committee on the Budget, without amendment:

S. Con. Res. 36. An original resolution revising the congressional budget for the United States Government for the fiscal years 1980, 1981, and 1982 (together with supplemental, additional, and minority views) (Rept. No. 96-311).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, without amendment, but with a preamble:

S. Con. Res. 29. A concurrent resolution regarding the restoration of Olympic records of the late James (Jim) Thorpe (Rept. No. 96-312).

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. EXON:

S. 1709. A bill for the relief of Teodoro A. Ando, M.D.; to the Committee on the Judiciary.

By Mr. HATCH:

S. 1710. A bill to provide procedures for calling Federal constitutional conventions under Article V for the purpose of proposing amendments to the United States Constitution; to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 1711. A bill to amend the authorization for the Santa Ana River flood control projects in the State of California; to the Committee on Environment and Public Works.

By Mr. ROBERT C. BYRD (for Mr. INOUYE):

S. 1712. A bill for the relief of Ms. Yukari Goldwater; to the Committee on the Judiciary.

S. 1713. A bill for the relief of Dr. Kenneth P. K. Ng; to the Committee on the Judiciary.

S. 1714. A bill for the relief of Ms. Saturnia V. Bonifacio; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 1715. A bill for the relief of Jerry L. Crow; to the Committee on Energy and Natural Resources.

By Mr. MORGAN (for himself, Mr. DURKIN and Mr. TSONGAS):

S. 1716. A bill to establish a Solar Energy Development Bank to help make available below market interest rate loans for the purchase and installation of solar energy equipment in commercial and residential buildings in the United States, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY:

S. 1717. A bill to amend certain provisions of title 18, United States Code, relating to the procedures for interception of wire or oral communications; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH:

S. 1710. A bill to provide procedures for calling Federal constitutional conventions under article V for the purpose of proposing amendments to the U.S. Constitution; to the Committee on the Judiciary.

Mr. HATCH. 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. 1710

APPLICATIONS FOR CONSTITUTIONAL CONVENTION

SEC. 2. (a) The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more specific amendments to the Constitution of the United States and stating the general subject of the amendment or amendments to be proposed.

(b) The procedures provided by this Act are required to be used whenever application is made to the Congress, under article V of the Constitution of the United States, for the calling of any convention for the purposes of proposing one or more specific amendments to the Constitution of the United States, each applying State stating in the terms of its application the general subject of the amendment or amendments to be proposed.

APPLICATION PROCEDURE

SEC. 3. (a) For the purpose of adopting or withdrawing a resolution pursuant to section 2 and section 5 of this Act, the State legislature shall follow the rules of procedure that govern the enactment of a statute by that legislature, except that the action shall be valid without the assent of the Governor of the State.

(b) Questions concerning the State legislative procedure and the validity of the adoption or withdrawal of a State resolution cognizable under this Act are determinable by the State legislature.

TRANSMITTAL OF APPLICATIONS

SEC. 4. (a) Within thirty days after the adoption by the legislature of a State of a resolution to apply for the calling of a constitutional convention, the secretary of state of the State, or, if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate and one to the Speaker of the House of Representatives.

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution, the exact text of the resolution signed by the presiding officer of each house of the State legislature, the date on which the legislature adopted the resolution, and a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution; and

(2) to the extent practicable, a list of all State applications in effect on the date of adoption whose subject or subjects are substantially the same as the subject or subjects set forth in the application.

(c) Within ten day after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is presiding officer, identifying the State making application, the general subject of the application, and the number of States then having made application on such subject. The President of the Senate and Speaker of the House of Representatives shall jointly cause copies of such application to be sent to the presiding officer of each house of the legislature of every other State and to each Member of the Senate and House of Representatives of the Congress of the United States.

EFFECTIVE PERIOD OF APPLICATION

SEC. 5. (a) An application submitted to the Congress by a State, unless sooner withdrawn by the State legislature, shall remain effective for the lesser of the period specified in such application by the State legislature or for a period of seven calendar years after the date it is received by the Congress, except that whenever within a period of seven calendar years two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the same general subject all such applications shall remain in effect until the Congess has taken action on a concurrent resolution, pursuant to section 6 of this Act, calling for a constitutional convention.

(b) A State may withdraw its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of withdrawal in conformity with the procedures specified in sections 3 and 4 of this Act, except that no such withdrawal shall be effective as to any valid application made for a constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same general subjects.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6. (a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each general subject. Whenever applications made by two-thirds or more of the States with respect to the same general subject have been received, the Secretary and the Clerk shall so report within five days, in writing to the officer to whom those applications were transmitted, and such officer within five days thereupon shall announce on the floor of the House of which he is an officer the substance of such report. It shall then be the duty of such House to determine that there are in effect valid applications made by two-thirds of the States with respect to the same general subject. If either House of the Congress determines, upon a consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same general subject, it shall be the duty of that House to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that general subject. Each such concurrent resolution shall (1) designate the place and time of meeting of the convention, and (2) set forth the general subject of the amendment or amendments for the consideration of which the convention is called. A copy of each such concurrent resolution agreed to by both Houses of the Congress shall be transmitted forthwith to the Governor and to the presiding officer of each house of the legislature of each State.

(b) The convention shall be convened not later than six months after adoption of the resolution.

DELEGATES

SEC. 7. (a) Each State shall appoint, in such manner as the legislature thereof may direct, a number of delegates, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress. No Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed

as delegate. Any vacancy occurring in a State delegation shall be filled by appointment of the legislature of that State.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function shall certify to the President of the Senate and the Speaker of the House of Representatives the name of each delegate elected or appointed by the legislature of the State pursuant to this section.

(c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest duing their attendance at a session of the convention, and in going to and returning from the same; and for any speech or debate in the convention they shall not be questioned in any other place.

CONVENING THE CONVENTION

SEC. 8. (a) Of those persons serving as chief justices of the State supreme courts, the person who is senior in years of service as such a chief justice shall convene the constitutional convention. He shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to comply with the Constitution of the United States and the provisions of this Act. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt.

(b) No Federal funds may be appropriated specifically for the purposes of payment of the expenses of the convention.

(c) The Administrator of the General Services shall provide such facilities, and the Congress and each executive department, agency, or authority of the United States, including the legislative branch and the judicial branch, except that no declaratory judgment may be required, shall provide such information and assistance as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

SEC. 9. (a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

SEC. 10. No convention called under this Act may propose any amendment or amendments of a general subject different from that stated in the concurrent resolution calling the convention.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit to the Congress the exact text of any amendment or amendments agreed upon by the convention.

(b)(1) Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit such amendment to the Administrator of General Services upon the expiration of the first period of thirty days of continuous session of the Congress following the date of receipt of such amendment unless within that period both Houses of the Congress have agreed to (A) a concurrent resolution directing the earlier transmission of such amendment to the Administrator of General Services and specifying in accordance with article V of the Constitution the mode of ratification in which such amendment shall be ratified, or (B) a concurrent resolution stating that the Congress disapproves the submission of such proposed amendment to the States because such proposed amendment relates to or includes a general subject which differs from or was not included as one of the general subjects named or described in the concurrent resolution of the Congress by which the convention was called. No measure agreed to by the Congress which expresses disapproval of any such proposed amendment for any other reason, or without a statement of any reason, shall relieve the President of the Senate and the Speaker of the House of Representatives of the obligation imposed upon them by the first sentence of this paragraph.

(2) For the purposes of paragraph (1) of this subsection, (A) the continuity of a session of the Congress shall be broken only by an adjournment of the Congress sine die, and (B) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the period of thirty days.

(c) Upon receipt of any such proposed amendment to the Constitution, the Administrator shall transmit forthwith to each of the several States a duly certified copy thereof, a copy of any concurrent resolution agreed to by both Houses of the Congress which prescribes the mode in which such amendment shall be ratified, and a copy of this Act. Such concurrent resolution may also prescribe the time within which such amendment shall be ratified in the event that the amendment itself contains no such provision. In no case shall such a resolution prescribe a period of ratification of less than four years.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified consistent with the provisions of article V of the Constitution of the United States.

(b) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RESCISSION OF RATIFICATIONS

SEC. 13. (a) Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendment by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.

JUDICIAL REVIEW

SEC. 15. (a) Any State aggrieved by any determination or finding, or by any failure of Congress to make a determination or finding within the periods provided, under section 6 or section 11 of this Act may bring an action in the Supreme Court of the United States against the Secretary of the Senate and the Clerk of the House of Representatives or, where appropriate, the Administrator of General Services, and such other parties as may be necessary to afford the relief sought. Such an action shall be given priority on the Court's docket.

(b) Every claim arising under this Act shall be barred unless suit is filed thereon within 60 days after such claim first arises.

(c) The right to review by the Supreme Court provided under subsection (a) does not limit or restrict the right to judicial review of any other determination or decision made under this Act of such review as is otherwise provided by the Constitution or any other law of the United States.

EFFECTIVE DATE OF AMENDMENTS

SEC. 16. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

CONSTITUTIONAL CONVENTION IMPLEMENTATION ACT OF 1979

Mr. HATCH. Mr. President, article V of the U.S. Constitution provides that constitutional amendments may be proposed in either of two ways. The first—the means by which every successful amendment to the Constitution has been proposed—requires the agreement of two-thirds of each House of Congress. The second requires the agreement of a convention called by Congress in response to the petitions of two-thirds of the State legislatures. Ratification of amendments proposed through either method is to be done either by the legislatures, or by conventions, in three-fourths of the States, depending upon the decision of Congress.

Largely as a result of the fact that the convention method of constitutional revision has never been successfully employed, there are substantial questions that relate to it:

What exactly constitutes a valid petition to the Congress?

What procedures must a State follow in submitting a petition?

Must the precise language of the proposed amendment be included within the petition?

How similar must the language be in the petitions of various States in order to allow them to be aggregated?

How long does a petition remain valid? May such petitions be rescinded by the States?

What is the extent of congressional power to review petitions? What is the extent of congressional power to restrict the deliberations of the convention?

What is the extent of State power to restrict the deliberations of the convention?

How is the convention to be organized? How are the States to be represented at the convention?

May Congress refuse to submit the product of a convention to the States for ratification?

How are constitutional convention-proposed amendments to be ratified in the States?

With respect to most of these questions, there is very little constitutional

guidance. The relevant language of article V states simply:

> The Congress . . . on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments.

Nor are there useful precedents in view of the fact that there has never been a constitutional convention. Each of the questions involved in this, the "alternative" means of amending the Constitution, is therefore a threshold question.

Article I, section 8, clause 18 of the Constitution invests authority in Congress to—

> Make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States.

This provision clearly authorizes the Congress to pass legislation that would give effect to the convention method of constitutional alteration. This would be a direct function of its article V authority to "call" a convention pursuant to petitions by two-thirds of the States.

OBJECTIVES OF ACT

I am introducing legislation, the "Constitutional Convention Implementation Act," which would fill in the interstices of article V. It is particularly important that this body act on this, or similar legislation, in view of the fact that at least 30 State legislatures have already purported to submit petitions to Congress for the convening of a constitution convention on the subject of a balanced budget amendment. I would hope that this act, however, could be considered separately from the merits of this specific amendment. The "Constitutional Convention Implementation Act" is designed to establish what are basically neutral procedures to guide the conduct of constitutional conventions generally. While the imminence of a convention of the matter of a balanced budget has clearly created the urgency for this legislation, the act is designed neither to facilitate nor obstruct the eventual achievement of a balanced budget amendment, or any other constitutional amendment.

One must look to the policy underlying the establishment of the convention form of amendment in order to construct a fair procedures bill. Even a cursory analysis of the original constitutional convention (convened under the auspices of the articles of confederation) would suggest that the final provision of article V resulted from a compromise between those delegates who sought to invest proposal authority solely in Congress and those who sought to invest it solely in the State legislatures. The two modes of initiating amendments were viewed as essentially equivalent alternatives, each of which was to serve as a check upon the intransigence of either the National Legislature or the State legislature in the matter of proposing constitutional revision.

In view of this fundamental purpose, I believe that legislation giving effect to the convention method of amendment should be such that resort to its use will not render the Constitution "too mutable" (the Federalist No. 43) while at the same time insuring that it will not be rendered null and void because it is too cumbersome a method. The amendment process should never be one that can be successfully employed with great ease, yet neither should it be a process totally incapable of being used to alter the Constitution. It is this general philosophy that guides congressionally-initiated amendments and would seem most appropriate with respect to convention-initiated amendments as well.

PROVISIONS OF ACT

I would like to briefly discuss the provisions of this act and explain their justification. I should add at the outset my debt to the efforts of our former colleague, Senator Sam Ervin. While my bill differs in a number of respects from legislation that Senator Ervin successfully shepherded through the Senate in 1971, its basic structure is closely related to that legislation. This measure has been reintroduced in the present Congress as S. 3 by our distinguished colleague from North Carolina (Senator HELMS).

Section 1 of my bill states that its short title is the "Constitutional Convention Implementation Act of 1979."

APPLICATIONS FOR CONVENTION

Section 2 states the manner in which States are to make applications for a constitutional convention. It states simply that the legislature shall state, within its application for a convention, the "General Subject" of the amendment or amendments to be proposed. It is expected that the application is to be sufficiently precise so as to enable Congress to determine whether or not the application ought to be aggregated with the applications of other States. It would not, for example, be enough for a State to say that it desired a convention for the purpose of "improving the functioning of the executive branch of the Federal Government," and have it aggregated with an application specifying its desire for a convention for the purpose of "considering changes in the length of the presidential term of office."

The purpose of the initiating process is to determine that there exists some form of consensus among the States on the matter of a relatively well-defined area of amendment. This consensus cannot fairly be said to be in evidence if aggregation is to be permitted of applications that are, at best, only incidentally related.

On the other hand, it cannot reasonably be expected that identical, or even nearly identical, language be employed in petitions that ought to be aggregated. Such a requirement is highly unrealistic with respect to fifty diverse State legislative bodies; the imposition of such a rigid rule would effectively render the alternative method of amendment provided in article V useless. Further, to the extent that a petition was required to be precise, either with respect to the specific amendment sought, or the specific language sought, there would be little use for the convention itself. To limit the convention to the consideration of a single, meticulously worded amendment is to make the convention a farce. In order for the convention to be a meaningful part of the article V process, it must have some leeway within which to exercise its legitimate discretion.

LIMITED CONVENTIONS

That this discretion, however, is not without its limits is the subject of section 2(B), and, indeed, is the basic theme of the "Constitutional Convention Implementation Act." This section states that the procedures provided in the act are to be followed in the case of applications for what are commonly referred to as "limited conventions." Such conventions are defined for the purposes of this act as conventions "for the purpose of proposing one or more specific amendments to the Constitution of the United States." Implicit in this section is the recognition that the States may call for the convening of either "limited" or "general" conventions; it is, however, simply with respect to the former that the terms of this act apply.

A "general" convention would be one in which the States petitioned for a convention, not with any specific or limited purposes in mind, but for the purpose of making whatever revisions were deemed necessary or desirable by the convention itself. It is this sort of convention that poses such great concerns to most observers, including myself. I am far from confident that a contemporary "General" convention could do much to improve upon the work of Madison, Hamilton, and Mason. While there is no way that Congress, through passage of a simple statute, could preclude the States from requesting a "general" convention—this is their right under article V—neither is Congress precluded from clarifying that the States are fully within their rights in seeking a "limited" convention.

There is significant academic dispute as to the possibilities of a "limited" constitutional convention. Prof. Charles Black of the Yale Law School, for example, believes that the constitutional convention is a "free agent," sovereign and without limitations. According to this theory, the convention represents the premier assembly of the people, and is therefore supreme to all other Government branches and agencies.

I would disagree with this interpretation. The constitutional convention, while clearly a unique and separate element of the Government—a new branch of the Government, so to speak—is subject to the same limitations and checks and balances as the other, permanent branches of the Government. A constitutional convention, as its name clearly implies, is a constitutional entity; it is appointed under the terms of the Constitution and subject to all of the express and implied limitations imposed by that document. As observed by Professor Jameson in his classic work on constitutional conventions:

> The convention's principal feature is that it is subaltern—it is evoked by the side and at the call of a government pre-existing and intended to survive it, for the purpose of administering to its special needs. It never supplants the existing organization. It never governs. Though called to look into and recommend improvement in the fundamental laws, it enacts neither them nor the statute law; and it performs no act of administration.

The Federal constitutional convention is an instrument of the Government, and acts properly only when it acts in conformity to its authorized powers.

There is nothing in the language of article V to suggest that the convention method of amendment cannot be limited to a single area of amendment; although the article states that the convention is to be convened for the purpose of proposing "amendments," resort to the plural is made also in describing the scope of Congress' proposing authority. The symmetry between the competing processes of constitutional amendment is emphasized by Madison in the Federalist No. 43 in discussing the objectives of article V:

> That useful alterations will be suggested by experience, could not be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the general and the State governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other.

It was clearly contemplated that the convention anticipated specific amendment or amendments, rather than general revisions, and that no distinction was to be drawn between the competing methods of amendment in this respect.

To enable Congress to propose specific constitutional amendments while allowing the States only to propose general constitutional revision is to confer markedly unequal powers of amendment upon these governments, an intention contradicted by the unanimous weight of documentary evidence. If the States are to have no ability to control the actions of a convention in the form of their convention applications, then there will be strong disincentives for them to seek such conventions. In the absence of broadbased dissatisfaction with the existing constitutional system, why should they want to create the threat or possibility of a convention acting beyond the scope of the application? Why, in seeking to originate the "amendment of errors" described by Madison, should the States have to risk total revision of the constitutional system?

It is anomalous that in seeking to correct what might be a narrow defect in the system that the States should have to place the entire system in jeopardy? What better means could there be to "perpetuate the discovered faults" of the system? What better means could there be to place the convention system of amendment in an unequivalent position to the congressional system of amendment? What better means could there be to completely discourage any and all resort to the convention means of constitutional amendment?

It is the States, not Congress, that ought to properly have the ability to limit the scope of the convention, through the convention applications. While Congress, under section 6 of the "Constitutional Convention Implementation Act," is empowered to specify in its call for the convention the scope of permissible deliberations, it is performing basically an administrative, nondiscretionary function in doing so; it is simply translating the State applications into a formal convention call.

APPLICATION PROCEDURES

Section 3 of the act specifies that the procedures to be followed in making a convention application are generally to be those established by the States themselves. Section 3(a) states that for the purpose either of adopting a resolution or withdrawing one (pursuant to section 6) the State legislature is to follow the same rules of procedure that govern the enactment of a simple statute, except that the action is to be considered valid without the assent of the Governor of the State.

Thus, the term "legislatures" in article V is treated in the same manner for the purpose of convention applications as it has traditionally been treated for the purpose of amendment ratification. It has generally been thought that, had the Founders intended to require gubernatorial participation in the amendment process, they would have made express reference either to the need for ratification or proposal by the "States," or by the legislatures with the assent of the "Executive." As the Supreme Court has observed in *Lester* v. *Garnett* 258 U.S. 130, 137 (1922):

> The function of the State legislature in ratifying a proposed amendment to the Constitution, like the function of Congress in proposing the amendment, is a Federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State.

In an analogous decision, the Court in the early case of *Hollingworth* v. *Virginia* 3 Dall. 376 (1798) interpreted the provisions of article V to require the exclusion of the national executive from the amendment process.

Section 3(b) provides further that questions concerning the validity of application procedures are to be decided by the State legislatures themselves. While recognizing that, in pursuit of their authority under article V, the States are acting in a quasi-Federal capacity, rather than in a purely State role, it would nevertheless be incongruous for any body to determine whether or not there has been procedural regularity in a State legislative action other than the State legislature itself.

In *Field* v. *Clark* 143 U.S. 649 (1892), it was decided by the Supreme Court that the procedural requirements of the legislative process were presumed to have been satisfied when legislation was formally certified by the appropriate legislative officers. Rather than intruding Congress or the courts into this area, there is no reason why this traditional rule ought not to continue to apply with respect to convention application actions. There is no compelling reason why article V should require sacrifice by the State legislatures of their right to regulate their own proceedings.

TRANSMISSION OF APPLICATIONS

Section 4 of the act specifies the means by which the States are to transmit their applications for a convention to Congress. Section 4(a) states that, within 30 days of the adoption by a State of an application, the appropriate official is to transmit copies to the President of the Senate and the Speaker of the House of Representatives.

Section 4(b) directs the States to include within these applications: the title of the resolution, the exact text of the resolution, the date of adoption, and an official certification. In addition, States are encouraged, but not compelled, to list in the application other effective State applications which are deemed to concern substantially the same subject. While such a listing is not expected to be conclusive with respect to Congress, it is nevertheless considered that such a listing will be useful to Congress in carrying out its responsibilities in aggregating similar applications.

Section 4(c) requires each house to establish a public record of each State application, and to notify each State legislature of the fact of each application. Through internal procedures to be determined by each House of Congress, Congress would be charged with making its decisions on whether or not to aggregate applications within the 10-day period following each new application. The criteria would be whether or not the applications referenced the "same general subject or subjects."

As observed earlier, it is the objective of this language to ensure the existence of some real consensus among the States with respect to the need for constitutional revision in some relatively circumscribed area. At the same time, in order not to interfere with the legitimate freedom of action of a convention, there ought not to be the requirement of extreme precision, either in the text or in the subject-matter. The language contained in the bill is designed to draw some rough balance between these requirements.

In order to ensure that the consensus for a constitutional amendment remains a relatively "contemporaneous" one (see *Dillon* v. *Gloss* 256 U.S. 368 (1921)), section 5(a) states that an application shall be effective for no longer than a 7-year period, with shorter effective periods contained within the body of an application to be respected. The court in Dillon stated that,

> Proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavour, the natural inference being that they are not to be widely separated in time . . . must reflect the will of the people in all sections at relatively the same period which of course ratification scattered through a long series of years would not do . . . We do not find anything in article V which suggests that an amendment once proposed is to be open for ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective.

Similarly, State convention applications and the "calling" of a constitutional convention are not unrelated acts, but necessary, succeeding steps in a single endeavor. There should be a "reasonable" relationship in time (see *Coleman* v. *Miller*, 307 U.S. 433 (1938)) between these actions. There is the same need to avoid staleness of applications to Congress as there is to avoid staleness of amendment proposals to the States.

In view of the fact that every amend-

ment proposed by Congress, except one, since the 18th amendment has contained a 7-year time limitation either in the body or in the enacting clause, it was decided to use the same period for determining effectiveness of applications.

Section 5(b) authorizes States to withdraw their applications at any time prior to the time that there are a sufficient number of valid applications before Congress to enable it to call a convention. There would seem to be no valid policy reason for denying them this right. Indeed, in order to insure that the amendment process reflects the notion of "contemporaneous consensus," it is vital that the States have the right to reconsider and reverse their application decisions. States should not be dragooned unwillingly into artificial consensuses because of an inability to rethink earlier application decisions.

CALLING OF THE CONVENTION

Section 6 of the "Constitutional Convention Implementation Act" relates to the actual calling by Congress of the convention. It provides that, upon receipt in each House of that application putting two-thirds of the States in agreement on the need for some amendment, it is the duty of that House to call for the convening of a Federal constitutional convention on that general subject. Congress is to designate the time and place of the meeting of the convention, and set forth the general subject of the amendment or amendments for consideration. The convention is to be convened not later than 6 months following the adoption by Congress of its resolution.

Despite some popular misconceptions on this point, it is obligatory that Congress call a convention upon the receipt of valid applications by two-thirds of the States. Alexander Hamilton observed in the Federalist No. 85 that—

> The national rulers, whenever nine states concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be *obliged* "on the application of the legislatures of two thirds of the states to call a convention for proposing amendments" . . . the words of this article are peremptory. The Congress "shall call a convention". Nothing in this particular is left to the discretion of that body.

James Madison, in a 1789 letter, remarked further—

> It is to be observed however that the question concerning a general convention will not belong to the Federal legislature. If two-thirds of the States apply for one, Congress cannot refuse to call it.

CONVENTION DELEGATES

Section 7 relates to the selection of delegates to the constitutional convention. The language is taken nearly verbatim from article II, section 1, paragraph 2 of the Constitution concerning the selection of Presidential electors. The "Great Compromise" between the larger and the smaller States is carried over into the selection of convention delegates with each State being entitled to that number of delegates equal to the combined number of its Senators and Representatives in Congress. The States are given a free hand in selecting their delegates in whatever (otherwise constitutional) manner they think appropriate. If the experience of the electoral college is at all relevant, and I believe that it is, each of the States will undoubtedly introduce some means of popular election for the delegate positions.

While there are those who would prefer to see a delegate selection system more precisely based upon population, I see no reason not to extend smaller States that slight disproportionate influence in the proposal of amendments through the convention system that they currently enjoy in the proposal of amendments through the congressional system. This is the method of delegate selection that most closely conforms to the basis for congressional representation, and which would most closely aline the alternative systems of proposing amendments.

Section 7 also excludes Members of Congress, the very embodiment of the national influence, from serving as convention delegates, directs the States to coordinate its delegate lists with the House and Senate, and confers the same immunity from arrest upon convention delegates, for the duration of the convention, that article I, section 6 of the Constitution confers upon Members of Congress.

CONVENING OF CONVENTION

Section 8 directs each delegate to the convention to subscribe to an oath by which he commits himself, during the conduct of the convention to "comply with the Constitution of the United States and the provisions of this act." As I discussed earlier, I do not believe that the concept of a "limited" convention is precluded in any manner by article V. The purpose of this purposely broad oath is simply to give effect to any limitations that may have been placed upon a convention by Congress acting on behalf of the States. Since the provisions of the "Constitutional Convention Implementation Act" purport to represent congressional interpretation of the provisions of article V, it is perhaps unnecessary to specify compliance with these as part of the delegate oath. I felt, however, that specificity was desirable in order to clarify that Congress is acting wholly within its appropriate authority in filling in the gaps of article V, and that the delegates to the convention themselves are not empowered to alter this interpretation.

Administering the oath of office to the delegates would be that chief justice serving on a State supreme court with the greatest seniority in that position. Rather than having the Vice President, or the Chief Justice of the United States fill this function, it is my belief that what is basically a State convention should remain that and not run any unnecessary risks, however remote, of being influenced by national officials. I stress the basic purpose for including the convention method of amendment in article V—the need for the States to be able to amend the Constitution in the face of an intransigent national Government.

CONVENTION PROCEDURES

Section 8 also states clearly that the convention itself is to have responsibility for drawing up its own rules of procedures, rather than Congress. No Federal funds whatsoever may be appropriated specifically for the purposes of payment of the expenses of the convention, except that the Administrator of the General Services Administration is authorized to provide facilities for the convention. At the request of the convention, the Federal Government is also permitted to provide sundry information and assistance to the convention.

Section 9 creates a single exception to the convention's prerogatives to determine its own rules by specifying that each delegate is to be entitled to a single vote on all questions before the convention.

The section also provides that the convention is to maintain a daily verbatim record of proceedings, analogous to the CONGRESSIONAL RECORD. All records of official proceedings are to be transmitted by the convention to the National Archives within 30 days following termination of the proceedings of the convention.

Section 10 again underscores the premise of this act that a "limited" convention to amend the Constitution may properly be called. It restates what is already implicit in the act that a convention called under its terms may not propose amendments of a "general subject" different from that stated in the convention's charter—the resolution approved by Congress. The convention exercises no legitimate governmental authority beyond that granted by the States through Congress. The convention is morally obliged to limit its considerations to the subjects set forth in the State applications; I believe further that it is appropriate for Congress to establish a legal obligation to this same effects.

SUBMISSION OF AMENDMENTS TO STATES

Section 11 concerns the procedures through which the convention product is submitted to the States for ratification. Within 30 days after the completion of the convention, its Presiding Officer is to transmit the exact text of any proposed amendments to Congress. The officers of each House, within 30 more days of continuous session, are to transmit the amendments to the General Services Administrator who, in turn, is to submit the amendments to the States. The amendments are to be accompanied by a congressional resolution specifying, pursuant to article V, the mode of ratification—whether it is to be ratified by the State legislatures or by special ratifying conventions within each of the States.

Congress may refuse to transmit an amendment and resolution to the States, through the GSA, only if it makes the determination that the amendment "relates to or includes" a general subject which differs from or was not included as one of the general subjects within the scope of the convention's authority. The objective is to provide some remedy to a failure by the convention to honor the limitations on its authority to propose amendments to the Constitution. Congress has no power whatsoever to refuse to submit an amendment because of disagreement with its substantive merits. Nor is it empowered to refuse to submit

an amendment because of what it perceives as procedural irregularities in the proceedings of the convention. Convention procedure is not within the ambit of congressional concern; checks upon procedural abuse must come from the States themselves in the form of the ratification process. Because this check also exists with respect to conventions acting in an ultra vires manner, it is hoped that Congress will resolve any doubts as to whether or not the convention acting within the scope of its authority in favor of an affirmative finding.

RATIFICATION OF AMENDMENTS

Section 12 of the act, borrowing language directly from article V, states simply that amendments proposed by "limited" constitutional conventions are to become part of the Constitution when ratified in accordance with the terms of article V—by three-fourths of the States in a timely and proper manner. Certified copies of the ratification document are to be forwarded by the States to the General Services Administration, although the ratification itself becomes effective once action is completed within the State legislature, *Dillon* v. *Gloss* 256 U.S. 368, 376 (1921).

Section 13 expressly holds that the States are free to reconsider and reverse their ratification decisions, at least until that point that an amendment has been ratified by three-fourths of the States. Thus, any State may ratify a proposed amendment after having previously rejected it, or may rescind an earlier ratification of a proposed amendment. It is again my view that the most reliable determination of the existence (or lack thereof) of a "contemporaneous consensus" can be made if the States are free to reconsider and rethink their ratification decisions until that point that three-fourths of the States are in agreement in support of amendment, or until that point that a "reasonable" period of time has passed for ratification. My views on the matter of rescission of ratifications are discussed at far greater length in the CONGRESSIONAL RECORD of October 4, 1978, at pages 33351–33353.

Section 14 imposes upon the General Services Administrator the duty to proclaim the final ratification of an amendment once it is in receipt of certifications of ratification from three-fourths of the States. As section 16 clarifies, however, this is an administrative duty of a symbolic nature, not one with an impact upon the actual effectiveness of an amendment. Under article V (and section 16), the amendment becomes part of the Constitution at the moment the final State has ratified, or on any date specified in the body of the amendment itself.

JUDICIAL REVIEW

Finally, section 15 discusses the role of the judicial branch in the constitutional convention process. It establishes two express situations in which an aggrieved State may bring a direct action in the Supreme Court, pursuant to article III, section 2 of the Constitution. The first involves cases in which a State disputes any determination or finding by Congress, or the failure of Congress to make a determination or finding, with respect to its section 6 responsibilities. Section 6 requires Congress to "call" a convention upon determining the existence of valid applications for such a convention from two-thirds of the States.

The second situation involves cases in which Congress actions with respect to its section 11 responsibilities are questioned. Section 11 requires Congress to submit amendments proposed by the convention to the States unless it determines that the convention acted on subject matter ouside the purview of its authority.

Section 15(c) expressly states that these two actions may not be inclusive concerning the right to a Supreme Court hearing, and that nothing in the act is intended to preclude such review "as is otherwise provided by the Constitution or any other law of the United States." Section 15 further requires suit to be brought within 60 days of a claim, either against the Secretary of the Senate and the Clerk of the House, the General Services Administrator, or "such other parties as may be necessary to afford the relief sought."

Thus, I would reject that version of the so-called "political questions" doctrine that suggests that all interpretative matters deriving from article V are to be resolved by Congress solely at its discretion. I find it ironic that so many individuals who have been so sympathetic to the advance of judicial activism in recent years are also those who would deny the Federal courts, particularly the Supreme Court, their constitutional obligation to interpret the plain language of that document. My views on the "political questions" doctrine are explained more thoroughly in the CONGRESSIONAL RECORD of October 4, 1978, at pages 33351–33352.

CONCLUSION

Mr. President, the convention method of constitutional amendment has been defended and described as an essential component of our Constitution by such men as James Madison, Alexander Hamilton, George Washington, Benjamin Franklin, and Abraham Lincoln. While no amendment has ever been ratified that has been proposed through this method, it has nevertheless exerted its influence in indirect ways. The 17th amendment to the Constitution, for example—providing for the direct election of U.S. Senators—was proposed by Congress in 1912 in response to an effort in the States to call a convention on this subject. Other convention efforts on such matters as Federal tax limitations and State legislative apportionment have also evoked a significant congressional response. It is clear, too, that the present "balanced budget" movement is having an impact upon national public policy.

It is necessary, however, in order to insure some measure of symmetry in the alternative amendment processes under article V to establish some clear-cut procedures for resort to the convention method. While the absence of legislation such as the "Constitutional Convention Implementation Act" will not preclude the States from exercising their right to call a convention, it will insure that the amendment process will not become bogged down in constant litigation, partisan political decisions, and uncertainty. The primary effect of this can only be to undermine the integrity of our constitutional system. In the process, also, we will be eroding one of the basic elements for preserving some semblance of balance between the national and the State governments, as observed by Alexander Hamilton,

> The most powerful obstacle to the Members of Congress betraying the interest of their constituents is the State legislatures themselves, who will be standing bodies of observation, possessing the confidence of the people, jealous of Federal encroachments and armed with every power to check the first essays at treachery.

While there is no one who respects more than I do the achievement of the Founding Fathers, nor anyone who would place a greater burden of proof upon those who propose to alter the Constitution, I would nevertheless agree with Malcolm Eiselen who stated (in 1937):

> To assume, as many apparently do, that a second convention could alter the Constitution only for the worse . . . is an unwarrantable libel upon the creative statesmanship and political sagacity of the American people.

A more contemporary observer has noted:

> To those who fear a "runaway convention", it need only be observed that the only group threatening to run away with it so far is Congress itself.

The purpose of the "Constitutional Convention Implementation Act" is to prevent both Congress and the Constitutional Convention from acting outside the scope of each of their proper authority. It is designed to insure that the States, in the event that Congress remains intransigent with respect to some deeply felt public problem, are able to circumvent Congress and act on their own to remedy such a situation. It is designed also to insure that the States—and Congress—are not forced to surrender totally their sovereignty to the Convention. It is designed to insure that the same matrice of constitutional checks and balances are applicable to the Constitutional Convention as to the other more permanent institutions within our governmental system. There can be no "runaway" Convention unless, ultimately, the dissatisfactions of the people are so broad and pervasive that it is a "runaway" Convention that they expressly request. The best way that Congress can work to insure that this never becomes the case is to allow the people and the States to work their will under established procedures when their grievances are more narrow, rather than allowing them to fester as a result of contrived "procedural irregularities." It is occasionally sobering to some of my colleagues, yet it is true, that ultimately it is the citizenry, not Congress, that is the responsible party in our political system.

By Mr. CRANSTON:

S. 1711. A bill to amend the authorization for the Santa Ana River flood control project in the State of California; to the Committee on Environment and Public Works.

● Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to authorize initial construction of the Santa Ana River flood control project in California.

The Santa Ana River poses one of the most serious flood threats in California. Improvements are urgently needed to provide flood protection to the urbanized portions of Orange, Riverside, and San Bernardino Counties.

Following disastrous floods in 1938, the Corps of Engineers built Prado Dam on the Santa Ana River to provide protection to Orange County from what was then considered a 200-year flood. In reliance upon this protection, the area below the dam has been heavily developed. It now has a population of over 1 million people and property valued at $16 billion.

However, with advancements in the field of hydrology, we have learned that Prado Dam is inadequate and cannot control floods larger than the 70-year flood. Experts now say that if the 200-year "standard project flood" were to occur, it would inundate about 115,000 acres and cause property damages and economic losses in excess of $3.4 billion. The potential loss in the future is even greater as the Santa Ana River Basin continues to be one of the fastest growing areas in the Nation.

In 1964, the House Committee on Public Works—at the request of Orange, Riverside, and San Bernardino Counties—authorized the corps to study the flood problem on the Santa Ana River. In 1976, more than 10 years later, the division engineer issued the review report on the main stem of the Santa Ana River and recommended construction of improvements described in alternative six, the all river plan.

The State of California and the Boards of Supervisors of Orange, Riverside, and San Bernardino Counties all support the all river plan as the appropriate plan for reducing the flood hazard on the Santa Ana River. This plan calls for the elevation of Prado Dam by 30 feet, construction of a second dam near Mentone, enlargement of the Santa Ana River channel from Prado Dam to the Pacific Ocean, channelization of Santiago Creek in the cities of Orange and Santa Ana, and channelization of Oak Street drain in the city of Corona.

Because the all river plan—with its cost sharing of about 11 percent State-local funding—is the only plan which has the support of all three local jurisdictions involved, it is the only flood control plan that is viable for the Santa Ana River Basin. Recognizing this fact, the Congress in 1976 authorized phase 1 design memorandum stage of advanced engineering and design of the Santa Ana River project in accordance with the recommendations of the division engineer in his report of February 27, 1976. Since that time, the corps has been working on the phase 1 design memorandum which is scheduled to be completed in early 1981.

In order to prevent any delay in actual construction of the Santa Ana River improvements, it is important that Congress move forward with the construction authorization this year. The longer we wait to commence construction, the higher the cost of the project will be. In fact, the total estimated project cost has increased nearly $250 million since 1975, up to $990 million this year.

The bill I am introducing today amends the existing phase 1 authorization for the Santa Ana River project to permit the Corps of Engineers to proceed with actual construction. It is my understanding that the corps could use $100 million through fiscal year 1985 to initiate construction of the project. Thus, my bill limits the authorization to that amount.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1711

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Section 109 of the Water Resources Development Act of 1976 (Public Law 94–587) is amended: (1) by striking out "the Phase 1 design memorandum stage of advanced engineering and design" and inserting in lieu thereof the following "construction of a"; (2) by striking out "an estimated cost of $700,000" and inserting in lieu thereof the following "a cost not to exceed $100,000,000 through fiscal year 1985 for initiation and partial accomplishment of such project"; and (3) by striking out the second sentence.●

By Mr. STEVENS:

S. 1715. A bill for the relief of Jerry L. Crow; to the Committee on Energy and Natural Resources.

● Mr. STEVENS. Mr. President, today I am introducing a bill for the private relief of Mr. Jerry Crow. Mr. Crow has been the victim of a broad interpretation of the law, in that he has been denied a claim of trade and manufacturing site on which he worked, improved, and ran a business according to the regulations of section 10 of the act of May 14, 1898.

Many are the circumstances where bureaucratic redtape and different interpretations of law can detrimentally affect the individuals whom we represent. The individuals involved in these circumstances often encounter adversities that could have been avoided; however, when the adversities are not avoided, we as their representatives must seek relief.

Jerry Crow is a man who is caught up in these ambiguous interpretations and redtape of an act concerning trade and manufacturing land sites. Mr. Crow followed all regulations in filing a claim for a land site of T. & M. off the Denali Highway in the Fairbanks meridian. The regulations of the act require that the land be possessed and occupied in good faith as a trade and manufacturing site and that the applicant show that the land is used and occupied for the purposes of trade or manufacturing. The regulation also requires that a site for a "prospective business" cannot be acquired under section 10 of the act of 1898, prospective in this case meaning to be established sometime in the future.

After Mr. Crow had applied for a claim, and the Bureau of Land Management field examiner came to inspect the improvements of the land on which his claim was sited, this same field examiner concurred that improvements were located on the property as cited, the evidence on the application was sufficient, and that he believed that Mr. Crow deserved to receive approval for all of the acreage he had claimed and that was improved. However, when the field examiner learned that most of Mr. Crow's personal income was derived from another business, he said, "This is against policy," and he maintained that the BLM policy states that T. & M. applicants must receive a significant portion of one's income from his claim.

Most people in business would understand how long it takes to obtain solid footing in financial matters, especially when the economy of a certain area is weak and unstable. The area around Mr. Crow's campground is largely unpopulated, and although he has advertised his campground, his business is only very gradually enlarging. The field examiner concluded the inspection. The BLM disapproved the application. After nearly 5 years of work and attempts to keep the Eskimo campground going, Jerry Crow was expected to lose nearly everything.

Jerry Crow lost his case on the basis of an interpretation of the law; specifically on the interpretation of "commercial enterprise." Even though Jerry Crow did have business licenses for the years of 1971 and 1972, he was believed to have maintained a "prospective business" which was forbidden under the regulations of the act. And even though Jerry Crow did work for years on improving the land while running the unprofitable campground, he was believed to have not been in good faith in using and occupying a trade and manufacturing site. And even though Jerry Crow obtained personal accounts and witness statements by customers, an employee, and a neighbor, and was shown to have improved on the land, he was still found to have been attempting to acquire the land for a prospective commercial campground.

Mr. President, I believe that although the campground has proved to be initially unprofitable, the trade and manufacturing site was established in good faith and the application should be looked at in that way. Therefore, I urge my colleagues to support the approval of a private relief bill on behalf of Mr. Jerry Crow, so that he may keep title to his claim.●

By Mr. MORGAN (for himself, Mr. DURKIN, and Mr. TSONGAS):

S. 1716. A bill to establish a Solar Energy Development Bank to help make available below-market interest rate loans for the purchase and installation of solar energy equipment in commercial and residential buildings in the United States, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SOLAR ENERGY DEVELOPMENT BANK ACT

● Mr. MORGAN. Mr. President, during this past year several bills designed to promote the widespread use of solar energy in residential and commercial build-

ings have been before the Congress. On March 1, I introduced S. 524, a companion measure to H.R. 605, introduced by my North Carolina colleague, the Honorable STEPHEN NEAL. On April 10, Mr. DURKIN for himself and others introduced S. 950. And finally, on July 27, Mr. TSONGAS and I, for the administration, introduced S. 1595. Both the Banking Committee and the Energy Committee have studied various dimensions of solar energy use in detail. Specifically, all three bills were examined by the Banking Committee in hearings concluded shortly before the August recess.

Mr. TSONGAS, Mr. DURKIN, and I are today introducing a new bill, the Solar Energy Development Bank Act, which combines what we believe to be the best features of all three bills, and which is expected to be before the Banking Committee for markup shortly.

The Solar Bank would promote solar energy use by subsidizing loans at below-market interest rates both for new construction and for retrofitting of solar devices in existing housing.

For that purpose the Solar Energy Development Bank Act creates within the Department of Housing and Urban Development a body with powers identical to those of the Government National Mortgage Association. The Solar Bank would be administered by a president (a Presidential appointee subject to Senate confirmation) and governed by a Board of Governors, consisting of the Secretaries of HUD, Energy, and Treasury, who would be empowered to determine interest rates. The Bank would be staffed by existing personnel of HUD and the Government National Mortgage Association.

The President of the Bank and the Board of Governors would be advised by a board drawn from the relevant sectors of the public, which would provide policy guidance, assist in the promotion of the Bank, and report annually to Congress.

The present bill would authorize the Bank for 5 years, subject to an automatic sunset provision at the end of that period. Subject to a warranty to protect consumers, loans for a broad range of active and passive solar designs would be authorized. Sixty percent of the subsidy payments made by the Bank would be required for residential use. Of that amount, 5 percent would be reserved for low-income housing. The remaining 40 percent would be available for commercial loans, with a maximum commercial loan of $200,000, and maximum residential loans of $10,000 per unit for one- to four-family dwellings, and $5,000 per unit for dwellings with five or more units, up to a maximum of $500,000.

The Solar Energy Development Bank Act is a lean program designed to utilize the resource of the private lending institutions and the expertise of existing Government personnel, already skilled in the administration of similar interest subsidy programs. Testimony before the Banking Committee, both from energy experts and from private lenders, made clear that existing solar technology has the potential to save our country significant amounts of energy. What is needed to achieve widespread use of solar energy is the right combination of Government incentives. The President has recognized that a solar bank is an important part of the program, and can play a significant role in helping to meet our Nation's energy needs. We hope the Congress will act quickly to make the Solar Bank a reality.

Mr. President, I ask unanimous consent that the text of the Solar Energy Development Bank Act be printed in the RECORD.

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

S. 1716

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 "Solar Energy Development Bank Act".

PURPOSE

SEC. 2. It is the purpose of this Act to encourage the use of solar energy, and thereby reduce the Nation's dependence on foreign sources of energy supplies, by establishing a Solar Energy Development Bank to provide subsidies for below-market interest rate loans made to owners or builders of commercial and residential structures for the purchase and installation of solar energy systems in such structures.

ESTABLISHMENT OF THE BANK

SEC. 3. (a). There is hereby created a body corporate to be known as the Solar Energy Development Bank (hereinafter referred to as the "Solar Bank") which shall be in the Department of Housing and Urban Development. The Solar Bank shall have succession until five years after the date of the enactment of this Act or until dissolved by an Act of Congress, whichever occurs first, and it shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia Corporation.

(b) There is established in the Department of Housing and Urban Development the position of President, Solar Bank, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate now or hereafter prescribed for Executive Level V by section 5316 of title 5, United States Code. Subject to the direction of the Board of Directors of the Solar Bank, the President shall manage and supervise the affairs of the Solar Bank and shall perform such other functions as the Board may prescribe.

(c) The General Accounting Office shall periodically audit the financial transactions of the Solar Bank, and, for this purpose, shall have access to all of its books, records, and accounts.

(d) The Solar Bank may impose fees or charges for its services which shall be deposited into the miscellaneous receipts of the Treasury.

(e) No officer, attorney, agent, or employee of the Solar Bank shall receive any salary or other remuneration from any source other than the Solar Bank during the period of his employment by such Bank. No officer, attorney, agent, or employee of the Solar Bank may participate, directly or indirectly, in any manner in the deliberations upon, or the determination of, any matter affecting his personal interest, or the interests of any corporation, partnership, or association with which he is directly or indirectly associated.

(f) The Solar Bank may impose fees or charges for its services which shall be deposited into the miscellaneous receipts of the Treasury.

(g) The Solar Bank shall have the same corporate powers given the Government National Mortgage Association in section 309 (a) of the National Housing Act.

BOARD OF DIRECTORS

SEC. 4. (a) The Solar Bank shall be governed by a Board of Directors (hereinafter referred to as the "Board") which shall make the report described in section 8 and provide advice to the President of the Solar Bank and to the Secretary of Housing and Urban Development for the purpose of assisting the Solar Bank in carrying out the provisions of this Act. The Board shall consist of the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Secretary of Energy. The Board shall adopt, and may amend or repeal, such regulations as are necessary or convenient for the functioning of the Solar Bank.

(b) Two members of the Board shall constitute a quorum.

(c) The Chairperson of the Board shall be the Secretary of Housing and Urban Development.

(d) The Board in consultation with the Advisory Board established by section 5 shall have the power to fix the level of subsidy on loans subsidized by the Bank and the interest rate paid by borrowers on such loans, and from time to time to alter the level of subsidy and interest rates for new loans subsidized by the Bank. In doing so the Bank shall give consideration to such factors as it shall deem appropriate, including, but not limited to the following:

(1) the prevailing market rates of interest for home mortgages, home improvement loans, and commercial loans, as well as prevailing market rates of interest for Government and corporate bonds;

(2) the availability of other Federal Government incentives and subsidies for solar energy equipment, including Federal income tax credits;

(3) the costs of nonrenewable energy resources and systems;

(4) the costs of solar energy systems; and

(5) the levels of subsidy needed to induce consumers and builders to install solar energy systems in residential and commercial buildings.

(e) The President of the Bank shall establish eligibility criteria which do not discriminate against simple passive or hybrid solar energy systems and which do not subsidize nonenergy related housing costs.

ADVISORY BOARD

SEC. 5. (a) As part of the Solar Bank, there shall be an Advisory Board which shall make the report described in section 8(a) and provide advice to the President of the Solar Bank and to the Board of Directors for the purpose of assisting the Solar Bank in carrying out the provisions of this Act. Such Advisory Board shall be composed of—

(1) one individual who is not an officer or employee of any governmental entity and who is able to represent the views of the general public as a result of his or her education, training, and experience.

(2) one individual who is not an officer or employee of any governmental entity or of any entity engaged in the exploration, development, production, or delivery of any energy resource and who is qualified to serve on the Board as a result of his or her education, training, and experience in scientific endeavors;

(3) one individual who is able to represent the views of the solar energy industry as a

result of his or her education, training, and experience;

(4) one individual who is able to represent the views of lending and financial institutions as a result of his or her education, training, and experience; and

(5) one individual who is able to represent the views of low income persons as a result of his or her education, training, and experience.

(b) The individuals described in paragraphs (1), (2), (3), (4), and (5) of subsection (a) shall be appointed by the President of the United States.

(c) If any member of the Advisory Board becomes an officer or employee of a government or becomes employed in a manner which would disqualify the person from being on the Board, he or she may continue as a member of the Board for not longer than the ninety-day period beginning on the date he or she leaves that office or becomes such an officer or employee, as the case may be.

(d)(1) Except as provided by paragraphs (2) and (3) of this subparagraph, members appointed under paragraphs (1), (2), (3), (4), and (5), of subsection (a) shall be appointed for a term of two years.

(2) Of the members first appointed, those appointed under paragraphs (1) and (2) of subsection (a) shall be appointed for a term of two years and those appointed under paragraphs (3), (4), and (5) of subsection (a) shall be appointed for a term of three years.

(3) Any member appointed under paragraph (1), (2), (3), (4), or (5) of subsection (a) to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his or her term until a successor has taken office.

(e)(1) Except as provided in paragraph (2) of this subsection, members of the Advisory Board shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–15 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Advisory Board.

(2) While away from their homes or regular places of business in the performance of services for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 (b) of title 5, United States Code.

(f) Three members of the Board shall constitute a quorum but a lesser number may hold hearings.

(g) The Chairman and Vice Chairman of the Advisory Board shall be elected by the members of the Advisory Board. The term of office of the Chairman and Vice Chairman shall be two years.

SUBSIDY PAYMENTS

SEC. 6. (a)(1) The Solar Bank may, beginning with fiscal year 1980, make payments to financial institutions for the purpose of subsidizing below-market rate loans which are made by such institutions to owners or builders of commercial and residential structures and to units of local government in connection with programs described in section 7(d)(3) for the purchase and installation of solar energy systems in such structures and which meet the requirements of this section. Such payments may also be made with respect to the portion of a larger loan which is allocable to the purchase and installation of solar energy systems.

(2) For purposes of this Act, the term "solar energy systems" means any addition, alteration, or improvement to an existing or new structure (or its immediate surrounding) which is designed to utilize solar energy directly or indirectly (such as wind energy, energy produced by a woodburning appliance) for the purpose of generating the heating or cooling (or both), hot water, process heat, or electrical energy requirements of that structure and which is in conformity (as certified by the Secretary of Energy) with such criteria and standards as shall be prescribed by the Secretary of Housing and Urban Development in consultation with the Secretary of Energy. The term "solar energy systems" shall also include earth shelters.

(3) The amount of any payment made with respect to any loan or qualifying portion of a loan may be in a lump-sum payment and shall be in an amount necessary, as determined by the Solar Bank, to compensate the financial institution for the difference between the interest rate determined by the Board of the Solar Bank and the yield it would have received if the loan were made at a market rate.

(4) The Solar Bank may, with respect to any loan for which a subsidy payment is made under this Act, require the financial institution to repay the Solar Bank any amount to which the Solar Bank is entitled as a result of the borrower's failure to meet his obligation under the loan.

(b) A payment may be made under this section with respect to a loan or qualifying portion of a loan only if—

(1) the term of repayment does not exceed thirty years and is not less than five years, except that there shall be no penalty imposed on the borrower if the loan or advance of credit is repaid at any time before the term of repayment expires;

(2) the amount of such loan allocable to purchase and installation of a solar energy system does not exceed $10,000 per unit in the case of any one- to four-family residential structure, $5,000 per unit in the case of any residential structure with five or more dwelling units (not to exceed $500,000 per loan), and $200,000 in the case of any commercial structure;

(3) the solar energy system purchased and installed with such loan is covered by a warranty that the installer or manufacturer, or both, will remedy any defects in materials, manufacture, or installation of the system without charge and within reasonable time (including, if necessary, repair or replacement at the site) which becomes evident within one year from the date of installation or such longer period as the Board of Directors of the Solar Bark determines is reasonable. The Board of Director may also require that such warranty include a requirement that the installer will provide, without charge and within fifteen days before the expiration of the warranty, an onsite inspection of the system and components for the purpose of discovering and remedying any defects which may be present;

(4) the security for the loan meets the requirements of the Board of Directors of the Solar Bank; and

(5) the solar energy system to be financed will be purchased and installed after the date of enactment of this Act.

(c) At least 60 per centum of the amount of subsidy payments made under this section in any year shall be for the purpose of assisting the financing of solar energy systems in residential structures.

(d)(1) At least 5 per centum of the amount of subsidy payments made under this section in any year shall be for the purpose of assisting the financing of solar energy systems in residential structures occupied by low income persons. The Board of Directors shall fix special subsidy levels on loans subsidized by the bank pursuant to this subsection.

(2) Any failure to expend funds specified in this subsection shall not delay payments made under other subsections. Funds available for this subsection that are not expended in a given year shall remain available for the following year.

(3) For the purposes of this subsection, a unit of local government shall be considered an eligible recipient of a subsidized loan on behalf of low income persons in connection with a project carried out with other housing or rehabilitation programs.

PENALTIES

SEC. 7. Any person who knowingly makes any false statement or misrepresents any material fact with respect to any loan assisted under this Act shall be fined not more than $10,000 or imprisoned not more than one year, or both.

REPORTS

SEC. 8. The Advisory Board shall make an annual report to both Houses of Congress and to the President of the United States for the purpose of providing a detailed accounting of the operation of the program established by this Act, making recommendations for improvements in such program, and identifying problem areas within the solar energy industry, the Federal Government, and lending institutions which may be inhibiting the success of such program. Such report shall include the majority and minority and dissenting views of the Advisory Board and the Board of Directors and the views of the President of the Solar Bank.

PROMOTION OF PROGRAM

SEC. 9. The Solar Bank shall promote the program established by this Act by informing financial institutions and consumers of the benefits of such program and by actively seeking their participation in the program.

USE OF HOUSING AND URBAN DEVELOPMENT PERSONNEL

SEC. 10. The Secretary of Housing and Urban Development may permit the Solar Bank to utilize the services of personnel of the Department of Housing and Urban Development, including the personnel of the Government National Mortgage Association, for the purpose of carrying out the provisions of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to carry out the purposes of this Act not to exceed $50,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, $225,000,000 for the fiscal year ending September 30, 1982, $300,000,000 for the fiscal year ending September 30, 1983, and $400,000,000 for the fiscal year ending September 30, 1984.●

Mr. DURKIN. Mr. President, the Sun is often seen as an exotic, complicated, and expensive source of energy. Nothing could be further from the truth. The "secret" of solar architecture is being rediscovered, not discovered. The ancient Greeks understood this principle. In one of his famous dialogs, the philospher Socrates outlined the principle of passive solar architecture which promises so much today.

Although the "secret" of solar energy is old, the need for solar energy is quite contemporary. Solar energy offers a solution to some of mankind's most pressing problems. It offers us a way to achieve

energy independence without depleting our nonrenewable resources and without ruining our environment.

Solar energy has several unique advantages over other sources of energy. Unlike oil, gas, coal, or uranium supplies, the Sun cannot be monopolized by any producer's cartel, hostile government, or band of terrorists. In an age of increasing centralization, solar energy offers the welcome promise of decentralizing a major part of our energy supply. The centralization of energy systems has thrust decisions upon our Government that it is ill suited to make. A solar economy offers us the opportunity to reverse this trend of centralization.

Solar energy also provides a welcome alternative to the increasingly unfavorable tradeoffs we face between energy development and protection of the environment. For unlike coal and nuclear power, solar energy has a benign environmental impact. It neither pollutes the air nor leaves toxic wastes.

Unlike the sources of energy we depend upon now, solar energy is a renewable resource. Until the Sun burns out, we will will have solar energy once we make the initial investment in solar collectors, the fuel is free and unlimited.

The development of solar energy could have impressive economic benefits as well. Solar energy offers us the opportunity to revitalize small business, provide badly needed unskilled and semiskilled jobs in construction, and improve the property tax base upon which local governments depend.

A successful solar energy strategy can build upon and revitalize the two industries in our country that are still made up of small independent producers—housing construction and agriculture. The housing industry will prosper in the solar age, because it is in the best position to modify existing houses and to build solar devices into new houses. The farm economy will benefit as we begin brewing alcohol fuels from farm crops that catch and store the rays of the Sun. At a time when our farm economy is in deep trouble, converting the solar energy stored by plants into liquid fuels is a possibility that we must aggressively pursue.

Increased reliance on solar energy can reduce our dependence on foreign energy supplies. This year we will import nearly $70 billion worth of foreign oil. This sum represents an enormous drain on our resources. Developing solar energy would keep this money in the United States where it can provide jobs and economic improvement for our people.

A major barrier to accelerated solar development is a structure of credit. Tapping solar energy is an investment that yields returns continuously for many years into the future. Given the unique nature of the costs and benefits of solar energy, we must establish long term, low interest loans for solar conversion. Extended credit programs have kept a small farmer in business and provided millions of Americans with the opportunity to own their own home. A program of long-term low interest loans or loan guarantees for solar systems could in a similar manner stimulate small business, help millions of home owners, hold down energy costs and meet our national energy goals all at the same time.

Solar energy today is put at a competitive disadvantage with conventional fossil fuels and nuclear power, because of hidden subsidies and unaccounted environmental costs for the oil and nuclear industries. Despite this disadvantage, solar energy is already economically viable for many uses and in many areas. If the true costs of the fuels we now use were ever reflected in their price rather than in the Federal budget solar energy would be even more attractive. At a time when the prices of all the fuels we use are rising rapidly, the prices of solar systems are falling daily.

The prospects for solar energy are bright. Well designed Federal initiatives can make the future brighter yet.

Establishment of a solar bank will be an important step in achieving the widespread commercialization of solar energy in the near future. This legislation will establish a solar bank, in the Department of Housing and Urban Development, to subsidize the interest rates on loans for solar systems. Since the bank will work with and through the existing Federal banking and housing programs, the bureaucratic overhead on this program will be kept to an absolute minimum. This bank is designed in such a way that the Federal money will call forth a far greater amount of private money than will be actually spent by the Federal Government. In a time of tight Federal budgets, it is essential that we get the maximum impact from the Federal dollars that are spent. I am convinced that the solar bank offers one of the best ways to achieve a maximum payoff for Federal funds.

The legislation I am today introducing with Senators MORGAN and TSONGAS embodies concepts originally introduced during the last Congress in the House by Congressman STEVE NEAL of North Carolina and in the Senate by Senator MCINTYRE and me. In this Congress a further distillation of these ideas was introduced by Senator MORGAN in S. 524 and by Senator TSONGAS and me in the Omnibus Solar Commercialization Act, S. 950. Further improvements on the solar bank idea by the President's domestic policy review of solar energy were introduced by Senator MORGAN earlier this summer. The legislation Senators MORGAN, TSONGAS, and I are introducing today embodies the best of these bills. Numerous days of hearings in the House and Senate and in the Senate Energy and Banking Committees have subjected these ideas to an intense and, I believe, productive public scrutiny. The Senate Subcommittee on Energy Conservation and Supply of which I am chairman, and of which Senator TSONGAS is vice chairman, held 3 days of hearings on S. 950. During these hearings dozens of Americans from all walks of life testified both to the viability of solar technologies and to the need for well-designed Federal efforts to bring solar systems within the reach of more Americans.

The results of this long learning experience are embodied in the legislation we are introducing today. I am convinced that the legislation we are introducing today is superior to the legislation as it was originally introduced some years ago. I hope the Congress will soon pass this worthy legislation and send it to the President so that this program can begin assisting the vitally needed solar transition.

Mr. TSONGAS. Mr. President, this bill provides a powerful tool to meet the realistic goal of getting 25 percent of America's energy from solar and other renewable sources by the year 2000. It establishes a Solar Energy Development Bank with the best features from the administration bill and from Representative NEAL's bill.

The administration's proposed legislation is a very positive contribution to our deliberations. This new bill combines the flexible interest subsidy rates of the administration plan with the advisory board and corporate powers of the Neal plan. Like the administration bill, it relies on the financial mechanism of the Government National Mortgage Association, which can be geared up quickly.

This legislation follows Congressman NEAL's approach by creating a five-member advisory committee with one representative from each of five sectors: The general public, the financial community, the solar industry, the scientific community, and low-income citizens. Another new provision is a 5 percent set-aside to finance solar systems in low-income residences.

The Solar Energy Development Bank is a vital part of a comprehensive commitment to transition to a solar-powered economy. It complements the residential and commercial solar tax credit passed last year in making solar energy even more attractive than it already is for many homes, businesses, and industries. It will encourage Americans to invest now in practical solar technologies which will pay dividends of savings and security for years and years.

By Mr. KENNEDY:

S. 1717. A bill to amend certain provisions of title 18, United States Code, relating to the procedures for interception of wire or oral communications; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, today I am introducing a bill to amend title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 2510 et seq.). This bill addresses two distinct issues which arise in connection with the interception of wire and oral communications for law enforcement purposes: The use of a surreptitious entry to effect an interception under title III and the need for authority to conduct emergency interceptions without prior court approval in situations which involve an immediate danger of death or serious physical injury to a person.

The provisions of this bill which deal with surreptitious entry are designed to provide procedural safeguards which will insure informed judicial consideration of the need for and the reasonableness of the surreptitious entry as well as require specific court authorization for any such entry. Title III does not now contain such safeguards, and the Supreme Court recently held in *Dalia* v. *United States*, 99 S. Ct. 1682 (1979), that such safeguards are not constitutionally mandated.

The rationale of the court in Dalia was, in part, based on a finding that authorization for a surreptitious entry is implicit in an order authorizing the interception of oral communications. However, the Court did note that the "preferable approach" in such cases was for Government agencies to make explicit to the authorizing court their expectation that some form of surreptitious entry would be required to accomplish the interception. The Court then cited, with approval, the current Department of Justice policy regarding such entries. Not only do current Department of Justice guidelines require its officers to inform the Court of the need for, and to request the use of, a surreptitious entry in an application for a title III interception when such an entry is required to execute the court order, but also the Department's model form for a title III intercept order includes a provision specifically authorizing such an entry

The U.S. National Commission for Review of Federal and State Laws relating to wiretapping and electronic surveillance has recommended that Title III be amended to provide for specific court authorization of surreptitious entries, and President Carter firmly endorsed this recommendation in his recent privacy message to the Congress. The President's and my own support for such an amendment are based on the same conviction: That requiring court authorization of surreptitious entries under title III is a sound policy that will limit unnecessary encroachments on individual privacy. The power of a Government agent to enter a house or office surreptitiously lends itself to dangerous abuse and must be carefully circumscribed.

Although the fourth amendment does not generally require a judge, when issuing a warrant, to scrutinize or specifically authorize the particular means by which the warrant is to be executed, I believe that the use of surreptitious entry to effect a title III interception presents unique privacy considerations that merit such judicial involvement. First, the use of electronic surveillance in itself is quite rightly viewed as one of the most intrusive means of obtaining evidence of a crime. The stringent procedural requirements presently set forth in title III reflect the seriousness of the breach of privacy that results from the interception of personal communications. Second, unlike the execution of a search warrant, the execution of an interception order and any attendant physical entry must be accomplished in secrecy, and thus there is no contemporaneous notice to the occupants of the premises that a breach of their privacy has taken place. Third, where covert entry occurs in the course of electronic surveillance, there is a dual encroachment on the individual's right to privacy, for not only is his conversational privacy violated, but his physical privacy is breached as well.

The amendments dealing with surreptitious entries require: First, that the applicant for a title III intercept order state in his application whether a surreptitious entry will be required to effect the interception and, if so, why other means of accomplishing the same objectives are not feasible; second, that the issuing judge determine that such entry is reasonably required to effect the interception; third, that the intercept order itself specifically state whether a surreptitious entry is authorized to execute the intercept order; and fourth, that the Government attorney in charge of the investigation notify the issuing court of the time and method of the proposed entry.

It is the purpose of these amendments, then, to address the unique privacy concerns which arise when a surreptitious entry is used to execute an intercept order under title III. It is not the purpose of these amendments to preclude the use of surreptitious entry, for at times it is the only practical means of installing a surveillance device which will produce evidence of a serious crime, but rather to subject such entries to the scrutiny and approval of an informed, neutral judicial officer.

A second and equally important purpose of this bill is to provide statutory authority for an emergency interception of communications in life-threatening situations. It has long been recognized that exigent circumstances justify conducting a warrantless search, and this same principle should apply to the interception of wire or oral communications. Where an interception would be authorized under title III if there were time to obtain a court order, and where such an interception could be instrumental in preventing death or serious injury, as in a kidnaping or hostage situation, a law enforcement officer should have at his immediate disposal this valuable investigative tool.

Title III does not now permit an emergency interception in life-endangering situations. It does, however, permit such interceptions in an emergency situation which relates to "conspiratorial activities threatening the national security" or "conspiratorial activities characteristic of organized crime." The exigency of an immediate threat to human life is at least as, if not a more important reason for an emergency interception, and the scope of the emergency authorization provision, 18 U.S.C. 2518(7), should encompass such life-endangering situations.

This bill, which has been developed with the full participation of the administration and which has been personally endorsed by the President, will make these needed improvements to title III. I ask unanimous consent that the bill and the section-by-section analysis be printed in the RECORD. I also ask unanimous consent that a letter from the Administrative Office of the U.S. Courts, which details the number, type and location of State and Federal intercepts for the past 10 years, be printed in the RECORD.

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

S. 1717

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2510 of title 18, United States Code, is amended—

(1) in paragraph (10), by striking out "and" at the end thereof;

(2) in paragraph (11), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

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

"(12) 'surreptitious entry' means a physical entry upon a private place or premises to install, repair, resposition, replace, or remove any electronic, mechanical or other device, and includes both covert entry and entry effected by means of a ruse or subterfuge.".

SEC. 2. Section 2518(1) of that title is amended—

(1) in paragraph (e), by striking out "and" at the end thereof;

(2) in paragraph (f), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

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

"(g) a statement whether surreptitious entry is required to effect the interception, and if such surreptitious entry is required, a statement as to why means of effecting the interception other than surreptitious entry reasonably appear, if tried, to be unlikely to succeed, to be too dangerous, or to be impracticable.".

SEC. 3. Section 2518(3) of that title is amended—

(1) in paragraph (d), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

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

"(e) where the order is to authorize or approve a surreptitious entry, such surreptitious entry reasonably appears to be required to effect the interception because means of effecting the interception other than surreptitious entry reasonably appear, if tried, to be unlikely to succeed, to be too dangerous, or to be impracticable.".

SEC. 4. Section 2518(4) of that title is amended—

(1) in paragraph (d), by striking out the "and" at the end thereof;

(2) in paragraph (e), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

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

"(f) whether surreptitious entry is authorized or approved to effect the interception; and

"(g) in any order which includes authorization of surreptitious entry—

"(i) the identity of the agency authorized to make the surreptitious entry;

"(ii) that the attorney for the government in charge of the investigation shall, when practicable, notify in writing the authorizing judge of the proposed time and method of the entry, and when prior notice is not practicable, notification is to be made within 48 hours after such entry; and

"(iii) that in any case in which more than one entry is necessary to install the device, or in which re-entry is necessary to repair, reposition, or replace the device, the attorney for the government in charge of the investigation shall, when practicable, notify in writing the authorizing judge prior to such re-entry of the reasons which necessitate the re-entry, and when prior notice is not practicable, such notification is to be made within 48 hours after the re-entry and is to describe the reasons which necessitated the re-entry and why prior notification was not practicable.".

SEC. 5. Section 2518(7) of that title is amended—

(1) by amending paragraph (a) to read as follows:

"(a) an emergency situation exists that involves—

"(i) immediate danger of death or serious physical injury to any person,

"(ii) conspiratorial activities threatening the national security interest, or

"(iii) conspiratorial activities characteristic of organized crime,

that requires a wire or oral communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and"; and

(2) by inserting a comma and "and may make any surreptitious entry required to effect such interception," immediately before "if an application for an order".

SEC. 6. Section 2519(1) of that title is amended—

(1) by inserting immediately after paragraph (e) the following:

"(f) the fact that a surreptitious entry to effect the interception was authorized or approved, the number of such entries made, and the purpose, either to install, repair, reposition, replace, or remove the interception device, for each such entry;"; and

(2) by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), respectively.

SEC. 7. Section 2519(2) of that title is amended in paragraph (a) by striking out "(g)" and by inserting in lieu thereof "(h)".

SECTION-BY-SECTION ANALYSIS

Section one. This section amends section 2510 of Title 18, which sets forth the definitions of the terms employed in Title III, by defining the term "surreptitious entry". "Surreptitious entry" is defined to mean a "physical entry upon a private place or premises to install, repair, reposition, replace, or remove any electronic, mechanical, or other device". "Electronic, mechanical, or other device" is already defined in section 2510 to reach those devices which are used to intercept wire or oral communications.

The term "surreptitious entry" includes both covert entries and entries effected by ruse or subterfuge. Thus, the procedures governing surreptitious entry are to be followed whether the anticipated mode of entry is a physical break-in or the use of a pretext such as a bomb scare or utilities inspection. Inasmuch as each of these modes of gaining entry constitute physical intrusions into private premises, it is appropriate that specific court authorization for either type of entry be sought. Indeed, the Court in *Dalia v. United States*, 99 S. Ct. 1682 (1979), was of the opinion that both modes of entry were equally intrusive.

It is not intended that "surreptitious entry" include an entry which has been authorized by an occupant of the premises, or which a person, such as a landlord or common carrier has been directed to cooperate with the officers executing the order pursuant to section 2518(4). However, in the later case, if an entry on to the private premises is required, such entry must be authorized by the court. Nor are any entries onto public places intended to be characterized as "surreptitious" entries, even though a ruse or subterfuge might be used to protect the security of the interception or the safety of the officers.

Section two. 18 U.S.C. 2518(1) describes the information which must be included in an application for an order authorizing or approving the interception of wire or oral communications. Section two of the bill would amend current section 2518(1) by requiring that the application state whether surreptitious entry is required to effect the interception, and if so why means of effecting the interception other than surreptitious entry, reasonably appear, if tried, to be unlikely to succeed, to be too dangerous, or to be impracticable.

The provisions of section two would alert the issuing judge of the fact that a surreptitious entry was anticipated, and would supply him with sufficient information to determine whether the use of surreptitious entry to effect the interception was justified.

These amendments to 18 U.S.C. 2518(1) would not require the applicant to demonstrate that surreptitious entry is the only means of effecting the interception. Rather, he need only demonstrate that alternative means appear to be unlikely to succeed, to be too dangerous, or to be impracticable. For example, the use of an external monitoring device may be impracticable if it is not available to the officers applying for the order, if they do not have the technical expertise to operate it, if it is known to be unreliable, or if the configuration of the premises is believed to make it ineffective.

The interception of oral communications generally can be accomplished only by installing a concealed surveillance device, and in most instances, surreptitious entry is necessary to install the device. Nonetheless, in such a situation, the applicant should briefly state why the use of alternative means of effecting the interception are not feasible or as equally effective. On the other hand, interception of wire communications generally does not require the use of surreptitious entry since exterior lines may be tapped. If a situation should arise in which it is necessary to use surreptitious entry to effect the interception of wire communications, the applicant should explain why traditional non-instrusive methods cannot be employed.

Section three. Section three sets forth the findings that must be made by the issuing court as a prerequisite to issuing an order which authorizes or approves the use of surreptitious entry. This amendment to 18 U.S.C. 2518(3), which currently states the required findings that must be made before an order authorizing or approving the interception of wire or oral communications may be issued, provides that authorization or approval of surreptitious entry must be based on a finding that such entry reasonably appears to be required to effect the interception because means of effecting the interception other than surreptitious entry reasonably appear, if tried, to be unlikely to succeed, to be too dangerous, or to be impracticable.

The issuing judge is not required to find that surreptitious entry is the only means of effecting the interception in order to authorize such an entry. While there may exist highly sophisticated devices which are capable, in certain circumstances, of external interception of oral communications, these devices are still in the experimental stages, are highly expensive, often unreliable, and are not generally available to or used by law enforcement agencies. It is recognized that implantation of concealed surveillance devices is, in most instances, the only generally available and feasible means of intercepting oral communications. Hence, the use of external devices to monitor oral communications is generally "impractical" or "unlikely to succeed", and therefore, it is likely that surreptitious entry to install a microphone on the premises identified in the order will be "required" to effect the interception.

Section four. Section four of the bill amends 18 U.S.C. 2518(4) to require that the order authorizing or approving the interception specifically state whether surreptitious entry to effect the interception is authorized. The Supreme Court held in *Dalia v. United States* 99 S. Ct. 1682 (1979), that, while judges issuing Title III interception orders had the power to authorize such entries, the Fourth Amendment did not require that the order specifically authorize such entry. The Court's reasoning was that an order authorizing interception of oral communications implicitly authorized a surreptitious entry to position a device that would intercept the targeted conversations. These amendments will ensure that the issuing court is, in fact aware that surreptitious entry will be used to effect an interception and that the court specifically authorizes a surreptitious entry in the interception order.

In addition to requiring that the order state whether surreptitious entry is authorized, section four provides that the interception order shall identify the agency authorized to make the entry, and that the order shall require the government attorney supervising the interception to notify the issuing court in writing of the proposed time and method of the initial entry, and of any subsequent entry and the purpose therefor, i.e., either to repair, reposition, replace or remove the device. The statement of the proposed method of entry need only indicate whether contemplated entry is to be gained by a ruse, a subterfuge, by a physical break-in, or some other method, and need not detail every aspect of the mode of entry, such as the tools employed, although the judge may request more detailed information if he so desires. However, this notification would not preclude the officers executing the order from using a different method of entry which, at the last minute proves to be safer, more secretive or more effective.

Where prior notice to the issuing court is not practicable or where a method different from that originally contemplated is employed, a notice to the issuing court must be given within forty-eight hours after the entry. The purpose of these notification provisions is to supply the issuing judge with sufficient information so that he may monitor the use of the surreptitious entry. If it appears that the authority to conduct surreptitious entry is being abused, the issuing judge may place restrictions on any further such entries, or may modify his initial order, if appropriate.

The notification provisions will not require the submission of an application for, or the entry of, a new order to authorize additional surreptitious entries after the

initial entry to replace, reposition, or remove an interception device in the course of a single interception. Inasmuch as "surreptitious entry" is defined to include an entry made for the purposes of installing, repairing, repositioning, replacing, or removing an interception device, an order authorizing "surreptitious entry" would include a grant of authority to make such subsequent entries. However, the government attorney would be required to notify the issuing court of the contemplated entry.

Section five. The authorization of emergency interceptions without prior court approval is governed by section 2518(7), of Title 18. Section five of this bill contains two amendments to section 2518(7). Currently, this section of Title III permits the authorization of an interception without a prior court order in only two instances: first, when an emergency situation exists with respect to "conspiratorial activities threatening the national security" and second, when such an emergency exists with respect to "conspiratorial activities characteristic of organized crime". Section five of the bill would add as a third permissible basis for the authorization of an emergency interception the existence of a situation which involves an immediate danger of death or serious physical injury. The other requirements governing emergency interceptions set forth in section 2518(7) would remain unchanged. These current requirements include a provision that there must have existed sufficient grounds that a court order could have been obtained but for the fact that the emergency situation required immediate action, and that an application for an order approving the interception be made within forty-eight hours.

It is a well established principle that the existence of exigent circumstances requiring immediate action is justification for conducting a warrantless search. There is no reason why this same principle should not apply in the area of interception of communications, particularly in view of the narrowly drawn basis for emergency authorization set forth in this amendment. Certainly, an immediate threat of danger to human life is an equally, if not a more compelling justification for emergency interception than the current statutory basis set out in section 2518(7).

Situations have arisen and may again arise in which terrorists or a felon while holding hostages, use an available telephone to arrange with associates a strategy to force action on their demands or a plan of escape. In such a situation, interception of communications may be necessary to protect the lives of the hostages, yet time for obtaining a court order is not available. This amendment to section 2518(7) of Title 18 would make it clear that an emergency interception may be authorized without prior court approval when there is imminent danger to human life.

The second amendment to section 2518 (7) contained in section five of this bill simply provides that an emergency interception authorized under 18 U.S.C. 2518(7) may be effected by means of a surreptitious entry. As under current law, an application for an order approving an emergency interception must be made within forty-eight hours, and the application and the order, if granted, would be required to conform with the provisions set forth in this bill concerning surreptitious entry, if such an entry were made in the course of an emergency interception.

Section six. Section 2519 of Title 18 currently provides that certain information concerning Title III interceptions be reported to the Administrative Office of the United States Courts. Section six of this bill would amend 18 U.S.C. 2519 to require that the number and purpose of surreptitious entries made in the course of an interception also be included in the reported information. The statement of the purpose of the surreptitious entry will simply indicate whether the entry was made to install, repair, reposition, replace, or remove the device. This information would be available in the written notices filed with the issuing judge in accordance with the proposed amendment to 18 U.S.C. 2518(4).

Compilation of this data will enable Congress and others interested in the use of eavesdropping for law enforcement purposes to assess the extent to which surreptitious entries are used to effect Title III interceptions.

Section seven. This section corrects the paragraph references in section 2519(2) to reflect the addition of a new paragraph two, and redesignation of current paragraphs of, section 2519(1) in section six of the bill.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,
Washington, D.C., August 31, 1979.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR KENNEDY: In response to your request of August 28, 1979, we have prepared tables on the number of state and federal intercepts installed, by location and type, during calendar years 1968 through 1978. The tables are as follows:

1. Table 1, State and Federal Phone Wire Intercepts Installed, by Location, for the Years 1968 through 1978;

2. Table 2, State and Federal Microphone-Eavesdrop Intercepts Installed, by Location, for the Years 1968 through 1978;

3. Table 3, State and Federal Phone Wire/Microphone Eavesdrop Intercepts Installed, by Location, for the Years 1968 through 1978; and

4. Table 4, State and Federal Intercepts Installed Using Other Types of Surveillance, by Location, for the Years 1968 through 1978.

In addition we are enclosing a copy of the report instructions, the docket set, and the Wiretap Report for calendar year 1978.

Sincerely yours,

JAMES A. MCCAFFERTY.

Enclosures.

TABLE 1.—STATE AND FEDERAL PHONE WIRE INTERCEPTS INSTALLED, BY LOCATION, FOR THE YEARS 1968 THROUGH 1978 [1]

Jurisdiction and year	Total installed	Location					
		Single-family dwelling	Apartment	Multi-dwelling	Business	Combination [2]	Other
Total Federal and State	6,096	2,527	1,600	397	1,012	320	230
Total Federal	1,160	424	308	48	163	179	38
1968							
1969	27	10	7	3	7		
1970	171	49	56	4	33	22	7
1971	270	115	78	11	30	27	9
1972	187	64	57	10	14	31	11
1973	105	41	29	6	13	15	1
1974	97	36	20	5	14	20	2
1975	83	26	23	4	11	18	1
1976	109	44	26	1	14	20	4
1977	57	16	8	3	9	18	3
1978	54	23	4	1	18	8	
Total State	4,936	2,113	1,292	349	849	141	192
1968	147	57	44	6	40		
1969	222	110	55	9	45	3	
1970	367	144	91	34	70	8	20
1971	483	219	124	30	90	9	11
1972	592	276	149	43	86	10	28
1973	626	243	186	48	102	11	36
1974	536	204	123	51	111	22	25
1975	537	224	154	28	92	22	17
1976	472	200	125	49	67	12	19
1977	498	220	136	25	70	26	21
1978	456	216	105	26	76	18	15

[1] 1968 data covers the period June 20 to Dec. 31, 1968. All other data is for the entire calendar year.
[2] Combination refers to the number of authorized interceptions where more than 1 location was reported.

Source: Prepared by the Administrative Office of the U.S. Courts, Statistical Analysis and Reports Division, Washington, D.C. 20544.

TABLE 2.—STATE AND FEDERAL MICROPHONE-EAVESDROP INTERCEPTS INSTALLED BY LOCATION, FOR THE YEARS 1968 THROUGH 1978 [1]

Jurisdiction and year	Total installed	Location					
		Single family dwelling	Apartment	Multi-dwelling	Business	Combination [2]	Other
Total Federal and State	282	19	38	6	137	5	77
Total Federal	79	6	11	3	43	2	14
1968							
1969	1				1		
1970	3		1		2		
1971	5		1		2		2
1972	5		2		2		1
1973	12	2	1		5		4
1974	10	1		1	7		1
1975	11	1	3		5	1	1
1976	10		1		5	1	3
1977	9	2	1	1	4		1
1978	13		1	1	10		1
Total State	203	13	27	3	94	3	63
1968							
1969	14		1		8		5
1970	18		4	1	6		7
1971	12	1	1		4		6
1972	24	1	2		7	1	13
1973	36	7	6		14		9
1974	26		6	1	14	1	4
1975	26	1	5		15		5
1976	16	1			9	1	5
1977	17	2	2	1	5		7
1978	14				12		2

[1] 1968 data covers the period June 20 to Dec. 31, 1968. All other data is for the entire calendar year.
[2] Combination refers to the number of authorized interceptions where more than 1 location was reported.

Source: Prepared by the Administrative Office of the U.S. Courts, Statistical Analysis and Reports Division, Washington, D.C. 20544.

TABLE 3.—STATE AND FEDERAL PHONE WIRE/MICROPHONE EAVESDROP INTERCEPTS INSTALLED, BY LOCATION, FOR THE YEARS 1968 THROUGH 1978[1]

Jurisdiction and year	Total installed	Location					
		Single family dwelling	Apartment	Multi-dwelling	Business	Combination[2]	Other
Total Federal and State	203	22	34	5	80	42	20
Total Federal	103	8	8	1	47	36	3
1968							
1969	2					2	
1970	5	1	1		3		
1971	6		1		2	3	
1972	13	1	1		4	5	2
1973	13	2	2		5	4	
1974	13		1		7	5	
1975	12			1	9	2	
1976	15		1		7	6	1
1977	11	1	1		5	4	
1978	13	3			5	5	
Total State	100	14	26	4	33	6	17
1968							
1969	4	1	2		1		
1970	18	3	9		3		3
1971	8	1	2	1	1		3
1972	15	2	2	2	4	1	4
1973	19	2	5		9		3
1974	5		1		4		
1975	7		3		2	2	
1976	10	2	1		4	1	2
1977	7	2	1	1	2	1	
1978	7	1			3	1	2

[1] 1968 data covers the period June 20 to Dec. 31, 1968. All other data is for the entire calendar year.
[2] Combination refers to the number of authorized interceptions where more than one location was reported.

Source: Prepared by the Administrative Office of the U.S. Courts, Statistical Analysis and Reports Division, Washington, D.C. 20544.

TABLE 4.—STATE AND FEDERAL INTERCEPTS INSTALLED USING OTHER TYPES OF SURVEILLANCE, BY LOCATION, FOR THE YEARS 1968 THROUGH 1978[1]

Jurisdiction and year	Total installed	Location					
		Single family dwelling	Apartment	Multi-dwelling	Business	Combination[2]	Other
Total Federal and State	29	8	5		6	2	8
Total Federal	3	1				1	1
1968							
1969							
1970							
1971							
1972							
1973							
1974							
1975							
1976	2					1	1
1977							
1978	1	1					
Total State	26	7	5		6	1	7
1968							
1969							
1970							
1971	8	3			2	1	2
1972	5		2		1		2
1973	1	1					
1974	7	2	3		1		1
1975							
1976	1				1		
1977	2	1			1		
1978	2						2

[1] 1968 data covers the period June 20 to Dec. 31, 1968. All other data is for the entire calendar year.
[2] Combination refers to the number of authorized interceptions where more than one location was reported.

Source: Prepared by the Administrative Office of the U.S. Courts, Statistical Analysis and Report Division, Washington, D.C. 20544.

ADDITIONAL COSPONSORS

S. 43

At the request of Mr. HATCH, the Senator from Iowa (Mr. JEPSEN), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Mississippi (Mr. STENNIS), the Senator from Georgia (Mr. TALMADGE), and the Senator from Nebraska (Mr. ZORINSKY) were added as cosponsors of S. 43, the National Ski Patrol System Recognition Act.

S. 91

At the request of Mr. THURMOND, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 91, a bill to amend title 10, U.S. Code, to remove certain inequities in the survivor benefit plan provided for under chapter 73 of such title, and for other purposes.

S. 105

At the request of Mr. WALLOP, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 105, the Parental Kidnaping Prevention Act of 1979.

S. 391

At the request of Mr. ROTH, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of S. 391, a bill to limit the burden reporting requirements placed on small businesses, to provide for the pilot testing of reporting forms issued or required by the Federal Government, to establish procedures for the reduction of the reporting burden upon small businesses on a continuing basis, and for other purposes.

S. 600

At the request of Mr. KENNEDY, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of S. 600, the Small and Independent Business Protection Act of 1979.

S. 616

At the request of Mr. DOLE, the Senator from North Carolina (Mr. HELMS) and the Senator from Maryland (Mr. MATHIAS) were added as cosponsors of S. 616, a bill to amend the Internal Revenue Code to allow a deduction for contributions for the construction or maintenance of buildings housing fraternal organizations.

S. 625

At the request of Mr. WALLOP, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 625, a bill to amend the Federal Mine Safety and Health Amendments Act of 1977.

S. 655

At the request of Mr. WEICKER, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 655, the Small Business Investment Incentive Act.

S. 731

At the request of Mr. SCHWEIKER, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 731, a bill to amend titles XVIII and XIX of the Social Security Act to strengthen the capabilities of the States and the Federal Government to detect medicaid fraud and abuse.

S. 879

At the request of Mr. CHILES, the Senator from Florida (Mr. STONE) was added as a cosponsor of S. 879, a bill to provide lump sum death benefits for certain Federal law officers and firefighters killed in the line of duty.

S. 1004

At the request of Mr. BENTSEN, the Senator from Nebraska (Mr. ZORINSKY) was added as a cosponsor of S. 1004, a bill to suspend the duty on freight cars until the close of June 30, 1981.

S. 1246

At the request of Mr. KENNEDY, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of S. 1246, the Energy Antimonopoly Act of 1979.

S. 1252, S. 1253, S. 1254, S. 1255, S. 1256, AND S. 1257

At the request of Mr. BENTSEN, the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 1252, S. 1253, S. 1254, S. 1255, S. 1256, and S. 1257, bills to increase productivity.

S. 1269

At the request of Mr. SCHWEIKER, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 1269, a bill to amend the Urban Mass Transportation Assistance Act of 1964 with respect to reduced fare ridership for elderly or handicapped persons.

S. 1295

At the request of Mr. CULVER, the Senator from Arkansas (Mr. BUMPERS) was added as a cosponsor of S. 1295, the Senior Citizens Health Insurance Reform Act of 1979.

S. 1411

At the request of Mr. CHILES, the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 1411, a bill to improve the economy and efficiency of the Government and the private sector by improving Federal information management.

S. 1433

At the request of Mr. PACKWOOD, the Senator from Florida (Mr. CHILES), the Senator from Tennessee (Mr. SASSER), and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 1433, a bill to improve the certification process used by the Federal Aviation Authority for passenger airplanes.

S. 1475

At the request of Mr. BENTSEN, the Senator from New York (Mr. JAVITS), the Senator from Indiana (Mr. LUGAR), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 1475, a bill to amend the Internal Revenue Code of 1954 to provide tax incentives to encourage the creation and growth of new and innovative firms.

S. 1481

At the request of Mr. WEICKER, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 1481, the Small Business Participating Debenture bill.

S. 1505

At the request of Mr. COCHRAN, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 1505, to amend the IRC to provide that the amount of a deduction in the case of a disaster loss shall be increased by an amount computed with regard to the replacement cost of property lost in the disaster.

S. 1523

At the request of Mr. THURMOND, the Senator from Tennessee (Mr. BAKER) was added as cosponsors of S. 1523, a bill to amend title 38, United States Code, to establish demonstration centers of geriatric research, education, and clinical operations within the Veterans' Administration.

S. 1571

At the request of Mr. PACKWOOD, the Senator from Wisconsin (Mr. NELSON), the Senator from Texas (Mr. BENTSEN), and the Senator from Massachusetts (Mr. TSONGAS), were added as cosponsors to S. 1571, a bill to amend the Internal Revenue Code to provide increased incentives for the utilization of alternative energy sources.

S. 1576

At the request of Mr. BAKER (for Mr. JEPSEN), the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1576, a bill to amend the National Labor Relations Act to provide for a freedom of choice in labor relations for full-time and part-time secondary and college students by exempting them from compulsory union membership, and for other purposes.

S. 1577

At the request of Mr. BAKER (for Mr. JEPSEN), the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1577, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 1658

At the request of Mr. JAVITS, the Senator from Rhode Island (Mr. PELL) and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 1658, the Asbestos School Hazard Detection and Control Act of 1979.

S. 1680

At the request of Mr. HATCH, the Senator from Wyoming (Mr. SIMPSON), the Senator from Nevada (Mr. LAXALT) and the Senator from Wyoming (Mr. WALLOP) were added as cosponsors of S. 1680, a bill to provide for the cession and conveyance to the States of federally owned unreserved, unappropriated funds, and to establish policy, methods, procedures, schedules, and criteria for such transfers.

SENATE JOINT RESOLUTION 85

At the request of Mr. SCHWEIKER, the Senator from Florida (Mr. CHILES) was added as a cosponsor of Senate Joint Resolution 85, to authorize and request the President to proclaim the week of September 16–22, 1979, as "National Meals on Wheels Week."

SENATE JOINT RESOLUTION 100

At the request of Mr. SASSER, the Senator from Mississippi (Mr. COCHRAN), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Indiana (Mr. LUGAR), and the Senator from California (Mr. CRANSTON) were added as cosponsors of Senate Joint Resolution 100, to authorize the President to proclaim May 1, 1980 as National Bicycling Day.

SENATE RESOLUTION 216

At the request of Mr. PROXMIRE, the Senator from North Dakota (Mr. BURDICK) and the Senator from Arkansas (Mr. BUMPERS) were added as cosponsors of Senate Resolution 216, relating to the construction of the Senate office buildings.

SENATE CONCURRENT RESOLUTION 36—ORIGINAL CONCURRENT RESOLUTION REPORTED DURING THE RECESS REVISING THE CONGRESSIONAL BUDGET FOR FISCAL YEARS 1980, 1981, AND 1982

Mr. MUSKIE, from the Committee on the Budget, pursuant to the order of the Senate on August 3, 1979, reported the following original resolution on August 24, 1979:

S. CON. RES. 36

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby determines and declares, pursuant to subsection 310(a) of the Congressional Budget Act of 1974, that:

In order to achieve a balanced budget in fiscal year 1981, the following budgetary levels are appropriate for the fiscal years beginning on October 1, 1979, October 1, 1980, and October 1, 1981—

(a) the recommended level of Federal revenues is as follows:

Fiscal year 1980: $514,700,000,000;
Fiscal year 1981: $603,600,000,000;
Fiscal year 1982: $658,400,000,000;

and the amount by which the aggregate levels of Federal revenues should be increased or decreased is as follows:

Fiscal year 1980: +$2,000,000,000;
Fiscal year 1981: +$9,700,000,000;
Fiscal year 1982: —$38,700,000,000;

(b) the appropriate level of total new budget authority is as follows:

Fiscal year 1980: $632,200,000,000;
Fiscal year 1981: $649,200,000,000;
Fiscal year 1982: $722,500,000,000;

(c) the appropriate level of total budget outlays is as follows:

Fiscal year 1980: $542,700,000,000;
Fiscal year 1981: $588,600,000,000;
Fiscal year 1982: $632,800,000,000;

(d) the amount of the deficit or surplus in the budget which is appropriate in the light of economic conditions and all other relevant factors is as follows:

Fiscal year 1980: —$28,000,000,000;
Fiscal year 1981: +$15,000,000,000;
Fiscal year 1982: +$25,600,000,000;

(e) the appropriate level of the public debt is as follows:

Fiscal year 1980: $887,400,000,000;
Fiscal year 1981: $906,200,000,000;
Fiscal year 1982: $921,400,000,000;

the amount by which the temporary statutory limit on such debt should be accordingly increased is as follows:

Fiscal year 1980: $57,400,000,000;
Fiscal year 1981: $76,200,00,000;
Fiscal year 1982: $91,400,000,000.

SEC. 2. Based on allocations of the appropriate level of total new budget authority and of total budget outlays as set forth in paragraphs (b) and (c) of the preceding subsection of this resolution, the Congress hereby determines and declares pursuant to subsection 310(a) of the Congressional Budget Act of 1974 that, for the fiscal years beginning on October 1, 1979, October 1, 1980, and October 1, 1981, the appropriate level of new budget authority and the estimated budget outlays for each major functional category are respectively as follows:

(a) National Defense (050):

Fiscal year 1980:

(A) New budget authority, $136,800,000,000;

(B) Outlays, $127,400,000,000.

Fiscal year 1981:

(A) New budget authority, $147,300,000,000;

(B) Outlays, $138,300,000,000.

Fiscal year 1982:

(A) New budget authority, $159,000,000,000;

(B) Outlays, $148,900,000,000.

(b) International Affairs (150):

Fiscal year 1980:

(A) New budget authority, $13,100,000,000;

(B) Outlays, $8,300,000,000.

Fiscal year 1981:

(A) New budget authority, $14,000,000,000;

(B) Outlays, $8,700,000,000.

Fiscal year 1982:
(A) New budget authority, $14,900,000,000;
(B) Outlays, $8,700,000,000.
(c) General Science, Space, and Technology (250):
Fiscal year 1980:
(A) New budget authority, $5,900,000,000;
(B) Outlays, $5,700,000,000.
Fiscal year 1981:
(A) New budget authority, $5,900,000,000;
(B) Outlays, $5,800,000,000.
Fiscal year 1982:
(A) New budget authority, $5,600,000,000;
(B) Outlays, $5,700,000,000.
(d) Energy (270):
Fiscal year 1980:
(A) New budget authority, $41,000,000,000;
(B) Outlays $7,000,000,000.
Fiscal year 1981:
(A) New budget authority, $4,700,000,000;
(B) Outlays, $7,600,000,000.
Fiscal year 1982:
(A) New budget authority, $24,200,000,000;
(B) Outlays, $9,500,000,000.
(e) Natural Resources and Environment (300):
Fiscal year 1980:
(A) New budget authority, $12,700,000,000;
(B) Outlays, $11,900,000,000.
Fiscal year 1981:
(A) New budget authority, $13,400,000,000;
(B) Outlays, $12,700,000,000.
Fiscal year 1982:
(A) New budget authority, $14,100,000,000;
(B) Outlays, $13,500,000,000.
(f) Agriculture (350):
Fiscal year 1980:
(A) New budget authority, $5,000,000,000;
(B) Outlays, $2,600,000,000.
Fiscal year 1981:
(A) New budget authority, $4,800,000,000;
(B) Outlays, $3,200,000,000.
Fiscal year 1982:
(A) New budget authority, $3,900,000,000;
(B) Outlays, $3,600,000,000.
(g) Commerce and Housing Credit (370):
Fiscal year 1980:
(A) New budget authority, $6,800,000,000;
(B) Outlays, $3,000,000,000.
Fiscal year 1981:
(A) New budget authority, $5,900,000,000;
(B) Outlays, $3,500,000,000.
Fiscal year 1982:
(A) New budget authority, $6,200,000,000;
(B) Outlays, $3,200,000,000.
(h) Transportation (400):
Fiscal year 1980:
(A) New budget authority, $19,500,000,000;
(B) Outlays, $18,600,000,000.
Fiscal year 1981:
(A) New budget authority, $21,700,000,000;
(B) Outlays, $19,800,000,000.
Fiscal year 1982:
(A) New budget authority, $20,400,000,000;
(B) Outlays, $20,800,000,000.
(i) Community and Regional Development (450):
Fiscal year 1980:
(A) New budget authority, $8,900,000,000;
(B) Outlays, $8,400,000,000.
Fiscal year 1981:
(A) New budget authority, $9,900,000,000;
(B) Outlays, $9,200,000,000.
Fiscal year 1982:
(A) New budget authority, $9,500,000,000;
(B) Outlays, $9,600,000,000.
(j) Education, Training, Employment, and Social Services (500):
Fiscal year 1980:
(A) New budget authority, $29,700,000,000;
(B) Outlays, $30,500,000,000.
Fiscal year 1981:
(A) New budget authority, $30,400,000,000;
(B) Outlays, $30,000,000,000.
Fiscal year 1982:
(A) New budget authority, $30,300,000,000;
(B) Outlays, $30,000,000,000.
(k) Health (550):
Fiscal year 1980:
(A) New budget authority, $58,800,000,000;
(B) Outlays, $54,200,000,000.
Fiscal year 1981:
(A) New budget authority, $70,500,000,000;
(B) Outlays, $61,100,000,000.
Fiscal year 1982:
(A) New budget authority, $82,100,000,000;
(B) Outlays, $68,100,000,000.
(l) Income Security (600):
Fiscal year 1980:
(A) New budget authority, $216,600,000,000;
(B) Outlays, $188,400,000,000.
Fiscal year 1981:
(A) New budget authority, $243,300,000,000;
(B) Outlays, $210,500,000,000.
Fiscal year 1982:
(A) New budget authority, $273,500,000,000;
(B) Outlays, $233,000,000,000.
(m) Veterans Benefits and Services (700):
Fiscal year 1980:
(A) New budget authority, $21,200,000,000;
(B) Outlays, $20,500,000,000.
Fiscal year 1981:
(A) New budget authority, $21,800,000,000;
(B) Outlays, $21,400,000,000.
Fiscal year 1982:
(A) New budget authority, $22,600,000,000;
(B) Outlays, $22,500,000,000.
(n) Administration of Justice (750):
Fiscal year 1980:
(A) New budget authority, $4,200,000,000;
(B) Outlays, $4,400,000,000.
Fiscal year 1981:
(A) New budget authority, $4,400,000,000;
(B) Outlays, $4,500,000,000.
Fiscal year 1982:
(A) New budget authority, $4,500,000,000;
(B) Outlays, $4,500,000,000.
(o) General Government (800):
Fiscal year 1980:
(A) New budget authority, $4,400,000,000;
(B) Outlays, $4,200,000,000.
Fiscal year 1981:
(A) New budget authority, $4,700,000,000;
(B) Outlays, $4,400,000,000.
Fiscal year 1982:
(A) New budget authority, $4,900,000,000;
(B) Outlays, $4,600,000,000.
(p) General Purpose Fiscal Assistance (850):
Fiscal year 1980:
(A) New budget authority, $9,300,000,000;
(B) Outlays, $9,300,000,000.
Fiscal year 1981:
(A) New budget authority, $8,200,000,000;
(B) Outlays, $8,600,000,000.
Fiscal year 1982:
(A) New budget authority, $8,200,000,000;
(B) Outlays, $8,200,000,000.
(q) Interest (900):
Fiscal year 1980:
(A) New budget authority, $58,100,000,000;
(B) Outlays, $58,100,000,000.
Fiscal year 1981:
(A) New budget authority, $60,900,000,000;
(B) Outlays, $60,900,000,000.
Fiscal year 1982:
(A) New budget authority, $62,300,000,000;
(B) Outlays, $62,300,000,000.
(r) Allowances (920):
Fiscal year 1980:
(A) New budget authority, —$100,000,000;
(B) Outlays, —$100,000,000.
Fiscal year 1981:
(A) New budget authority, —$100,000,000;
(B) Outlays, —$100,000,000.
Fiscal year 1982:
(A) New budget authority, $0;
(B) Outlays, $0.
(s) Undistributed Offsetting Receipts (950);
Fiscal year 1980:
(A) New budget authority, —$19,700,000,000;
(B) Outlays, —$19,700,000,000.
Fiscal year 1981:
(A) New budget authority, —$21,500,000,000;
(B) Outlays, —$21,500,000,000.
Fiscal year 1982:
(A) New budget authority, —$23,900,000,000;
(B) Outlays, —$23,900,000,000.

SEC. 3. Pursuant to subsection 310(a) of the Congressional Budget Act of 1974, the Committees on Appropriations shall reduce spending in reported or enacted laws, bills, and resolutions by $2,900,000,000 in budget authority and $2,500,000,000 in outlays for fiscal year 1980 and are instructed to report promptly, in accordance with section 310 of such Act, their recomendations for changes in new budget authority for fiscal year 1980, budget authority initially provided for prior fiscal years, and new spending authority which is to become effective during fiscal year 1980 contained in reported or enacted laws, bills, and resolutions within the jurisdictions of those committees sufficient to accomplish the reduction required by this section.

SEC. 4. Pursuant to subsection 310(a) of the Congressional Budget Act of 1974, the Committees on Agriculture shall reduce spending for fiscal year 1980 in reported or enacted laws, bills, and resolutions by $100,000,000 in budget authority and $100,000,000 in outlays and are instructed to report promptly, in accordance with section 310 of such Act, their recommendations for changes in new budget authority for fiscal year 1980, budget authority initially provided for prior fiscal years, and new spending authority which is to become effective during fiscal year 1980 contained in reported or enacted laws, bills, and resolutions within the jurisdictions of those committees sufficient to accomplish the reduction required by this section.

SEC. 5. Pursuant to subsection 310(a) of the Congressional Budget Act of 1974, the Committees on Armed Services shall reduce spending for fiscal year 1980 in reported or enacted laws, bills, and resolutions by $100,000,000 in budget authority and $100,000,000 in outlays and are instructed to report promptly, in accordance with section 310 of such Act, their recommendations for changes in new budget authority for fiscal year 1980, budget authority initially provided for prior fiscal years, and new spending authority which is to become effective during fiscal year 1980 contained in reported or enacted laws, bills, and resolutions within the jurisdictions of those committees sufficient to accomplish the reduction required by this section.

SEC. 6. Pursuant to subsection 310(a) of the Congressional Budget Act of 1974, the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation shall reduce spending for fiscal year 1980 in reported or enacted laws, bills, and resolutions by $250,000,000 in budget authority and are instructed to report promptly, in accordance with section 301 of such Act, recommendations for changes in new budget authority for fiscal year 1980, budget authority initially provided for prior fiscal years, and new spending authority which is to become effective during fiscal year 1980 contained in reported or enacted laws, bills, and resolutions within the jurisdictions of those committees sufficient to accomplish the reduction required by this section.

SEC. 7. Pursuant to subsection 310(a) of the Congressional Budget Act of 1974, the Senate Committee on Finance and the House Committee on Ways and Means shall reduce spending for fiscal year 1980 in reported or enacted laws, bills, and resolutions by $300,000,000 in budget authority and $1,700,000 in outlays and are instructed to report promptly, in accordance with section 310 of such Act, recommendations for changes in new budget authority for fiscal year 1980, budget authority provided for prior fiscal years, and new spending authority which is to become effective during fiscal year 1980 contained in reported or enacted laws, bills, and resolutions within the jurisdictions of those committees sufficient to accomplish the reduction required by this section.

SEC. 8. Pursuant to subsection 310(a) of the Congressional Budget Act of 1974, the Senate Committee on Governmental Affairs and the House Committee on Government Operations shall reduce spending for fiscal year 1980 in reported or enacted laws, bills, and resolutions by $100,000,000 in outlays and are instructed to report promptly, in accordance with section 310 of such Act, recommendations for changes in new budget authority for fiscal year 1980, budget authority initially provided for prior fiscal years, and new spending authority which is to become effective during fiscal year 1980 contained in reported or enacted laws, bills, and resolutions within the jurisdictions of those committees sufficient to accomplish the reduction required by this section.

SEC. 9. Pursuant to subsection 310(a) of the Congressional Budget Act of 1974, the Committees on Veterans' Affairs shall reduce spending for fiscal year 1980 in reported or enacted laws, bills, and resolutions by $100,000,000 in budget authority and $200,000,000 in outlays and are instructed to report promptly, in accordance with section 310 of such Act, recommendations for changes in new budget authority for fiscal year 1980, budget authority initially provided for prior fiscal years, and new spending authority which is to become effective during fiscal year 1980 contained in reported or enacted laws, bills, and resolutions within the jurisdictions of those committees sufficient to accomplish the reduction required by this section.

SEC. 10. Pursuant to section 300 and 310 of the Congressional Budget Act of 1974, the committees specified in sections 3 to 9 herein shall report the recommendations required by this resolution not later than September 25, 1979, or ten days after Congress completes action on this resolution, whichever first occurs.

AMENDMENTS SUBMITTED FOR PRINTING

MONETARY POLICY IMPROVEMENT ACT OF 1979—S. 85

AMENDMENT NO. 398

(Ordered to be printed and referred to the Committee on Banking, Housing, and Urban Affairs)

Mr. PROXMIRE (for himself, Mr. BURDICK, and Mr. BUMPERS) submitted an amendment intended to be proposed by them jointly, to S. 85, a bill to amend the Federal Reserve Act to provide for maintenance of reserves in order to facilitate the implementation of monetary policy, to promote competitive equality among depository institutions, to require the imposition of service charges for services by Federal Reserve banks, and for other purposes.

Mr. PROXMIRE. Mr. President, I am today introducing an amendment to S. 85, the Monetary Policy Improvement Act of 1979, which incorporates many of the ideas that have been talked about during the course of extensive hearings on the so-called Fed membership problem, during meetings on this subject by various groups within the banking community, and during the evolution of H.R. 7 through the House of Representatives. This amendment is being offered as a substitute for the original text of S. 85 and will be considered by the Banking Committee along with H.R. 7 at hearings that have been scheduled for September 26 and 27, 1979.

This issue has been before the Congress for a considerable time and if no consensus can be reached during this session it will be an ongoing issue until it is resolved. To call it the Fed membership issue is incorrect for the issue goes far beyond the problem of the continued erosion of membership in the Federal Reserve System. That is, of course, the problem which brought the broader issues out into the open. But, in my view, and in the view of former Chairman G. William Miller, membership in the central bank is not essential. The evolution of banking and the financial markets in the past 30 years has been dramatic, and it is time to consider needed and fundamental reforms in the Federal Reserve System to make it truly our Nation's central bank unencumbered by worries about membership.

The primary responsibility of the Federal Reserve today is the conduct of monetary policy, a function that was not even envisioned in 1913 when the Congress passed the Federal Reserve Act. In fact, the most important monetary policy committee within the Federal Reserve, the Federal Open Market Committee, was not created until 1933. And since then the importance of monetary policy to the well-being of the Nation has expanded dramatically. If the Congress is to continue to depend on the Federal Reserve to manage our money and credit needs, it is the Congress responsibility to make sure that the Fed has both the necessary tools and a broad base within the financial system from which those tools can be used. The continued reduction of the proportion of deposits covered by reserve requirements could weaken the Fed's ability to implement monetary policy.

The innovativeness of the financial system has developed an expanded payments mechanism which goes far beyond that of 1913, 1933, or even 1970. Our basic money supply used to be composed of only currency, coin, and demand deposits at banks—checking accounts. But, in recent years, our means of payments have expanded to include negotiable order of withdrawal accounts (NOW's), credit union share drafts, telephone transfer and billpayer accounts, remote service units, automatic transfer accounts, and others. If control of the money supply is important to this economy, and there is almost nobody that says it is not, then the Federal Reserve must be in a position to use its policy tools to the growth of currency, demand deposits and the new types of money, regardless of whether those components of money are deposits at member banks, nonmember banks, credit unions, mutual savings banks, or savings and loan associations.

Mr. President, important and beneficial changes are needed if the Federal Reserve System is to continue to remain strong and effective. I have tried to incorporate these into the legislation I am submitting today. The broad objectives which are sought by this legislation are:

First, to insure on a permanent basis that the Federal Reserve has the ability to control money and credit in a rapidly changing financial environment;

Second, to promote greater competitive equality among financial institutions;

Third, to provide for changes in the reserve requirement structure that provide for a lower, more uniform, and more equitable structure while at the same time providing the necessary cover to strengthen the ability of the Fed to control both money and credit;

Fourth, to enhance the safety and soundness of the banking system by providing direct access to the Federal Reserve's discount window for all depository institutions offering transaction accounts based on need, not affiliation;

Fifth, to improve the efficiency of the payments mechanism by the establishment of a system of fees for Federal Reserve services, now offered without charge, by encouraging faster clearing and less float, and by providing access to Federal Reserve services to all depository institutions at the same price;

Sixth, to free the Federal Reserve Board from any overbearing concern it may have that its decisions with regard to issues of monetary policy, or supervision and regulation of banks or bank holding companies may adversely affect membership in the Federal Reserve Sys-

tem and, therefore, weaken its ability to act; and

Seventh, to accomplish the above objectives in a manner that provides the maximum benefit at a reasonable and justifiable cost to the U.S. Treasury and the American taxpayers.

Mr. President, on July 18, 1979 the Banking Leadership Conference of the American Bankers Association issued a consensus statement in which it affirmed the importance of preserving the strength, independence, and monetary effectiveness of the Federal Reserve. The statement also indicated that the ABA would be willing to support legislation which established reserve requirements set by the Federal Reserve on all transactions accounts offered by any and all financial intermediaries, with some allowance for size considerations. This structure has been called the level-playing field because all depositories would be treated in the same manner. The legislation that I am introducing today satisfies those requirements.

SUMMARY OF MAIN FEATURES

Reserve requirements: All depository institutions would be required to hold reserves against their transaction accounts and nonpersonal time deposits. There would be no reserve requirements against personal time and savings deposits. For transaction accounts the reserve requirement would be 3 percent on the first $5 million and 12 percent on such accounts in excess of $5 million. The Federal Reserve Board would be given the authority to vary the reserve ratio on accounts above $5 million within a range of 11 to 13 percent solely for the purpose of implementing monetary policy. For nonpersonal time deposits the reserve requirement would be zero percent on the first $5 million and 6 percent on such deposits above $5 million. The Board would have the authority to vary the reserve ratio on such deposits in excess of $5 million within a range of 0 to 12 percent, again solely for the purpose of implementing monetary policy. The Board would also be given flexibility to impose reserve requirements above or below the prescribed limits in extraordinary circumstances for a period of 30 days.

This simplified and lower reserve requirement structure would permit a reduction in reserves maintained by member banks at the Federal Reserve banks of more than $10 billion, while total reserves of the banking system would be reduced by about $7 billion. At the same time the proportion of total bank deposits held at those banks subject to reserve requirements would be increased from 72 percent to approximately 87 percent. The number of banks holding reserves would increase from 5,062, total number of members banks, to 6,872.

Reporting requirements: The Federal Reserve Board would be authorized to require periodic reporting of liabilities and assets from all depository institutions whose reserve requirements are greater than zero as may be necessary or desirable to enable the Board to monitor and control the monetary and credit aggregates. Institutions not subject to reserve requirements would provide such reports to their respective supervisory agencies.

Discount window: Any depository institution in which transaction accounts are held would be entitled to access to the Federal Reserve's discount window on the same terms and conditions as member banks.

Federal Reserve services: The Federal Reserve would be required to publish for public comment a set of pricing principles and a proposed schedule of fees based on those principles for services offered by Federal Reserve banks to depository institutions within 6 months after enactment of the legislation. The Board would also be required to put into effect a schedule of fees for such services within 18 months after the date of enactment of the legislation.

All Federal Reserve services covered by the fee schedule would be made available to nonmember depository institutions at the same fee applicable to member banks.

The fees are to be established on the basis of all direct and indirect costs actually incurred including overhead and an allocated or imputed cost for taxes and the rate of return on capital that would have applied if such services were provided by private business firms, except where the Board determines that it is necessary to depart from this principle in order to prevent a serious and long lasting impairment of the Nation's payments system.

One of the services that the Federal Reserve provides—Federal Reserve float—arises from the clearing of checks and other paper items. The Fed is attempting to reduce the level of float by operational means and is studying possible changes in rules for clearing that may be needed to further reduce float. The legislation would require that any float remaining after such reductions be charged for at the current rate of interest applicable in the market for Federal funds.

Treasury revenues: The legislation would affect the revenues of the Federal Reserve System and ultimately the Treasury and, therefore, the budget deficit in a number of ways. First, the revised reserve requirement structure would reduce reserve requirements for member banks by $10.2 billion. This would increase member banks earnings and cost the Treasury approximately $660 million in pretax revenues. Second, the application of reserve requirements to insured and noninsured nonmember banks will result in an increase of reserves of $3.3 billion and an increase in pretax revenues to the Treasury of $213.4 million. Third, the mandate to begin charging for Federal Reserve services would produce an additional $410 million in pretax revenues to the Treasury at current service levels. Fourth, assuming reduction of float to end-of-year 1977 levels, the Federal Reserve would collect an additional $247 million in fees for the remaining float.

The combined effect of these changes would result in a pretax revenue gain to the Treasury of $210 million. However, these net gains in revenue to the Treasury would be subject to offsetting taxes against increased earnings and write-offs against increased expenses. The Treasury has estimated that the revenue loss would be at a 55-percent rate. Therefore, the net revenue gains to the Treasury would be approximately $116 million. This is a net gain in revenue, not a loss as would be the case with all other proposals. The revenue loss to the Treasury after taking into consideration of the amount to be recaptured by taxes of H.R. 7 is over $300 million and could be much more, perhaps more than $1 billion, depending on how the pricing of Federal Reserve services is handled. Given the President's commitment to hold down the deficit and to balance the budget, we must be mindful of the effects that this legislation will have on Treasury revenues. In our inflationary environment, with the CPI increasing at 13 percent, the use of Treasury revenues to provide additional revenues for the banks, will be extremely difficult to justify to the voters of the Nation.

Mr. President, I had an opportunity to meet with Chairman Volcker yesterday to discuss the Fed membership legislation. Several different approaches were the subject of our meeting, including some new ideas that Chairman Volcker has put forth. He will be discussing this issue with various groups over the next 2 or 3 weeks prior to our committee hearings on September 26 and 27.

Mr. President, I ask unanimous consent that the text of my amendment and the section-by-section analysis of the amendment be included in the RECORD.

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

AMENDMENT NO. 398

Strike out all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as the "Monetary Policy Improvement Act of 1979".

DEFINITIONS

SEC. 2. Section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)) is amended by adding at the end thereof the following new paragraphs:

"The term 'depository institution' means—

"(1) any insured bank as defined in section 3 of the Federal Deposit Insurance Act;

"(2) any mutual savings bank as defined in section 3 of the federal Deposit Insurance Act;

"(3) any savings bank as defined in section 3 of the Federal Deposit Insurance Act;

"(4) any insured credit union as defined in section 101 of the Federal Credit Union Act;

"(5) any member as defined in section 2 of the Federal Home Loan Bank Act;

"(6) any insured institution as defined in section 401 of the National Housing Act; and

"(7) for the purpose of section 13 and the fourteenth paragraph of section 16, any association or entity which is wholly owned by

or which consists only of institutions referred to in clauses (1) through (6).

"The term 'bank' means any insured or noninsured bank, as defined in section 3 of the Federal Deposit Insurance Act, other than a mutual savings bank or a savings bank as defined in section 3 of the Federal Deposit Insurance Act.

"The term 'transaction account' means a deposit or account on which the depositor or account holder is allowed to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, or other similar item for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

"The term 'nonpersonal time deposits' means a time deposit or account representing funds deposited to the credit of, or in which any beneficial interest is held by a depositor who is not a natural person.

"In order to prevent evasions of the reserve requirements imposed by this Act, after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board, the Board of Governors of the Federal Reserve System is further authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.".

REPORTING REQUIREMENTS

SEC. 3 Section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) Federal Home Loan Bank Board in the case of any institution insured by the Federal Savings and Loan Insurance Corporation or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.".

RESERVE REQUIREMENTS

SEC. 4. Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)) is amended to read as follows:

"(b)(1) RESERVE REQUIREMENTS.—(A) Each depository institution shall maintain reserves against its transaction accounts as the Board may by regulation prescribe solely for the purpose of implementing monetary policy—

"(i) in the ratio of 3 per centum for that portion of its total transaction accounts of $5,000,000 or less; and

"(ii) in the ratio of 12 per centum, or in such other ratio as the Board may prescribe not greater than 13 per centum and not less than 11 per centum, for that portion of its total transactions accounts in excess of $5,000,000.

"(B) Each depository institution shall maintain reserves against its nonpersonal time deposits as the Board may by regulation prescribe solely for the purpose of implementing monetary policy—

"(i) in the ratio of 0 per centum for that portion of its nonpersonal time deposits if $5,000,000 or less; and

"(ii) in the ratio of 6 per centum, or in such other ratio not greater than 12 per centum and not less than 0 per centum, for that portion of its nonpersonal time deposits in excess of the $5,000,000.

"(2) WAIVER OF RATIO LIMITS.—Upon a finding by the Board that extraordinary circumstances require such action, the Board, after consultation with the appropriate committees of the Congress, may impose reserve requirements above or below the limits otherwise prescribed by this section for a period not exceeding thirty days, and for further periods not exceeding thirty days each by affirmative action by the Board in each instance. The Board shall promptly transmit to the Congress a report of any exercise of its authority under this paragraph and the reasons for such exercise.

"(3) PRIVILEGES OF INSTITUTIONS MAINTAINING RESERVES.—During any period that a depository institution is maintaining reserves pursuant to this section, such depository institution shall be entitled to all the privileges of membership in the Federal Reserve System, except that, if it is not otherwise a member, it may not hold stock in, or vote for any director of, a Federal Reserve bank.

"(4) RESERVES RELATED TO FOREIGN OBLIGATIONS OR ASSETS.—Foreign branches, subsidiaries, and international banking facilities of nonmember depository institutions shall maintain reserves to the same extent required by the Board of foreign branches, subsidiaries, and international banking facilities of member banks. In addition to any reserves otherwise required to be maintained pursuant to this subsection, any depository institution shall maintain reserves in such ratios as the Board may prescribe against—

"(A) net balances owed by domestic offices of such depository institution in the United States to its directly related foreign offices and to nonrelated foreign depository institutions,

"(B) loans to United States residents made by overseas offices of such depository institution if such depository institution has one or more offices in the United States, and

"(C) assets (including participations) held by foreign offices of a depository institution in the United States which were acquired from its domestic offices (other than assets representing credit extended to persons not residents of the United States).

"(5) EXEMPTION FOR CERTAIN DEPOSITS.—The requirements imposed by paragraph (1) of this subsection do not apply to deposits payable only outside the States of the United States and the District of Columbia, but nothing in this subsection limits the authority of the Board to impose conditions and requirements on member banks under section 25 of this Act or the authority of the Board under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105).

"(6) DISCOUNT AND BORROWING.—Any depository institution in which transaction accounts are held shall be entitled to the same discount and borrowing privileges as member banks.

"(7) TRANSITIONAL ADJUSTMENTS.—

"(A) Any depository institution required to maintain reserves under this section which was engaged in business on July 1, 1979, but was not a member of the Federal Reserve System on that date, shall maintain reserves against its deposits during the first twelve-month period following the effective date of this paragraph in amounts equal to one-fourth of those otherwise required by this section, during the second such twelve-month period in amounts equal to one-half of those otherwise required, and during the third such twelve-month period in amounts equal to three-fourths of those otherwise required.

"(B) With respect to any bank which was a member of the Federal Reserve System on July 1, 1979, the amount of required reserves imposed pursuant to this section on the effective date of this section that exceeds the amount of required reserves maintained by the member institution during the reserve computation period immediately preceding the effective date of such paragraphs may, at the discretion of the Board and in accordance with such rules and regulations as it may adopt, be reduced by 75 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 25 per centum during the third year.

"(C) In order to provide for an orderly transition period, the Board shall implement the reduction in reserve requirements resulting from the amendment of this subsection by the Monetary Policy Improvement Act of 1979 with respect to member banks over a period not greater than 48 months after the effective date of such paragraph.

"(D) Any depository institution which is a member bank on July 1, 1979, and leaves the Federal Reserve System after such date shall continue to be required to maintain reserves against its deposits after the effective date of this section as if it were a member bank.".

FORM OF RESERVES

SEC. 5. Section 19(c) of the Federal Reserve Act, as amended (12 U.S.C. 461) is amended to read as follows:

"(c) Reserves held by a depository institution to meet the requirements imposed pursuant to subsection (b) of this section shall be in the form of—

"(1) balances maintained for such purposes by such depository institution in the Federal Reserve bank of which it is a member or at which it maintains an account. However, the Board may, by regulation or order, permit depository institutions to maintain all or a portion of their required reserves in the form of vault cash, except that any portion so permitted shall be identical for all depository institutions; and

"(2) balances maintained by a nonmember depository institution in a depository institution that maintains required reserve balances at a Federal Reserve bank, in a Federal home loan bank, or in a central liquidity facility for credit unions, if such depository institution, Federal home loan bank, or cen-

tral liquidity facility maintains such funds in the form of balances in a Federal Reserve bank of which it is a member or at which it maintains an account. Balances received by a depository institution from another depository institution and used to satisfy the reserve requirement imposed on such depository institution by this section shall not be subject to the reserve requirements of this section imposed on such bank, and shall not be subject to assessment imposed on such bank, pursuant to section 7 of the Federal Deposit Insurance Act.".

MISCELLANEOUS AMENDMENTS

SEC. 6. (a) The first paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) is amended as follows:

(1) by inserting after the words "member banks" the words "or other depository institutions";

(2) by inserting after the words "payable upon presentation" the first and third times they appear, the words "or other items";

(3) by inserting after "payable upon presentation within its district," the words "or other items";

(4) by inserting after "nonmember bank or trust company," wherever it appears the words "or other depository institution";

(5) by striking out "sufficient to offset the items in transit held for its account by the Federal Reserve bank" and inserting in lieu thereof the words "in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate"; and

(6) by inserting after the words "nonmember bank" after the second colon the words "or other depository institution".

(b) The second paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended to read as follows:

"Each Federal Reserve bank shall maintain with the local Federal Reserve agent collateral in the form of financial assets in an amount not less than the amount of Federal Reserve notes issued by such bank and outstanding. Collateral shall not be required for Federal Reserve notes that are held in the vaults of Federal Reserve banks. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The Board of Governors may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued by it.".

(c) The thirteenth paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 360) is amended—

(1) by striking out the words "member banks" wherever they appear and inserting in lieu thereof "depository institutions";

(2) by striking out the words "member bank" wherever they appear and inserting in lieu thereof "depository institution"; and

(3) by inserting after "checks" wherever it appears the words "and other items, including negotiable orders of withdrawal and share drafts".

(d) The fourteenth paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 248 (o)) is amended by striking out "its member banks" and inserting in lieu thereof "depository institutions".

(e) The first sentence of section 19(e) of the Federal Reserve Act (12 U.S.C. 463) is amended to read as follows: "No member bank shall keep or deposit with any depository institution which is not authorized to have access to Federal Reserve advances under section 10(b) of this Act a sum in excess of 10 per centum of its own paid-up capital and surplus.".

ABOLITION OF PENALTY RATE

SEC. 7. Section 10(b) of the Federal Reserve Act (12 U.S.C. 347b) is amended by striking out the second sentence of the first paragraph thereof.

PRICING OF SERVICES

SEC. 8. The Federal Reserve Act is amended by inserting after section 11 the following new section:

"SEC. 11A. (a) Not later than the first day of the sixth calendar month after the date of enactment of the Monetary Policy Improvement Act of 1979, the Board shall publish for public comment a set of pricing principles in accordance with this section and a proposed schedule of fees based upon those principles for Federal Reserve bank services to depository institutions, and not later than the first day of the eighteenth calendar month after the date of enactment of the Monetary Policy Improvement Act of 1979, the Board shall put into effect a schedule of fees for such services which is based on those principles.

"(b) The services which shall be covered by the schedule of fees under subsection (a) are—

"(1) currency and coin services;

"(2) check clearing and collection services;

"(3) wire transfer services;

"(4) automated clearinghouse services;

"(5) settlement services;

"(6) securities safekeeping services;

"(7) Federal Reserve float; and

"(8) any new services which the Federal Reserve system offers, including but not limited to payment services to effectuate the electronic transfer of funds.

"(c) The schedule of fees prescribed pursuant to this section shall be based on the following principles:

"(1) All Federal Reserve bank services covered by the fee schedule shall be priced explicitly.

"(2) All Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions and such services shall be priced at the same fee schedule applicable to member banks, except that nonmembers shall be subject to any other terms, including a requirement of balances sufficient for clearing purposes, that the Board may determine are applicable to member banks.

"(3) Over the long run, fees shall be established on the basis of all direct and indirect costs actually incurred in providing the Federal Reserve services priced, including interest on items credited prior to actual collection, overhead, and an allocation of imputed costs which takes into account the taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm, except that the pricing principles shall give due regard to competitive factors and the provision of an adequate level of such services nationwide.

"(4) Interest on items credited prior to collection shall be charged at the current rate applicable in the market for Federal funds.

"(d) The Board shall require reductions in the operating budgets of the Federal Reserve banks commensurate with any actual or projected decline in the volume of services to be provided by such banks. The full amount of any savings so realized shall be paid into the United States Treasury.".

AUTHORITY OF STATE BANK SUPERVISORS

SEC. 9. Nothing in the this Act or in the amendments made by this Act shall be construed in derogation of the authority of any officer or agency of State over any institutions organized or existing under the laws of such State.

EFFECTIVE DATES

SEC. 10. This Act shall take effect on the date of enactment, except that the amendments made by sections 4 and 5 of this Act shall take effect on the first day of the sixth month which begins after the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Title. Title of the bill is the "Monetary Policy Improvement Act of 1979".

Section 2. Definitions. Defines the terms "depository institution", "bank", "transaction account", and "nonpersonal time deposits". The section also gives the Federal Reserve Board the authority to determine whether an account or deposit is a transaction account after consultation with the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

Section 3. Reporting Requirements. Gives the Federal Reserve Board the authority to collect reports of liabilities and assets from depository institutions as may be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates.

Section 4. Reserve Requirements. This section establishes rules pertaining to reserves to be held against deposits held by depository institutions.

Every depository institution would have reserve requirements against its transaction accounts of less than $5,000,000 in a ratio of 3% and in excess of $5,000,000 in a ratio of 12%, or within a range of 11% to 13%, as determined by the Board for the purpose of implementing monetary policy. Also, every depository institution would have reserve requirements against its nonpersonal time deposits in excess of $5,000,000 in a ratio of 6%, or within a range of 0% to 12%

The Board would be given the authority to impose reserve requirements outside statutory limits for a period of 30 days in extraordinary circumstances. The exercise of this authority would require the Board to report the reasons for such actions from the Congress.

Any depository institution maintaining reserves would be entitled to all the privileges of membership in the Federal Reserve System, except nonmembers could not hold stock in or vote for directors of a Federal Reserve Bank.

The Board's authority to apply reserve requirements against foreign obligations or assets of member banks is classified and such authority as extended to nonmember depository institutions. Reserves could be prescribed against net balances owed by domestic offices to foreign offices, loans to U.S. residents made by overseas offices, and assets held by foreign offices of a U.S. depository institution acquired from its domestic offices.

The authority of the Board to impose conditions and requirements in member banks under Section 25 of the Federal Reserve Act and section 7 of the International Banking Act of 1978 is not limited by this Act.

Any depository institution in which transaction accounts are held would have access to the discount window on the same basis as member banks.

There would be a four-year phase-in of reserve requirements for any depository institution that was not a member as of July 1, 1979. Similarly, any member bank as of July 1, 1979 with an increase in reserve requirements imposed pursuant to this legislation would have a four-year phase-in of the additional requirements.

The reduction of reserve requirements for member banks would be made over a four-year period.

A nonmember depository institution, organized under state law, with the principal

offices of which are outside the continental limit of the U.S. would not be required to hold reserves against its deposits until six years after the enactment of the legislation, and then the reserve requirements would be phased-in over an additional 10 years.

Any bank which is a member bank as of July 1, 1979 and leaves the Federal Reserve System would continue to be required to maintain reserves as if it were a member.

Section 5. Form of Reserves. The reserves held by a depository institution to meet its reserve requirements would be required to be held as (1) balances for that purpose at a Federal Reserve bank, (2) vault cash, or (3) balances maintained by a nonmember depository institution in a depository institution that maintains required reserve balances at a Federal Reserve bank, in a Federal Home Loan bank, or in a central liquidity facility for credit unions, provided such balances are maintained in the form of balances with a Federal Reserve bank.

Section 6. Miscellaneous Amendments. This section amends the Federal Reserve Act to permit the Federal Reserve bank to accept deposits and to clear checks or similar instruments received from nonmember depository institutions. It also amends the collateral requirements for Federal Reserve notes.

Section 7. Abolition of Penalty Rate. Eliminates the penalty rate on advances to member banks.

Section 8. Pricing of Services. This section requires that the Federal Reserve Board publish for comment a set of pricing principles for Federal Reserve services within six months after the date of enactment of the legislation. The Board would also be required to put a fee schedule into effect within 18 months after the date of enactment.

The services to be priced include currency and coin, check clearing and collection, wire transfers, ACH services, settlement, securities safekeeping, and Federal Reserve float with float to be valued at the Federal funds rate.

This section specifies a set of principles on which prices are to be based. It also indicates that if adherence to the pricing principles for system services results in an increase in the performance of such service by the private sector the Board would make commensurate reductions in system expenditures for the provision of such services.

Section 9. Authority of State Bank Supervisors. This section provides that nothing in the bill is to be construed in derogation of the authority of any state bank supervisor over any institution it supervises by state law.

Section 10. Effective Dates. The new reserve requirement included in Section 4 and 5 takes effect on the first day of the sixth calendar month after enactment. All other sections take effect on the date of enactment.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Senator from North Dakota (Mr. BURDICK) and the Senator from Arkansas (Mr. BUMPERS) be added as cosponsors to the amendment.

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

NOTICES OF HEARINGS

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

● Mr. HARRY F. BYRD, JR. Mr. President, I wish to announce that the Subcommittee on Taxation and Debt Management of the Committee on Finance will hold a hearing on extension of the temporary limit on the public debt has been scheduled. The Honorable William G. Miller, Secretary of the Treasury, Mr. James T. McIntyre, Director of the Office of Management and Budget, and Alice M. Rivlin, Director of the Congressional Budget Office, will testify on the public debt at 2 p.m., Tuesday, September 11, 1979, in room 2221, Dirksen Senate Office Building.

The temporary debt limit of $836 billion which the Congress enacted in February of 1979 is due to expire on September 30.

By law, the budget is required to be in balance by fiscal year 1981.

The hearings will give Congress an opportunity to review the work of the Office of Management and Budget in preparing a balanced budget and implementing the requirements established by prior debt ceiling legislation.

The subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five copies by October 1, 1979, to Michael Stern, staff director, Committee on Finance, room 2227, Dirksen Senate Office Building, Washington, D.C.●

SUBCOMMITTEE ON ENERGY REGULATION

● Mr. JOHNSTON. Mr. President, I wish to announce that the Subcommittee on Energy Regulation of the Committee on Energy and Natural Resources will hold a field hearing on Saturday, September 8, 1979, in room 120, Boyd Hall, Plymouth State College, Plymouth, N.H., commencing at 10 a.m. This hearing, to be chaired by Senator JOHN A. DURKIN, will deal with the home heating oil and kerosene supply situation in New Hampshire. Panels representing New Hampshire fuel oil dealers, citizen groups and energy and labor coalitions have been invited to testify. Questions about this hearing may be directed to James T. Bruce, of the subcommittee staff at 224–9894.●

SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION

● Mr. FORD. Mr. President, I wish to announce that on Wednesday, September 12, 1979, at 10 a.m. in room 5110, Dirksen Senate Office Building, the Subcommittee on Energy Resources and Materials Production of the Senate Committee on Energy and Natural Resources will convene a hearing to inquire into the circumstances surrounding the issuance of noncompetitive oil and gas exploration leases by the Department of the Interior on lands belonging to the Fort Chaffee, Ark. military reservation.●

SUBCOMMITTEE ON CHILD AND HUMAN DEVELOPMENT

● Mr. CRANSTON. Mr. President, the oversight hearing on the ACTION Agency's Older American Volunteer Programs scheduled by the Subcommittee on Child and Human Development for September 18 has been postponed. The hearing is now scheduled for October 17 from 8 a.m. to 10:30 a.m.●

SUBCOMMITTEE ON ENERGY REGULATION

● Mr. JOHNSTON. Mr. President, on Tuesday, September 11, and Wednesday, September 12, 1979, the Subcommittee on Energy Regulation of the Committee on Energy and Natural Resources will hold hearings on S. 1684, the Domestic Refinery Development and Improvement Act of 1979. These hearings will begin at 9:30 a.m. in room 3110 of the Dirksen Senate Office Building.

Questions about these hearings should be directed to Benjamin S. Cooper or James T. Bruce of the subcommittee staff at 224–9894.●

SUBCOMMITTEE ON ENERGY REGULATION

● Mr. JOHNSTON. Mr. President, on Tuesday, September 18, 1979 the Subcommittee on Energy Regulation of the Committee on Energy and Natural Resources will hold a hearing on S. 1417, the Foreign Oil Entitlements Act of 1979; S. 1205, the Oil Imports Act of 1979; S. 1134, the Oil Imports Act of 1979; and S. 1470, the Mandatory Oil Import Control Act of 1979. This hearing will begin at 9:30 a.m. in room 3110 of the Dirksen Senate Office Building.

Questions about this hearing should be directed to Benjamin S. Cooper or James T. Bruce of the subcommittee staff at 224–9894.●

ADDITIONAL STATEMENTS

ENERGY MOBILIZATION BOARD

● Mr. BUMPERS. Mr. President, the President in his energy speech called for an Energy Mobilization Board. The purpose of such a board would be to expedite critically needed energy facilities by cutting unnecessary redtape. The results would be catastrophic if the expedited process allowed the Board to waive the substantial body of constructive environmental and health laws this Congress has enacted over the past few years. The following are only a few of the laws that could be short-circuited in this process: Clean Air Act, Clean Water Act, Toxic Substance Control Act, Solid Waste Management Act, all public health laws, all occupational health and safety laws, Endangered Species Act, all laws protecting national forests and national parks and public domain lands, surface mining and other mining laws, laws affecting the establishment of claims and leases of energy and mineral resources, minimum wage laws, maximum hours laws, civil rights, equal opportunity employment, antitrust laws, patent laws, all corruption and criminal laws, Freedom of In-

formation Act, and water property rights. Fortunately, people have not been asleep as this issue has developed as the attached articles and editorials indicate.

My own amendment which is currently pending before the Energy Committee would make it abundantly clear that the purpose of such a board is to expedite decision schedules so that needed energy projects can be developed, but that its function is not to run roughshod over State and local governments, the health and safety of our workers and the public, or to destroy our natural and manmade environment.

I hope that other Senators will take heed of the warnings in these articles, and join me in support of my amendment.

I ask that the attached articles be printed in full at conclusion of my remarks.

The articles follow:

[From the Washington Post, Aug. 3, 1979]

IS "REDTAPE" A CODE WORD FOR LAW?

(By Amory Lovins)

The philosophy of Secretary James Schlesinger and Deputy Secretary John O'Leary has survived their tenure in the form of an Energy Mobilization Board (EMB), which was proposed to "cut red tape" impeding "critically needed" energy supply projects. But the crisis-management aura obscures a vital question: Does "red tape" mean the procedural defects everyone wants fixed—dilatory schedules, unconsolidated disparate hearings, uncoordinated agencies, and impact statements padded to disguise weakness with bulk? Or is "red tape" a code phrase for the painstakingly crafted substantive laws governing clean air and water, strip-mining, toxic substances, endangered species, and advance assessment of alternatives—or for the judicial review and public participation that give those laws practical effect?

Even shorn of this ambiguity, the EMB would be a dangerous implement to leave lying in the way of future administrations. Some senior officials even in the Carter administration, previously noted for its fine environmental record, have openly sought for months to use energy shortages as an excuse to gut the Clean Air Act. But the EMB is more deeply troublesome because it reflects the mistaken view that "procedural" requirements are a formalized game of hurdle-jumping rather than a serious effort to avoid mistakes.

To the extent that our political process seems cumbersome, it shows the health of democracy, for that process is meant to resolve by argument and compromise the fundamental conflicts that the EMB is meant to resolve by fiat—notably whether the facility is needed "critically" or at all. If concentrating more power in a central institution like the EMB suppresses or bypasses doubts that now cause awkward contests, those doubts will not disappear. They will merely pop up elsewhere, only worse, because the doubters will rightly be incensed at having been denied due process.

The EMB philosophy has some partial precedents that merit reflection. Still bitter in memory is the trans-Alaska pipeline. Objectors to the original "critically needed" proposal argued, on sober analysis, that the oil should be stretched out, used sparingly and piped to the Midwest (since on the West Coast it would cause a glut and have to be shipped to Japan), and that the pipeline would be leaky and astronomically expensive. They proved right on all counts. The oil companies are now immensely grateful that they were made to build a better (if still bad) pipeline that might not fall apart immediately, and at a date that saved them billions of dollars. But it was still a bad choice, rammed through Congress on Spiro Agnew's tie-breaking vote by duplicitous federal officials who thought their own wisdom was superior to public process. If we had stuck to that process, Alaskan oil would today be contributing far more to our security and prosperity. Whenever, as in that case, environmental lawsuits have delayed major energy projects, both the courts and history have consistently found the objectors right on the merits—not a hindrance to be lightly disregarded.

For many years, too, we had a federal superagency that could and did cut red tape by overriding all state or local regulation of nuclear power plants. The Atomic Energy Commission's hearings to license provided the form of due process without its substance. By dedicated cynicism, the AEC achieved the operation of dozens of nuclear plants, many near our cities. Yet once again it appears, in hindsight, that the objections the AEC so cavalierly bypassed were justified. By refusing to give them serious and timely attention, this nation poured $100 billion down a rathole; and the AEC and its successors lost their perceived legitimacy, perhaps forever.

The gravest flaw in the EMB approach lies still deeper, in its reliance on central management. The energy problem is not like building an A-bomb or putting a man on the moon. It consists rather of billions of inefficient energy-using devices and thousands of institutional barriers—silly rules and habits that prevent people from using energy in ways that would save money. With such a diverse and fine-grained problem, central management is more part of the problem than part of the solution; it is unnecessary and even an impediment.

President Carter's rhetorical tension between encouraging grass-roots and community innovation (the source of virtually all the good news about energy since 1973) and a $142 billion exercise in Nixonian technocracy reflects a deeper choice we must make—between traditional ideals of individual enterprise, intelligence and decision, and the less democratic belief that the same distrusted bureaucratic and oligopolistic elite who many feel got us into this mess are the only source of the wisdom that we are incompetent to muster for ourselves. It is a choice between soft and hard energy paths; between Jefferson and Hamilton; and ultimately between democracy and tyranny.

Rather than emphasizing those actions surest to excite political divisions, waste time and money, and fail, surely we should seek to build national consensus where it already exists. We should rely on our relatively quick, cheap and safe (and absolutely enormous) opportunities for raising energy productivity and for harnessing the vast range of proven, appropriate renewable energy sources. If we add up and vigorously promote—as in the president's fine reference to Davis, Calif.—the things we nearly all agree about, they'll be enough. We can then forget the things we don't agree about, such as synfuels and the EMB, because they'll be superfluous.

We have never tried before to design an energy policy around an existing consensus, but it seems long past time we started. Not to do so is a failure of nerve, a failure to learn that the cause of problems is facile solutions, a failure to realize that the age of throwing money at problems has passed, a failure to mobilize the deep wisdom and ingenuity of our people, and a failure of trust—trust that people can solve, as many are already solving, most of their own energy problems if only they have incentive and opportunity. The kind of energy mobilization we need is happening today in hundreds of communities and millions of homes across America. It doesn't need a board; it needs a modest government willing to lend a hand and then get out of the way.

[From the Washington Star, July 31, 1979]

ENERGY MOBILIZATION BY CONSENT?

To understand the interesting battle now shaping up in the House of Representatives, you need to recall the fifth point of President Carter's July 15th address: a so-called Energy Mobilization Board (EMB) powerful enough "to cut through the red tape, the delays and the endless roadblocks to completing key energy projects," specifically oil pipelines and refineries.

The classic case is the intolerable delay, by environmentalist nitpicking, of the Sohio pipeline. Similar dilatory processes—some warranted, some merely obstructive—could face the synthetic fuels projects Mr. Carter has called for.

The nation disagrees on the appropriate price, in social and environmental terms, to pay for shaking off energy dependency. So competing ideas of EMB powers have emerged—as expected, one might add. One man's red tape is another's protection against lung disease.

There is a congressional consensus that the Board ought to have authority to designate selected high-priority ("key") energy projects and to speed up local, state and federal regulatory procedures that could unduly delay them. EMB legislation might even limit, or at least speed up, judicial review; and when local, state or federal regulatory authorities failed to meet deadlines imposed by the Board, the Board itself might step in and pre-empt their decisions, adhering as it did so to applicable laws.

All this seems sound enough, justified by the threat of energy dependency to national well-being. Obstructive delays of vital projects must take a back seat.

But one version of the EMB legislation now before the Commerce Committee, the so-called Dingell version, appears to exceed even the uncommon powers sought for the Board by President Carter. Critics complain that the Dingell proposal would give the Board power not only to curtail dilatory procedures, and set deadlines, but to waive substantive requirements of law.

Colorado's Rep. Tim Wirth, who seeks to amend the bill, contends that "the board could waive any law—labor laws, equal opportunity laws, anything that stood in the way . . . If an oil shale project was dumping salt in the Colorado River, there would be nothing we could do about it."

Is this what the administration is seeking? That seems at least questionable. An Office of Legal Counsel memo broadly supporting the EMB concept says that "since substantive standards such as those regarding the environment, land use, health and safety are specifically excluded from the waiver, the authority does not threaten the provisions of traditional state and local services." The memo assumes, that is, that while the Board could set deadlines, and act to clear procedural obstacles when regulatory bodies fail to act speedily, it could not set aside the substance of law.

Any legislation extending the latter power to the Board would raise substantial con-

stitutional and practical questions. Washington's appetite for centralized power has not yet deprived the states of their police powers—although the federal government may undoubtedly influence the exercise of those powers by "threat and promise." What it presumably cannot do is override or prevent legislation to protect health and safety.

And would such nullification be practical, even if constitutional? Would it serve the larger purposes of "energy mobilization?" There are environmental regulations and statutes at all levels of government, many resulting from bloody fights in the 1960s, which no "energy mobilization board" could stamp out unchallenged, even if given paper authority to do it.

If the purpose of the EMB legislation is to speed up "key" energy projects and prod lethargic bureaucracies—an entirely legitimate purpose—Congress ought to beware of extending powers that would outrage state and local interests and stir virtual guerrilla warfare against the projects it aims to expedite. This would be self-defeating.

The seeming difference between what the administration is asking for and what some congressmen of the Dingell persuasion are prepared to yield suggests a need for clarification. Is the president demanding *procedural* waiver powers for his Energy Mobilization Board? Or is he asking that the Board also be empowered to steamroller *substantive* laws and regulations? The difference is crucial. The power to obliterate substantive laws could borrow as much agony, strife and delay for "key" energy projects as it forfends.●

GREATER U.S. COMMITMENT TO GASOHOL IN NATIONAL INTEREST

● Mr. CULVER. Mr. President, our current energy situation underscores the importance of developing efficient and economical alternative energy sources. One such fuel that offers the prospect of decreasing our reliance on scarce or uncertain energy supplies is gasohol.

This fuel is already a reality in Iowa, where more than 600 service stations are expected to sell over 40 million gallons of gasohol this year. This consumer interest graphically illustrates that our Nation is ready to use this stable and renewable energy source.

In order to accelerate development of gasohol, I sponsored an amendment to the Public Works and Economic Development Administration Act which greatly expands the funds that EDA can earmark for gasohol projects. As a result of my amendment, the administration will spend a minimum of $10 million to support the development of up to 100 gasohol plants. These funds would be directed toward rural areas, where energy needs are critical and residents are especially hurt by rising fuel costs.

A recent commentary by Mr. Keith Heffernan, executive director of the Iowa Corn Production Board, in the Burlington, Iowa, Hawkeye, states the case for increased gasohol production in greater detail. As Mr. Heffernan points out, production can reduce our reliance on imported oil while improving our balance of payments and strengthening the dollar overseas.

He concludes the case for gasohol by stating:

If we can strengthen our economy by becoming more energy independent through the use of domestic energy resources such as gasohol, who can place a value on what this would mean to our country?

We can answer this question by saying that the benefits to our Nation's economy and way of life would be substantial, and Government should make the necessary resources available so that communities can develop the production capability to significantly expand our gasohol production.

Mr. President, I ask that Mr. Heffernan's remarks be printed in the RECORD.

The remarks follow:

U.S. ECONOMY CAN BE IMPROVED BY ENERGY INDEPENDENCE

The latest OPEC hike raising the price of crude oil to $18.2350 per barrel—a 40 percent increase—confirms my belief that if domestic alternative energy sources, such as gasohol, are not developed and utilized by this country on a wholesale basis, our entire economy will experience ramifications far more severe than currently exist.

The economic questions centering around gasohol can no longer be confined to the obvious penny to penny per gallon comparison between alcohol and gasoline. We must consider the overall price our country is paying for being so heavily reliant on foreign oil.

With each OPEC increase, Americans are spending more and more of their paychecks for imported energy, leaving less to spend for domestic goods and services. This latest increase by the OPEC cartel will most likely spur a downward spiral of retail spending causing the layoff of hundreds of thousands of workers in the next year.

Additionally, reliance by the United States on foreign countries to supply us with 50 percent of our energy needs has affected our balance of trade and the value of the dollar on the world market.

Last year, the U.S. imported over $172 billion worth of goods and services, with petroleum imports accounting for almost one-fourth of this total. Exports for the same time period were slightly more than $141 billion, leaving us with a negative balance of trade and thus a devalued dollar.

This means that American consumers are having to pay a higher price for imported products, because the purchasing power of their dollar is lowered.

If the stature of our economy is to improve at home and abroad, we simply must become more energy self-sufficient.

Mass production and utilization of alcohol as a 10 percent fuel extender in gasohol mixtures to stretch gasoline supplies should provide a partial solution toward strengthening the economy.

Extensive use of alcohol fuel extenders should have the effect of reducing our import needs, thus allowing more currency to remain in the country to be spent for domestic products. This should result in a higher demand for workers to produce these products.

Also, by expanding exports of high protein by-products derived from the grain alcohol conversion process, our balance of trade and the value of the U.S. dollar could be strengthened. This would mean that American consumers would not have to pay as much for imported products such as coffee and television sets.

Certainly, the economic questions involving gasohol cover a broad spectrum. If we can strengthen our economy by becoming more energy independent through the use of domestic energy resources such as gasohol, who can place a value on what this would mean to our country?●

TRIBUTES TO DR. LOUISE B. GERRARD, EXECUTIVE DIRECTOR, WEST VIRGINIA COMMISSION ON AGING, CHARLESTON, W. VA.

● Mr. RANDOLPH. Mr. President, on July 16, Dr. Louise Gerrard, executive director of West Virginia's Commission on Aging, died at Johns Hopkins of cancer, at the age of 62. She was a great lady, a dear friend, and a treasured adviser in the field of aging. Her untimely death is to deprive West Virginia and the Nation of significant contributions in the field, as well as the congressional committees before which she often appeared as an advocate for the needs of older Americans and particularly in rural America. Working over the past 10 years as a State commissioner, she also served the National Council on the Aging as vice president, secretary, chairperson for the Council's National Center on Rural Aging and as a member of the board. She founded the National Association of States Units on Aging, creating a Washington liaison office for State agency directors.

Mr. President, I would like to share with this distinguished body an Associated Press article that appeared in the Charleston Daily Mail on July 17, together with a listing of those who paid tribute to Louise Gerrard at a July 25 memorial service at the B'nai Israel Temple in Charleston, W. Va., and ask that they are printed in the RECORD.

The material is as follows:

DR. LOUISE GERRARD DIES: CALLED DYNAMIC, GENTLE

As the West Virginia Commission on Aging holds one of its four meetings a year today, it will do so without the guidance of Louise Gerrard.

Mrs. Gerrard, 62, who headed the commission for 10 years, died Monday in Johns Hopkins University Hospital in Baltimore after a fight with cancer.

"She was working right up until, I guess, three weeks or a month ago," said the Rev. Arnold Belcher, the commission's chairman.

In fact, Mrs. Gerrard "had pretty well lined out" an annual plan for using federal and state money for the elderly that is to go before the commission today for its approval, Belcher said.

"She was a very dynamic person. She loved the elderly. She gave her every ounce of energy for them," Belcher said.

Mrs. Gerrard got a first-hand feeling for the problems of old people late last year when she was first hospitalized at Johns Hopkins for ovarian cancer.

When she got out of the hospital following an operation, she told a reporter: "I thought I knew about health care needs. But you really don't understand how much medical care costs until you get a bill yourself."

She returned to the hospital June 22 for tests.

Belcher described Mrs. Gerrard as a woman who "did everything very forcefully—yet very gently. I remember in the very beginning that when she wanted something done she wasn't afraid to approach any of the government officials from the governor on up, and they listened to her when she spoke."

Gov. Rockefeller praised her by saying, "In her 10 years as executive director of the Commission on Aging, Dr. Gerrard turned a fledgling operation into a vibrant organization that now touches thousands of elderly West Virginians."

Sen. Jennings Randolph said Mrs. Gerrard "has been recognized by her peers on an intellectual level as one of the foremost authorities on problems of aging."

Last week Mrs. Gerrard was honored by the National Governor's Association for her work in developing programs for the elderly.

Last month she was honored by the Capitol City Civitan Club as "Citizen of the Year" for her service in providing programs for the state's more than 300,000 senior citizens.

She held three degrees: a bachelor's in sociology and a master's in political science from the University of Chicago and a doctorate in public law and government from Columbia University.

She taught political science and administration at Barnard College, Columbia and the West Virginia College of Graduate Studies.

She received an honorary degree of Human Letters from Southwestern University in Washington, D.C.

She is survived by her husband, Nathan Gerrard, a retired professor of sociology at the University of Charleston, two sons, Michael, a New York city lawyer, Steven, a candidate for a doctorate in philosophy at Johns Hopkins University; two sisters, Mrs. Violet Shuman of Glenview, Ill., and Mrs. Trina Melamed of Evanston, Ill.

Memorial service will be at noon July 25 in Temple Israel in Charleston, with Rabbi Israel E. Coller officiating. The family requests donations be made to the American Cancer Society.

SERVICE FOR DR. LOUISE GERRARD

Prayer Service by Rabbi I. B. Koller, Congregation B'nai Israel.

Tributes by Michael B. Gerrard, Son, Attorney at Law, New York, New York.

John D. Rockefeller IV, Governor, West Virginia.

Mrs. Rose Martin, Representing Senator Randolph.

Rev. Arnold Belcher, Chairman, Commission on Aging.

Terry H. Cunningham, Assistant Director, Commission on Aging.

Paul J. Kaufman, Attorney at Law, Charleston.

Jack Ossofsky, Executive Director, National Council on the Aging.

Harry Walker, Deputy Commissioner, Maryland Office on Aging.

Concluding Prayers by Rabbi Koller.

Mr. RANDOLPH. Mr. President, there have been a great many individuals at the National, State, and legislative levels who have expressed their love for Dr. Louise Gerrard, as a person and as a colleague in the field of aging. It is my privilege to share some of the tributes from many Federal, State, and National organizations as they join me in mourning and in memorializing Dr. Louise Gerrard:

IN MEMORY OF DR. LOUISE B. GERRARD, DIRECTOR, WEST VIRGINIA COMMISSION ON AGING

The State of West Virginia and the entire Nation benefitted from the dedication and abilities that Dr. Louise Gerrard brought to her work on the problems of aging. Through her personality and brilliance, Dr. Gerrard made lasting contributions to meeting the needs of the aged in America, and she will be long remembered for the unique role she played in confronting the challenges of aging in our society.—Honorable Robert C. Byrd, Majority Leader, United States Senate.

It is with great pride in the accomplishments of Dr. Louise Gerrard, that I join with my distinguished colleagues and friends from the State of West Virginia in paying tribute to the memory of this remarkable woman . . . Dr. Gerrard brought pride and distinction to the Commission on Aging and, as a result, to West Virginia and to herself. Her unselfish leadership and untiring dedication to improving the quality of life for the elderly of West Virginia, were responsible for significant change and improvement in the delivery of services—particularly health care services—to all the citizens of our State. . . . My thoughts and prayers are with the surviving members of her family, who can take great solace in the knowledge that the extraordinary accomplishments of this dedicated and compassionate woman, have made life better for us all.—Honorable Harley O. Staggers (D-WV), Member, U.S. House of Representatives.

I am indeed saddened by the death of Dr. Louise Gerrard. She will, without doubt, be missed by many. But let us not look upon her passing in grief. Instead, let us look at the many contributions she has made to senior citizens, both in West Virginia and across the Nation, and be thankful for her dedication, her innovation and her willingness to serve others. . . . She was a splendid woman, and I am confident that anyone who had the privilege of working with her will testify to the high degree of professionalism and sincerity that underlined all of her many contributions. She was a truly effective leader in the field of aging—a field to which she devoted many long and difficult hours. . . . I am deeply honored to have had the opportunity to work with her and to have had the benefit of her thinking on the many problems which confront Older Americans. While she will be missed enormously, her good work will live on and that is perhaps the finest tribute to individual accomplishment.—Honorable Robert H. Mollohan (D-WV), Member, U.S. House of Representatives.

On Monday, July 16, the people of West Virginia, indeed the Nation, lost a knowledgeable and dedicated public servant, as well as a fine personal friend, with the passing of Dr. Louise Gerrard, Executive Director of the WV Commission on Aging. . . . In the past, when my office had occasion to work with Dr. Gerrard, she never failed to provide thoughtful opinions and factual information, concerning problems associated with aging. Her absence will be greatly felt.—Honorable John Slack, Jr. (DWV), Member, U.S. House of Representatives.

Her contribution and effective work on behalf of senior citizens, and on behalf of West Virginians, were immeasurable. I shall miss working with her.—Honorable Nick Joe Rahall (D-WV), Member, U.S. House of Representatives.

Louise Gerrard helped tell the story of aging in this Nation, not only in terms of need, but also in terms of accomplishment for, and by, older Americans. I join my colleague Jennings Randolph in acknowledging our debt to her and our deep affection for her.—Honorable Harrison A. Williams, Jr., Chairman, Senate Committee on Labor and Human Resources.

Dr. Louise Gerrard will be long remembered for her concern and efforts on behalf of the rural elderly, especially in the area of health care. Her special understanding of the needs of older Americans made her an invaluable witness and resource for the Senate Special Committee on the Aging. The absence of her counsel will be greatly missed by Congressional Committees and staff alike, when issues involving the well-being of older Americans are under consideration.—Honorable Lawton Chiles, Chairman, Senate Special Committee on Aging.

It was with considerable regret that I learned of the death of Dr. Louise Gerrard. Her considerable capabilities and tireless efforts to improve the lives of our older citizens were felt far beyond the borders of West Virginia.

As Chairman of the Senate Subcommittee on Aging, I came to rely on Louise's good judgment and wise counsel as we worked to strengthen the Older Americans Act. The aging community has indeed suffered a great loss.—Honorable Thomas F. Eagleton, Chairman, Senate Subcommittee on Aging.

Men and women who work in aging are rewarded in many ways. Louise Gerrard enjoyed the older persons she served; she had the respect of her field, and she could savor many pioneering accomplishments by her agency and the Governors with whom she worked. Perhaps her biggest reward was the deepest affection felt for her by the elderly in her home State. In every appearance she made before the Congress, she made it clear that their trust was uppermost in her mind and heart.—Honorable Frank Church, Chairman, Senate Committee on Foreign Relations, Former Chairman, Senate Special Committee on Aging.

Dr. Gerrard's commitment to the older citizens of her State and the Nation served as a model for State Directors and other professionals in the field of aging. Through her untiring efforts, a Washington-based liaison office of the National Association of State Units on Aging (NASUA) was established to serve as a resource in the development of public policies and to coordinate the work of the aging network—the State and Area Agencies on Aging. This office will serve as a vital memorial to her years of work on behalf of older Americans.—E. Bentley Lipscomb, Staff Director, Special Committee on Aging, U.S. Senate.

Louise Gerrard brought dignity, effectiveness, and generosity to her advocacy in aging, and love as well. Her gentle presence will be missed.—William Oriol, Former Staff Director, Special Committee on Aging, U.S. Senate.

I was most shocked at the stunning loss of Louise Gerrard, whose contributions to the betterment of the life of older people must be remembered. Her concern and compassion were profound. Her special interest in the improvement of the lot of the rural elderly in West Virginia was exemplary. Not only was Louise Gerrard deeply committed to the quality of life of older people, but she

matched that commitment with the perception of a realist, and the effectiveness of an activist. This very dear person will be long remembered.—Dr. Robert Butler, Director, National Institute on Aging.

In her 10 years as executive director of the Commission on Aging, Dr. Gerrard turned a fledgling operation into a vibrant organization that now touches thousands of elderly West Virginians.—Honorable John D. Rockefeller IV, Governor, State of West Virginia.

Let me join with you and other citizens of the State of West Virginia, especially the elderly among those citizens, in our mutual sense of loss in the untimely death of Dr. Louise Gerrard.

In my years of association both in and out of government, with efforts to improve the quality of life for older Americans, I had occasion to observe the outstanding programs in your State under the leadership of Louise Gerrard. However, her talents were not confined to the State and, as you well know, her dedication was also directed to policy determining the course of National organizations of the elderly, and in counseling those of us who worked at the national level.

Just recently, I had suggested her name to the President for appointment to the Federal Council on Aging, and this appointment was in process. All of us on the Council, which I chair, were looking forward to working with her and having the benefit of her gentle and wise counsel. We thus feel the double loss of a colleague and a friend.

As I have known you for these many years, and been aware of your understanding of the needs of the elderly—going back to the days when you served in the House of Representatives and when we were both young men—I know you, too, share this sense of loss.—Dr. Nelson Cruikshank, Counsellor to the President on Aging, Chairman, Federal Council on Aging.

MEMORIAL RESOLUTION: WEST VIRGINIA COMMISSION ON AGING

Louise Gerrard was a complex and multi-talented person.

She was one of West Virginia's most prominent and sought-after public speakers.

Throughout her life, she wrote and was the author of well-drafted essays on American Family Life, small communities, and aging. Yet, she rejoiced in spending her time with the most humbly educated among us.

She was a friend and advisor to President Carter, to Governors, Senators, Members of Congress, Federal and State Officials of all sorts, but was equally at home with people in nursing homes and mental institutions.

She served 10 years as Executive Director of the West Virginia Commission on Aging, which represents a vocal group that is critical of the status quo, and impatient with government's tendency to delay solving problems until later. She represented and spoke for West Virginia's older adults—people who know they cannot wait. She argued, advocated, cajoled and criticized—but did so with such grace that she was effective in reaching many of her objectives while maintaining the admiration and affection of those she challenged.

She lived in turbulent political times, through two state administrations, which disagreed on many things but agreed on one—that Louise Gerrard was a West Virginia treasure. Everyone she served—two Governors, Members of the Commission on Aging, Members of the U.S. House and Senate, State legislators, three Presidents, and countless Federal officials, know of her commitment to those she served. Shortly before her death she was called again to serve—this time as President Carter's appointee to the Federal Council on Aging, announced four days after her death.

Public officials knew what was obvious—that Louise Gerrard's commitment was to no political party or even to herself.

Louise left us too soon and much too suddenly. When we learned she was ill we were shocked and saddened. She returned to her work and told us that she was optimistic about her condition and expected a complete and rapid recovery. She worked and lived as if she planned to live forever.

Louise Gerrard was a person to be emulated. Her life was one that everyone and every age would do well to remember as a model for the way we all should live.

The West Virginia Commission on Aging expresses its deepest sympathy to Dr. Gerrard's family and friends.

I am deeply saddened by Dr. Gerrard's untimely passing. In her work with the Commission on Aging and in her participation in a myriad of other civic activities, Dr. Gerrard was a tremendous asset to the people of the City of Charleston. Her enthusiasm and spirit will be greatly missed.—Hon. John G. Hutchinson, Mayor, City of Charleston, West Virginia.

In all of those years that I worked with her, I never knew Louise to do anything other than what was most appropriate for those she served. I always found her to be courageous and tenacious in a way that achieved many of our objectives for older people without offending those she had to convince in order to win.

She was a dedicated mother, a devoted wife, and a treasured colleague. All of us who knew her and worked with her will never forget her and all of us will be guided by the example she set so well.—Dr. Leon H. Ginsberg, Commissioner, Department of Welfare, State of West Virginia.

There are few people who combine intelligence, compassion and devotion in the way that Louise Gerrard has done. She understood the problems of our seniors in WV, cared about them, fought for them and showed them dignity. No higher compliment can be given about the life which she has led than the people she has touched and the work that has been accomplished. She will be long remembered. Louise worked so hard at living in her last days that few knew she was dying. I will miss her and the State will miss her.—Hon. Miles Dean, Commissioner of Finance & Administration, State of West Virginia.

Dr. Louise Gerrard was a compassionate woman who truly cared about the older citizens of West Virginia; she did everything in her power to make life better for them. Very few public officials made themselves accessible to their constituents in the way Dr. Gerrard did, especially during senior citizens conferences. Not many senior citizens in other States are as fortunate as we were to know their State Director as well as we knew Dr. Gerrard.—Mrs. Sally Baitty, Project Director (ret), Harrison County Area Agency on Aging, Clarksburg, West Virginia.

Louise Gerrard was not only a friend of the elderly, she was their tireless advocate in many ways: She could spend endless hours both at the West Virginia Legislature, and in our Nation's Capital, work as an official in several national organizations in the field of aging, administer the WV Commission on Aging and its programs, and still have time to sit down with a lady from Ranger, WV and talk about what it means to be an older, widowed woman, living alone in an isolated area of our State. Her concern for these many individual elderly expressed itself in her constant efforts on their behalf. West Virginia's loss is the Nation's loss.—Ms. Joan Ross, Executive Director, Southwestern Community Action Council, Huntington, West Virginia.

The sudden death of Dr. Louise Gerrard was like losing a member of our family. We knew that Dr. Gerrard cared for us and worked hard in the State and at the National level to improve the quality of life for all senior citizens like ourselves. It is difficult for us to believe that like many of the older persons whom she cared about, that she, too, has gone. While she was never really a "senior citizen," in fact over 20 years younger than me, and nearly 15 years younger than my sister, she was one of us. She was a kind lady whom we loved as she loved us. We will truly miss her, but will surely not forget her.—Mrs. Rea Borst and Mrs. Roberta Fox, sisters, Senior Citizens Wheeling, West Virginia.

The death of Louise Gerrard, who was, among many other things, Executive Director of the WV State Agency on Aging, is a great loss to the field of aging. She was a great friend, a tireless and devoted leader. Her determined fight against cancer is an example to all who must face illness or disability. In spite of extensive hospitalization, and a difficult treatment regimen, Louise maintained her warm personality and concern for continued improvement in services for older people. She was an exemplary person and an outstanding State Agency Director. She will be sincerely missed.

I extend my sincerest sympathy to Dr. Nathan Gerrard, her husband, and to their children.—Hon. Robert Benedict, Commissioner, Administration on Aging, Department of Health, Education and Welfare.

The death of Louise Gerrard deprives the field of aging of one of our truly outstanding leaders. Her understanding of the issues in the field of aging, her ability to work out constructive solutions to those issues, and her commitment to service in behalf of older persons, was and always will be a challenge and inspiration to all of us. Dr. Gerrard had the ability and the willingness to work at the grass roots, to administer the State program in an unusually effective manner, to provide leadership to her fellow directors of State Agencies, and to advise, to challenge, and to lift the sights of Federal Administrators.

Many persons mourn her death because of the unequivocal dedication of her talents and abilities to the service of others. We will miss her. She will remain with us as a continuing inspiration to all who labor in the field of aging.—Hon. Arthur S. Flemming, Immediate Past Commissioner, Administration on Aging, Department of Health, Education and Welfare.

She was, above all, a caring, compassionate, loving person who knew and felt the need of the people she served, and who had the talent and capacity to be their effective advocate. Millions of older people throughout West Virginia and indeed all of America will benefit from her life, especially the elderly poor and those in rural areas.

We have the product of her life work to remind us of all she sought to achieve for us, as we begin to perceive the void her absence leaves in America.—Jack Ossofsky, Executive Director, National Council on the Aging.

The news of Louise Gerrard's death was a shock to all of us in the field of aging. Louise had a long time concern with needs and problems of older people. Most of all, she had a measure of compassion for those who had the greatest social and economic needs. The welfare of the elderly in West Virginia, and in the country at large, through her influence, has been great. Those who have helped to carry forward the cause of the aging in this country will miss greatly her wise and gentle counsel.—John B. Martin, Legislative Consultant, National Retired Teachers/American Association of Retired Persons, Past Commissioner on Aging, Member, Federal Council on the Aging.

This Nation has truly lost a remarkable individual with the untimely death of Dr. Louise Gerrard. Her compassionate and tireless dedication on behalf of the well-being of older persons is exemplary of the best this country has to offer in personal commitment to assist our increasing numbers of senior citizens. My life and the entire aging network has been enriched by the dedication, skills and leadership of this superb lady. As the chairman of a former Task Force on Aging of the U.S. Conference of Mayors, it was my privilege to share many stimulating work experiences with this gentle giant from West Virginia. Ms. Peggy Seeley and Mr. Larry McNickle, of the task force staff, join me in expressing our sincere sympathy to Louise's family for the loss which we each will share.—Hon. Wesley C. Uhlman, Former Mayor, City of Seattle, Washington, Current Member of the Board, National Council on the Aging.

Louise Gerrard and I were great friends who shared a great concern for our Nation's older people, she as a spokeswoman for the rural elderly and I as spokesman for the urban. I recall the meeting of the Board of one national association on which we both served, when Louise and I, as we frequently did, sat next to each other and tried to catch each other up on our recent activities, as the meeting allowed. The Board's discussion suddenly turned to a dispute about urban and rural issues. Louise and I instinctively reached out a hand to each other—the tension for the moment broke when one board member noted: 'Look, the urban and rural elderly are holding hands!' Louise's memory will best be served by all of us continuing in her spirit to work together for the people we serve.—Mr. Robert J. Ahrens, President, Urban Elderly Coalition.

All older Americans, and especially those living in rural areas, have lost one of their strongest advocates, and the aging network one of its most valuable lieutenants. NASUA will be forever indebted to Louise's leadership and her untiring commitment to strengthening the capacity of the Association of the States Units to better serve older persons. I personally have lost one of my most trusted advisors and friend, whose wisdom and constant understanding have guided this office during its formative years.—Dr. Daniel Quirk, Executive Director, National Association of State Units on Aging.

The network on aging has lost one who helped lay the foundations for the network. Dr. Gerrard will be missed by all, but particularly by those who are especially concerned about the needs of elderly persons living in rural America.—Raymond C. Mastalish, Executive Director, National Association of Area Agencies on Aging.

The Mayor's Commission on Aging, Cleveland, joins the Aging network in expressions of sorrow at the loss of Dr. Louise Gerrard, Director of the WV Commission on Aging. Dr. Gerrard exemplified the capable administrator possessing sensitivity and concern for those her department served. As a West Virginian, I am proud of the superb record she has left; with her death, I am bereft of a good friend and admirable colleague.—Anna V. Brown, Executive Director, Mayor's Commission on Aging, City of Cleveland, Ohio.

Louise Gerrard made such a significant contribution to the well-being of this Nation's older American that she has left a legacy of service and commitment which few of us will ever be able to achieve, but which will serve as a standard for which to strive earnestly. She will be sorely missed.—Doris Dealaman, Chosen Freeholder, Somerset County, New Jersey, Chairperson for Aging, Welfare and Social Services Steering Committee, National Association of Counties.●

PROMOTION COSTS OF SALT II

● Mr. GOLDWATER. Mr. President, from the beginning of its campaign, the Carter administration has spent more than $1,200,000 of the taxpayer's money in its effort to build up the public pressure for Senate ratification of the SALT II Treaty. These figures were collected by the General Accounting Office from the agencies directly involved in the massive public relations effort. These figures show that during the first 6 months of 1979 expenditures were running about $624,000 and were on the increase. An earlier study by the GAO showed that the administration had spent $600,000 of taxpayer's money to promote the SALT Treaty during 1978—even before the treaty was formally submitted to the Senate.

The GAO study shows that most of the promotional work for SALT is being handled by the Department of State and the Arms Control and Disarmament Agency. However, the Department of Defense has played a role, and in recent months the White House has assumed a greater degree of participation. One of the interesting features of the study shows that the White House could not estimate the total costs which its efforts involve. From my own observation, they would be considerable.

Mr. President, during the 6-month period ending June 30, the State Department and the Arms Control and Disarmament Agency officials participated in over 650 speaking engagements before local groups and conferences in 48 States and the District of Columbia. There were 28 conferences and miniconferences cosponsored by the State Department and the ACDA as well as local organizations. Defense Department officials spoke at four of these conferences. In addition to these, the White House sponsored nine conferences or briefing sessions for congressional and public opinion media. Nonsalaried costs associated with these conferences totaled about $6,000.

Mr. President, the White House also did a massive job in mailing out, at taxpayer's expense, thousands of SALT documents, background reports, speeches, and booklets. Most of them were distributed to newspapers, columnists, radio and TV stations, and congressional staffs.

All in all, Mr. President, it is clear that the Carter administration is going all out in an attempt to build a grass roots campaign for a highly controversial policy question and doing it at the taxpayer's expense.

I ask to have the General Accounting Office report printed in the RECORD.

The report follows :

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., August 27, 1979.

Hon. BARRY M. GOLDWATER,
U.S. Senate.

DEAR SENATOR GOLDWATER: In response to your letter of May 23, 1979, we have obtained updated information on the costs of the administration's efforts to inform the public on the Strategic Arms Limitation Talks (SALT II). In an earlier report to you (ID-79-24, March 16, 1979), we explained that the administration's public information activities relating to SALT II were centered in the Department of State and the Arms Control and Disarmament Agency (ACDA) and had cost about $600,000 in 1978. For the first 6 months of 1979, expenditures were about $624,000, thus bringing the administration's overall costs for SALT II public affairs activities to about $1.2 million for the 18-month period. Enclosures I and II provide a detailed breakdown of costs.

As described in our earlier report, the Department of State and ACDA use a variety of means for keeping the public informed, including furnishing officials for speaking engagements, arranging conferences, preparing and distributing publications, and providing interviews and press releases for the media. While the nature of these activities has basically remained unchanged, the level at which they are carried out has increased, as discussed in enclosure III.

During the 6-month period ending June 30, 1979, State Department and ACDA officials participated in over 650 speaking engagements before local groups and conferences in 48 States and the District of Columbia. There were 28 conferences and mini-conferences, cosponsored by the State Department, ACDA, and local organizations. Department of Defense officials spoke at four of these conferences.

In recent months, the White House Office has assumed a greater role in the administration's SALT II public information efforts. However, the White House Office could not estimate salary costs for its staff involved in these activities, stating that: "No records have been kept which would provide any reasonable estimate of what portion of an individual's time was spent on SALT II and therefore, no reliable cost data can be computed."

Your May 23 letter also requested information on SALT II mailings sent by the White House to various organizations and individuals around the country. Although various units within the White House Office sent out mailings relating to SALT II, detailed information was provided for only the Office of Media Liaison. Between January 20, 1977, and June 27, 1979, that Office distributed about 15,300 SALT II-related documents at a cost of about $3,000. These documents, which included SALT II background reports, speeches, and booklets, were sent primarily to daily newspapers, columnists, radio and television stations, and congressional staffs. Enclosure IV lists the subject matter of the documents and the quantities distributed.

Additional costs identified by the White House Office for mailings by other units totaled about $10,000 and represented expenditures for document preparation, binding,

and postage and handling. In other related activities, the White House has sponsored nine conferences or briefing sessions for congressional and public opinion leaders with attendance ranging from about 35 to 235 guests. Nonsalary costs associated with these conferences totaled about $6,000.

It should be noted that all cost and statistical information presented in this report was furnished by the agencies. Although we obtained general explanations concerning the methodology used in preparing the information and discussed the report contents with agency officials, we did not verify the data provided.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of issue. At that time, we will send copies to the Secretaries of State and Defense, the Director, Arms Control and Disarmament Agency, and the Special Assistant to the President for Administration.

Sincerely yours,

J. K. FASICK,
Director.

ESTIMATED COST OF INFORMING THE PUBLIC ABOUT SALT II (JAN. 1–JUNE 30, 1979)

Department/agency [1]	Salary [2]	Travel	Miscellaneous [3]	Total
Department of State:				
Bureau of Public Affairs	$88,660	$46,766	$66,942	$202,368
Bureau of European Affairs (SALT Working Group)	81,262	27,448	28,503	137,213
Office of the Counselor	11,602	----------	1,000	12,602
Other bureaus	6,624	5,453	----------	12,077
Total	188,148	79,667	96,445	364,260
Arms Control and Disarmament Agency:				
Office of Public Affairs	149,126	3,839	9,245	162,210
Other offices	41,580	8,513	----------	50,093
Total	190,706	12,352	9,245	212,303
Department of Defense	3,043	26,259	----------	29,302
The White House Office [4]	3,566	88	14,429	18,083
Total	385,463	118,366	120,119	623,948

[1] All cost data provided by the respective department or agency.
[2] Salary costs do not include fringe benefits.
[3] Miscellaneous costs include expenses for such things as office supplies, equipment, and reproduction of materials. Printing and publications represent about $90,000 of these costs.
[4] Salary costs for the White House Office are for document preparation only. The White House Office stated that no reliable salary cost data could be computed for staff members involved in SALT II public affairs activities.

ESTIMATED COST OF INFORMING THE PUBLIC ABOUT SALT II (JAN. 1, 1978–JUNE 30, 1979

Department/agency [1]	Salary [2]	Travel	Miscellaneous [3]	Total
Department of State:				
Bureau of Public Affairs	$200,755	$83,212	$108,577	$392,544
Bureau of European Affairs (SALT Working Group)	170,065	43,343	48,654	262,062
Office of the Counselor	25,656	1,030	1,000	27,686
Other bureaus	16,836	12,242	----------	29,078
Total	413,312	139,827	158,231	711,370
Arms Control and Disarmament Agency:				
Office of Public Affairs	341,879	11,005	22,797	375,681
Other offices	71,580	13,283	----------	84,863
Total	413,459	24,288	22,797	460,544
Department of Defense	4,096	30,393	----------	34,489
The White House Office [4]	3,566	88	14,978	18,632
Total	834,433	194,596	196,006	1,225,035

[1] All cost data provided by the respective department or agency.
[2] Salary costs do not include fringe benefits.
[3] Miscellaneous costs include expenses for such things as office supplies, equipment, and reproduction of materials. Printing and publications represent about $147,000 of these costs.
[4] Salary costs for the White House Office are for document preparation only. The White House Office stated that no reliable salary cost data could be computed for staff members involved in SALT II public affairs activities.

THE BUREAU OF PUBLIC AFFAIRS

The Bureau of Public Affairs focuses its primary efforts on six priority public affairs issues including SALT information activities. The Bureau carries out its SALT activities through (1) programing Department and ACDA officials to speak before groups and organizations, (2) preparing and distributing publications, and (3) arranging media activities. The Bureau accounted for $202,368 of the State Department's SALT II public affairs expenditures during the period.

From January through June 30, 1979, speakers were furnished through the Bureau for 525 engagements in 48 States and the District of Columbia. A total of 191 trips were made, with Bureau-sponsored speakers often participating in several engagements while in travel status. These officials addressed numerous audiences including academic groups, religious organizations, civic clubs, and conferences arranged by the SALT Working Group. Bureau speakers also participated in 452 media events, which consisted of television, radio, and newspaper interviews in Washington, D.C. and around the country. By comparison, updated information provided by the State Department showed that in calendar year 1978, Bureau speakers participated in 540 speaking engagements during 148 trips and in 577 media events.

During the first half of 1979, the Bureau prepared 20 SALT II-related documents, including reports, pamphlets, and speeches. In total, the Bureau distributed approximately 507,200 copies of these documents. Publications included "SALT II Agreement," "SALT II—The Basic Guide," and "SALT II—The Reason Why."

SALT WORKING GROUP

The SALT Working Group is primarily involved in developing and cosponsoring conferences throughout the United States on the subject of U.S. security and the Soviet challenge. As shown in our prior report, the Group cosponsored nine conferences from June through December 1978. For the first 6 months of 1979, the Group cosponsored 11 major conferences in 11 States. The agenda for the conferences has remained the same, including presentations on Soviet affairs and strategic theory, SALT II provisions, and SALT's impact on U.S. security.

Detailed below is information on conference locations and agency personnel attending.

Location and date	Employees attending: State	ACDA	Defense	Total
Nashville, Tenn., Feb. 1, 1979	9	1	1	11
Minneapolis, Minn., Feb. 22, 1979	7	----------	----------	[1] 7
Indianapolis, Ind., Feb. 27, 1979	8	3	----------	11
Atlanta, Ga., Mar. 15, 1979	7	1	1	9
Birmingham, Ala., Mar 22, 1979	7	3	1	11
Des Moines, Iowa, Apr. 20, 1979	7	2	----------	9
Albuquerque, N. Mex., Apr. 25, 1979	7	2	----------	9
Richmond, Va., June 12, 1979	7	4	----------	11
Kansas City, Mo., June 26, 1979	7	2	----------	9
Denver, Colo., June 26, 1979	7	1	----------	8
Cheyenne, Wyo., June 27, 1979	7	2	----------	9
Total	80	21	3	104

[1] Conference was also attended by the Vice President and several members of his staff.

In addition to the above conferences, in the first 6 months of 1979, the SALT Working Group cosponsored 15 "mini-conferences" compared to 1 in 1978. At these mini-conferences, from 1 to 4 Government personnel discussed SALT II and related issues before audiences averaging 100 persons. The mini-conferences were cosponsored by local civic groups which furnished one or more local speakers to participate in the program. The local organizations provided most of the administrative support for the mini-conferences, and the State Department's Bureau of Public Affairs generally paid travel costs of the Government participants.

Following is a summary of the dates, locations, and number of agency personnel attending the mini-conferences:

Location and date	Employees attending: State	ACDA	Defense	Total
Detroit, Mich., Feb. 8, 1979	1	1	----------	2
Wichita, Kans., Feb. 12, 1979	3	----------	1	4
Leesburg, Fla., Feb. 16, 1979	----------	1	----------	1
Charlottesville, Va., Feb. 28, 1979	1	1	----------	2
St. Louis, Mo., Apr. 6, 1979	3	----------	----------	3
New Orleans, La., Apr. 20, 1979	4	----------	----------	4
Hartford, Conn., Apr. 26, 1979	1	1	----------	2
Minneapolis, Minn., Apr. 26, 1979	1	----------	----------	1
Springfield, Mass., Apr. 27, 1979	1	1	----------	2
Amarillo, Tex., May 1, 1979	2	----------	----------	2
Westport, Conn., May 6, 1979	1	----------	----------	1
Auburn, Ala., May 24, 1979	1	1	----------	2
Terre Haute, Ind., June 12, 1979	1	1	----------	2
New London, Conn., June 15, 1979	3	----------	----------	3
Memphis, Tenn., June 21, 1979	2	----------	----------	2
Total	25	7	1	33

According to a SALT Working Group spokesperson, the Group has plans for 10 additional conferences and 3 mini-conferences between July 1 and October 31, 1979.

ARMS CONTROL AND DISARMAMENT AGENCY

Within the Arms Control and Disarmament Agency, the Office of Public Affairs is responsible for SALT II public information activities. This Office coordinates speaking engagements of ACDA officers, including the Director, and works closely with the Department of State. From January 1 through June 30, 1979, ACDA spent $212,303 on SALT II public information activities.

Public speaking engagements—In addition to the officers who participated in engagements arranged by the State Department, ACDA furnished speakers for about 140 speaking engagements in 21 States and the Washington, D.C. area. By comparison, agency speakers participated in about 150 engagements in 1978.

SALT conferences/briefings—ACDA and the State Department jointly sponsored 2 conferences in Washington for 70 representatives of scientific societies and publications and for about 100 academicians from universities and research organizations. ACDA also organized briefings in Washington for former national commanders of major veterans' organizations, the American Legion, the Executive Board of the National Association for the Advancement of Colored People, and former Members of Congress.

Publications—In addition to contributing funds to the layout and design costs of a State Department publication on SALT II, ACDA issued an 8-page document, "SALT II—Glossary of Terms" and reproduced 500 copies each of 9 texts of major speeches delivered by the Director, ACDA.

SALT Working Group conferences—ACDA personnel attended 10 of 11 conferences arranged by the SALT Working Group and 7 of the 15 mini-conferences.

THE WHITE HOUSE OFFICE OF MEDIA LIAISON, SALT II-RELATED MAILINGS, JANUARY 20, 1977–JUNE 27, 1979

Date of mailing, subject matter, and estimated quantity distributed:

April 7, 1977, Strategic Arms Limitation Talks Background Report, 2,015.

July 15, 1977, B–1 Bomber, SALT Background Report, 4,300.

July 12, 1978, The SALT Process Booklet, 1,960.

March 7, 1979, Speech by Charles Duncan, Deputy Secretary of Defense, 533.

April 5, 1979, Speech by Harold Brown, Secretary of Defense, 268.

May 4, 1979, President Carter's Speech to the American Newspaper Association, 577.

May 9, 1979, SALT II—In Perspective Background Report, 643.

May 10, 1979, SALT II—In Perspective Background Report, 4,700.

May 24, 1979, SALT II—In Perspective Background Report, 351.

Total, 15,347.●

OUR INCREASING DEPENDENCE ON OPEC

● Mr. STONE. Mr. President, on June 15, 1979, Mr. Andrew H. Hines, Jr., president of the Florida Power Corp., delivered an important address to the Mississippi Broadcasters Association in Biloxi, Miss. Mr. Hines' address concerned the terrible dilemma facing the United States as a result of our increasing dependence on OPEC. I commend Mr. Hines' remarks to the Senate and to the public in understanding the serious situation our country is facing today. I ask that Mr. Hines' remarks be printed in the RECORD.

The address follows:

DRIFTING TOWARD THE FALLS

There's an apocryphal story about two friends who went for a canoe ride on the Niagara River. As they were drifting along on a summer afternoon, they heard a deep rumble somewhere ahead. One turned to the other and said, "I think we're going to have a thunderstorm." The second said, "It can't be. It wasn't in the weather forecast last night." These friends were one turn away from the falls, drifting aimlessly toward disaster. And that's very similar to our situation today.

The other morning, our newspaper carried two headlines printed close together and bearing conflicting viewpoints on the same basic problem. One headline dealt with nationwide protests on the use of nuclear power. The second was a headline which stated that truckers are becoming concerned about the higher price of diesel fuel and are going to shut down the economy. The irony is that the editors of the paper did not connect the contradictions inherent in these two headlines, and write a third story. That story would deal with our unwillingness as a nation to accept reality in the energy area.

I propose in these few minutes here with you today, to do some problem definition, to discuss some possible solutions and to project a need for a national posture which will better serve our country's citizens and indeed its institutions. Definition of the problem is difficult to do in the welter of information and misinformation which besets us today. But going through the maze and tangle of data and conflicting reports, we can reach a basic conclusion that our energy sources are being limited at a time when energy is increasingly important to our national well-being. We can further define that problem by linking it to a massive inflation which is sweeping across our country and which is threatening the underpinnings of our society. These two problems—the limitation in energy supply and the massive inflation which is wreaking a terrible havoc in the lives of many individuals—these two problems are aspects of the same problem. They are tied together. They are in a sense cause and effect and they must be treated together. We cannot take inflation as a problem and set it to one side and say we'll tackle this with wage and price controls or jawboning or credit controls or whatever economic tool we want to apply. It is directly related to the problem of energy supply limitation and antitrust type activity at the international level. To ignore that problem is not to address the first one.

So for our purposes today, I'd like to define our problem as a limitation in energy supply; of a cartel which has established runaway prices and which is causing a shock wave of inflation to go throughout our society. And I'd like to make the point that this problem—this underlying problem of cartel action is being amplified, is being worsened, is being aggravated by regulation which is bogging down America's ability to respond to challenge. It is highly important for us as a nation to accept our problem for what it is, to cease the mindless backbiting and interagency fighting, the bickering back and forth amongst various sectors of our society. We need to cease fighting ourselves and to turn our attention to the real source.

In this regard we are, as a nation, victims of instant replay. Instant replay has done a great deal for football coaches. It has done much for grandstand quarterbacks. It enables someone to sit in his living room and watch in slow motion each unfolding event as a quarterback heads into the line of scrimmage. It shows how, if he had taken one step more to the left, he could have gone five yards further. The unfortunate thing is that the quarterback didn't have the advantage of instant replay when he was diving for the line. He had to make decisions on the basis of what he had. And criticism on the basis of instant replay doesn't really treat the person being criticized very fairly. Likewise, in our society today we are subjecting all decisions to instant replay . . . the result is that we are spending so much time belaboring our mistakes of the past that we are letting the future go by default.

We must accept our energy problem for what it is . . . a limitation in resources brought about by foreign cartel, price fixing at the international level which has provoked a massive wave of inflation. Only if we accept it in these terms can we effectively deal with it. And it is vitally important that we address the problem and that we deal with it. Because just as our friends on the Niagara River were due for a rude awakening when they drifted around the bend, so our nation is due for a rude awakening as it drifts toward a time of energy constraints which will increasingly affect the economy, the well-being and perhaps the individual freedom of each of its citizens.

Our solutions must cover a broad gambit of activities. The first and foremost, and on this there can be no argument, is conservation . . . conservation now in the facilities and the use of the energy that we have, conservation in the future by changing our methods of building, designing and operating. This program indeed is well under way. You see it reflected in targets for miles per gallon on automobiles in the early 1980's. You see it reflected in higher levels of insulation mandated in building codes. You see it reflected in the efficiency ratings of various appliances. Indeed, conservation for the future is being built into our society. Conservation for the present takes a widespread change in living habits and lifestyles. It is not a change that is easy to make for many people. Those of you who remember days when fuel was short in another national emergency will recall that we in the service were required to take our showerbaths by turning on the water, getting wet, turning it off, soaping up, turning it on, rinsing off and proceeding to get dressed. You could take a showerbath this way in about a ten quart bucket of water. Contrast this with the showerbath which your children will take when they come home from college, literally steaming the wallpaper off the walls in 30 minutes of blissful relaxation. Those days are going. Economics is forcing it. National interest intensifies the need for us to move toward conservation. It does mean change, it means doing without some things we'd like to have, it means close attention to details, but it has got to be the first step in a solution to our national dilemma.

The second step, and one which I approach from the standpoint of what I believe to be economic justice, is the need to impose national gasoline rationing. We have adopted a national policy of watching prices rise with the hope that this will curtail the demand for the product. It's true that in the long haul as prices rise, demand declines, but when you are dealing with a necessity of life, many people are caught in a severe economic crunch. Those who can afford the higher prices for gasoline will continue to utilize the fuel for whatever purpose they wish in whatever amount they wish. There may be nothing basically immoral or illegal about that. But those whose financial ability does not keep pace with the rising price of a necessity of life will become increasingly constrained. They will find themselves cutting the food budget, cutting the insurance budget, cutting the clothing budget in order to be able to drive to and from work. Only by a national system of gasoline rationing can we effectively make a major cut in the demand for petroleum products. I think it's vital that we make such a cut in order to implement some further steps that we need to take for our national well-being. The importance of gasoline rationing lies in the fact that it will enable us to take a stronger posture vis-a-vis the OPEC nations, and it is extremely important that we do just that.

I am confident that we can weather the adjustments which rationing would require.

When this was a young country, our reply to the Barbary pirates was "Millions for defense and not one cent for tribute." We must return to that type of attitude if we are to gain any respect at the international level and if we are to defend our citizens against the actions of the oil cartel. We have, indeed, to take a much stronger posture than anybody has been willing to publicly discuss, and I'd like to point out to you some possible actions that we should seriously consider.

The first of these is an embargo of all OPEC nations—not buying one cent's worth of oil from them—not selling one bushel of wheat, one piece of computer hardware, one airplane—a complete cessation in trade with all OPEC nations. In order to do that, we will have to cut our imports of oil, and the only way that I see to effectively do this is to ration gasoline. We should also consider severe action such as the confiscation of all of the assets of the OPEC nations within this country where the same thing has been done to our citizens' assets over there. We should consider the deportation of all nationals of OPEC nations. Our citizens have been driven back from the Middle East—why should theirs continue to enjoy tax-subsidized education in the United States? We can only take these vigorous actions—actions similar to those Teddy Roosevelt might have proposed—if we are in a position to face the consequences. The consequences, of course, are a reduced supply of fuel from overseas. If we are able to do this, we will be in a much stronger position to resist the kind of death by inches that our economy is now suffering.

Those who will not defend themselves are destined to suffer the consequences of no defense, and we are not defending ourselves in this economic war which is underway and intensifying. Those things which we can do within our own nation, we must do. This means that we must build new facilities—new facilities not only for producing more oil and gas but new facilities for permitting a transfer of our energy burdens from oil and gas to coal and uranium. It is a tragedy that the anti-nuclear hysteria focuses upon this country at this time when our need for nuclear power in the future will be much greater than it has been in the past. It is tragic that the straitjacket of regulation will make it increasingly more difficult to mine and burn coal than it has been in the past. These are the means whereby we can replace many millions of barrels of oil per year.

Only if we break the bottlenecks of regulation—the bottlenecks of conflicting law, rules and procedures—only if we break these can we get underway the building program which will be necessary to our national wellbeing. We have already passed the point of no return toward energy shortages which will manifest themselves over the next five to eight years. We cannot, now, begin construction on new power plants and have them ready in time to prevent a shortage of electricity that will afflict this nation in the early 1980's. But if we are to come out of that pending shortage, we must get these projects under way. Only then by recognizing our problem for what it is—cartel action resulting in massive inflation and aggravated by regulation which is bogging down constructive response; only then can we move in a straightforward, hardhitting manner to respond. We could then look forward to better days on the other side of the falls.

Our situation is not too different from that encountered by the democracies following the Munich crisis. At that time, in the rather bleak winter of 1938, there was a sense of rejoicing among many in England that peace has been obtained; that the sacrifice of the freedom of Czechoslovakia had brought peace in that time. It was before a stormy Parliament that Winston Churchill rose to express a counter view. May I quote him in closing:

"This is only the beginning of the reckoning. This is only the first sip, the first foretaste of a bitter cup which will be proffered to us year by year unless, by a supreme recovery of moral health and martial vigor, we arise again and take our stand for freedom as in the olden time."●

TAX INCREASES FROM INFLATION SHOULD BE STOPPED

○ Mr. DOLE. Mr. President, recently the Government announced a 1-percent rise in the Consumer Price Index for the month of July and a projected annual inflation rate for 1979 in excess of 13 percent. These are not mere statistics to American taxpayers—they represent a real reduction in earning power, even where wage increases keep pace with inflation. This is so because nominal wage increases boost taxpayers into higher brackets where they are taxed at a higher rate. The result is "taxflation"—an automatic revenue boost for the U.S. Treasury and an unlegislated tax increase for our citizens.

In the Washington Post of August 16, columnist George Will discussed indexing the income tax to the rate of inflation. It is gratifying that Mr. Will favorably mentioned legislation introduced by the Senator from Kansas which would do precisely that. Indexing income taxes is not a surrender to inflation—it is a major and necessary step in our battle to preserve the purchasing power of our citizens and ease the terrible burden which inflation places on those with fixed incomes.

Indexing is equitable, logical, and simple; and the time for it is now. The Senator from Kansas believes we need to be reminded of the impact which inflation has on the tax burden of the average citizen and of the fact that a remedy—indexing—is readily available. This issue will continue to be brought to the attention of the Congress and the public, and it should be.

Mr. President, I ask that George Will's column of August 16, 1979, be printed in the RECORD.

The column follows:

A CURE FOR INCOME "TAXFLATION"

(By George F. Will)

It is perverse, even unpatriotic.

This nation was born in a wild overreaction to a tiny tax on tea. Insurrection sprang from the principle that tax increases should be legislated by representatives. Yet, today, Americans tolerate constant, huge and unlegislated tax increases.

The cause of the increases is inflation. The cure is legislation introduced by Rep. Bill Gradison (R.–Ohio) and Sen. Bob Dole (R.–Kan.). Their bill would index taxes by linking personal income-tax rates (and the personal exemption, and the no-tax threshold) to the consumer price index.

Everyone would benefit. Taxes would be lower than they otherwise will be. Congress would have to be more candid than it hitherto has been. And the inflation rate might be lower than it otherwise will be, because government would have less money to spend.

The U.S. progressive tax system was developed in an era that assumed stable prices. But today, high inflation seems inextricably entwined with the poltical process. It is a permanent affliction and demands a permanent accommodation of the sort Gradison and Dole propose.

Gradison illustrates indexing in terms of a worker with a wife, two children, and wage of $9.50 an hour, or about $19,000 in 1979. With four exemptions and the standard deduction, his taxable income is $15,000; his tax bill is $2,055. Assuming, optimistically, only 8 percent inflation, in 1980 his cost-of-living adjustment will bring his pay to $10.26 an hour, or $20,520 for the year. With indexing, he would pay the same percentage (10.8) of his income in 1980 taxes as he paid in 1979, or $2,220. Without indexing he will pay $2,390. The $170 difference is a decline in his real money income, the result of an unlegislated tax increase.

Dole calculates that with 8 percent inflation, a family earning $30,000 in 1979 must earn $32,400 in 1980 just to stay even. But if it does earn that, its tax bill goes up $888. Without indexing, taxpayers will pay $9 billion extra on 1979 income. The 1980 "taxflation" bill will be about $12 billion.

Indexing of income taxes has begun in several states, and in a dozen nations, including Canada. In the first five years of indexing, Canada's compounded inflation was 52.1 percent, so personal exemptions for a family of four rose from $3,600 to $5,480, and the income threshold for the maximum 56 percent rate rose from $60,000 to $91,260. Furthermore, a Canadian official says indexing is the most important factor behind Canada's declining rate of growth of government expenditure:

	Percent
1974	15.9
1975	10.2
1976	2.7
1977	2.1

Erase government's expectation of windfall revenues from inflation and you lower expenditures.

Many so-called tax "cuts" do little more than reduce the tax burden to what it was before a recent run of inflation. If Congress wants taxes to rise, it needs only to forgo such "cuts." The Gradison-Dole proposal would force accountability on Congress by requiring it to legislate tax increases and to refrain from bogus tax reductions.

Some opposition to indexing is rooted in political opportunism: Legislators do not want to make automatic the sort of tax adjustments they hitherto advertised as tax cuts. Other opposition is rooted in addiction to a discredited economic practice. Indexing, some opponents say, will diminish Congress' ability to use tax changes to "fine tune" the economy.

It is preposterous to say, as some critics of indexing do, that indexing will cause people to become apathetic about inflation. People who suffer from inflation a dozen times a day, at every cash register, will not sink into complacency about inflation just because it no longer injures them in their capacity as federal taxpayers.

Without indexing, government's incentives are perniciously mixed. There is, of course, some political reward for reducing inflation. But there also are substantial political benefits from distributing, through spending, the windfall revenues that inflation generates.

Without indexing, government harvests between $1 billion and $1.5 billion in windfall revenues for each percentage point of inflation. Surely it is imprudent to allow government to profit so handsomely from inflation that it causes and that only it can seriously combat. As Benjamin Franklin said, "He's a fool that makes his doctor his heir."●

REV. JAMES PATTERSON LYKE

● Mr. SASSER. Mr. President, on August 1 the Rev. James Patterson Lyke was ordained an auxiliary bishop of the Roman Catholic Diocese of Cleveland, Ohio. He is only the fifth black priest to be elevated to so eminent a position in his church. And at the age of 40, he is one of the youngest priests ever chosen to wear the miter of a bishop.

We in Tennessee are marking this occasion with special pride, because Father Lyke—or Father Jim, as he is known—was for 9 years the beloved pastor of St. Thomas Roman Catholic Church in Memphis.

He arrived in Memphis in 1968 and departed in 1977 to become a chaplain at Grambling College in Louisiana. His years in Memphis were distinguished by his courage and effectiveness as a leader in the cause of human rights—a leadership that was marked by his unique gift for inspiring people to work together.

In an interview in the Memphis Commercial Appeal, Msgr. Paul Clunan of the Diocese of Memphis spoke feelingly of the Christian commitment that Father Lyke brought to his role as a parish priest and community leader.

"He has an excellent way of dealing with white and black people," he said. "God has blessed him in that way."

Mr. President, we are immensely proud of Father Lyke—and we are indeed grateful, too. He touched our lives in Memphis, and because he did, we are better Christians—and better human beings. In serving his God, he served us all.●

PROPOSED FEDERAL ASSISTANCE

● Mr. WEICKER. Mr. President, Treasury Secretary G. William Miller recently announced that he would recommend Federal Government loan guarantees to aid Chrysler Corp. In his opinion, these guarantees would enable Chrysler to avert bankruptcy and get back on its feet by borrowing operating capital from private bankers which would otherwise reject loans to the company.

However, it is important to realize that should Chrysler default on repayment of these loans, the American taxpayer would be left holding the bag. If this were to occur, all the Federal Government could do would be to take over Chrysler and sell off its assets.

Mr. President, I have consistently objected to the notion of the Federal Government bailing out beleaguered businesses. I do not want to see jobs lost, but in the long run more jobs will be lost if the Federal Government hands out money to every Lockheed, Wheeling-Pittsburgh, or Chrysler that comes along, as those businesses which must go it alone will be put at a tremendous competitive disadvantage.

The free enterprise system upon which America's economic philosophy is predicated gives everyone the right to succeed or fail on one's own merits. Yes, failure is as much a part of the free enterprise system as is success.

Mr. President, if a company does not have the management and does not have the right product, it should not be in business. This applies to Chrysler as well as every other company in this country.

According to an article in the August 24 edition of the Wall Street Journal, American car sales rose 22 percent to an estimated 242,892 units in August 11–20, 1979, period, which established an alltime record. Yet in this same time period, Chrysler's sales slumped almost 19 percent. Clearly, Chrysler is doing something wrong.

It is Chrysler's management, however, and not the American Government, that has placed Chrysler in the position it presently is. An article in last Friday's Wall Street Journal shows the adverse effect that past bad business judgments have had on Chrysler. As of the end of July, Chrysler had 80,000 vehicles sitting on various lots around the country which were unwanted by consumers. This stockpile of unwanted autos is the result of Chrysler's practice, which was contrary to that of its rivals, of building "vehicles knowing full well that none of its dealers had ordered them. When dealers then refused to buy them, Chrysler was stuck with vehicles into which it had put hundreds of millions of dollars in labor, material, and other costs." The sales bank, which contained only 44,000 units early this year rose to 110,000 in early June. Now, Chrysler is in the midst of expending $90 million to get rid of these stockpiled vehicles.

Mr. President, an automobile manufacturer with sound management can, without Federal assistance, rebound from an adverse financial position to one of profitability. In 1976, American Motors Corp. was precariously close to extinction. Yet, for fiscal year 1978, American Motors showed profits of $36.7 million on sales of $2.6 billion, achieving this status by focusing its energies on specific market segments. Additionally, according to an August 29 article in the Washington Star, American Motors intends to make more than $100 million in capital investments in the next year. This turnabout has been achieved without Federal aid.

Mr. President, I believe that Chrysler, like American Motors, can return to a profitable financial position without Federal aid. Accordingly, although I wish Chrysler the best in its battle to reverse its financial misfortunes, I urge my colleagues to do likewise.

I would like to commend to the attention of my colleagues the August 31 Wall Street Journal article entitled "Orphan Autos: Cars Chrysler Produced Without Dealer Orders Burden It Many Ways." This piece depicts an example of the type of bad business judgment that has put Chrysler in the position it is. I would also urge my colleagues to read the article entitled "Small Car Revival Brings Profits, Stability to AMC," which appeared in the August 29 Washington Star, to see what a financially troubled auto manufacturer with good management can accomplish without Federal aid.

Mr. President, I ask that these articles be printed in the RECORD.

The articles follow:

[From the Wall Street Journal, Aug. 31, 1979]

ORPHAN AUTOS: CARS CHRYSLER PRODUCED WITHOUT DEALER ORDERS BURDEN IT MANY WAYS

(By Amanda Bennett)

WINDSOR, ONTARIO.—Day after day, Ethel, a chunky redhead, sits at the main gate of a harness-racing track here across the river from Chrysler Corp's. Detroit headquarters. Equipped with a CB radio (her handle is "cat eyes") and a stack of comic books, she and her staff of about a half-dozen security guards watch over fields of Chrysler cars, trucks and vans.

Some of the vehicles, parked nose-down in gullies along the roadway, have been sitting so long that thistles and cattails have grown up around them. Hoods are standing open here and there as six men in a powder-blue van move about, jumping run-down batteries and checking for other troubles.

To Ethel's crew and the maintenance men, these thousands of Chryslers, Dodges and Plymouths mean income. To Chrysler Corp., they're a colossal financial headache—and one it inflicted on itself.

At the end of last month, as Chrysler was announcing a record $207.1 million second quarter loss and appealing for an unprecedented $1 billion government rescue, there were some 80,000 such vehicles sitting on owned and rented lots around North America—unwanted by consumers or Chrysler's dealers.

BUILT UNORDERED

Contrary to the practice of its rivals, the auto maker had built the vehicles knowing full well that none of its dealers had ordered them. When dealers then refused to buy them, Chrysler was stuck with vehicles into which it had put hundreds of millions of dollars in labor, material and other costs.

These unrecovered costs have worsened Chrysler's losses and forced it to lean heavily on its $750 million short-term bank credit lines for operating money. Those borrowings, in turn, are costing Chrysler dearly in interest charges. Then there are the fees for guards, lot rentals and upkeep. And now Chrysler is digging deeper into its pockets, mounting a giant $90 million sales push to get rid of the vehicles—at fire-sale prices.

Disposing of this stockpile, euphemistically described by Chrysler as a "sales bank," is "our No. 1 priority," concedes Gar F. Laux, executive vice president for sales and marketing. "I have to get that thing moving." The company's new sales drive seems to be helping. At last count, the sales bank had dropped below 40,000 vehicles as huge discounts to dealers and direct $400-a-car rebates to consumers effectively reduced retail prices on some Chrysler models by up to $2,000.

UNIQUE PRODUCTION POLICY

But the problem is hardly solved. Despite the big reduction, the remaining stockpile still represents about $350 million worth of autos and is only slightly smaller than it was last spring, when company executives described it as "backbreaking." Mr. Laux predicts the problem will be "controllable" by October, so that Chrysler can maintain orderly production and shipment of its 1980 models. But he declines to estimate how many 1979s Chrysler will still have by then or when they will all be out of the company's hands.

General Motors Corp. and Ford Motor Co. build only cars that dealers have ordered, either to fill firm customer requests or for their showrooms. "There's a dealer with an open credit line waiting as every car rolls out" the factory door, explains one Ford man. Each car is promptly assigned to the appropriate dealer, and the auto maker is immediately paid.

Chrysler, however, since the 1960s has periodically built more cars than its dealers

ordered, and later through subtle price cutting and sometimes not-so-subtle arm-twisting persuaded its dealers to buy them. This practice was initially thought of as a "temporary expedient," recalls one Chrysler official, a method of storing up cars in slow periods to take advantage of anticipated market surges. And for years, it worked.

TROUBLE IN 1975

During the late 1960s, when the auto market was rapidly expanding, Chrysler was able to almost double its market share and maximize the efficiency and profitability of its plants. But in the slower-growth 1970s, the strategy began to backfire; in the deep 1975 recession, Chrysler found itself strangling on a 60,000-unit sales bank and in much the same predicament it is in today. Afterward, chairman John J. Riccardo promised that the practice would be abandoned and that in future downturns Chrysler "wouldn't fall in the soup again."

Yet when the gasoline crisis accelerated the current slump, the auto maker again found itself with an unwieldly stockpile of unordered autos. Early this year, Lee A. Iacocca, Chrysler's newly named president, declared that "breaking the back" of the sales bank—then containing about 44,000 units—was his prime goal. Instead, production continued to outstrip sales, and the sales bank peaked at 110,000 in early June.

Now, Mr. Iacocca and Mr. Laux—both former Ford executives—say the sales-bank strategy they inherited is officially dead. "We're dedicated to draining" the stockpile, Mr. Laux says. "There isn't one man in the organization from the top right on down who will make one move to fill the sales bank" again, he declares.

In the meantime, Chrysler is struggling to get rid of what it still has. Because sales-bank cars are built on instructions from company management rather than to orders from dealers, who presumably are more attuned to changing customer desires, "the sales bank always has the wrong cars," one Washington-area dealer complains. Mr. Iacocca doesn't disagree; the problem is "tougher than the numbers indicate," he says, because the stockpiled autos are "the kind that dealers resist taking"—such as large cars, compacts with eight-cylinder engines and other vehicles with relatively poor mileage ratings.

So as dealers draw down the sales bank, they're almost certain to bleed off the most-desirable models first, leaving behind those hardest to sell.

That means Chrysler could have a chunk of capital tied up in the vehicles for some time, returning it nothing. Indeed, one Wall Street analyst figures that at the end of the second quarter, when there were 80,000 vehicles on hand, Chrysler may have been paying some $5 million a month in interest on the bank funds it borrowed to make up for the revenues it couldn't collect by selling its stockpile.

On top of that are the direct costs of moving, storing and protecting the unsold vehicles. Chrysler has had to turn to some unusual partners for storage space. The state of Michigan, for example, has for years rented the company 10 to 12 acres at its fairgrounds in northern Detroit for about $3,000 a month. Until recently, says a state-fair official, Chrysler was squeezing about 7,000 cars in and around the edges of lots designed to park 3,000. "It was so close sometimes they'd have to crawl in through the windows to move the cars," he says.

PARKED AT FORD LOT

Besides the race track and drive-ins here, Chrysler has from time to time rented empty airport parking space in some areas and, ironically, more than 20 acres of unused ground at a Ford Motor facility in Highland Park, Mich. None of these are permanent homes, so periodically whole fleets have to be moved. In mid-August, for example, Chrysler had to evacuate the Michigan fairgrounds because the fair was about to begin. Each move costs the auto maker $35 a car, Mr. Laux says.

Chrysler says it can't estimate the cost of fixing up cars damaged while sitting on lots or being shuttled about, but Mr. Iacocca acknowledges there will be some. "We don't deliver a unit out of the bank unless it is completely gone over by the manufacturing people and shipped in good shape," he says.

With the stockpile so large, it is difficult to keep track of where things are. Mr. Laux says Chrysler has set up a special office in Detroit just to match dealer orders with long, computer-printed lists of sales-bank vehicles. Recently, he says, cars ordered by a Detroit dealer had to be located on a lot in St. Louis.

And sometimes they aren't located very quickly. Ethel says she remembers a big commotion on her lot recently when two "Chrysler hot shots" came slogging through the mud in search of a car that was on their list but was nowhere in sight. Mr. Laux concedes cars are misplaced from time to time. "But we find them eventually," he says.

In view of all these care-and-feeding costs, Chrysler's decision to slash prices to eliminate the stockpile is even more understandable. Mr. Laux says Chrysler still believes it will make some money on the cars as they are sold. But others think it may not be much. Heavy wholesale discounts to dealers and cash rebates to consumers add up to the biggest price cuts Chrysler has ever offered. On top of that are the costs of an advertising blitz making heavy use of radio and television, and support for dealer promotions.

But at least the effort seems to be working. At Ken Brown Motor Co. in downtown Detroit, just after the rebate promotion was announced "we had people leaving mad because I couldn't get a salesman to them fast enough," says Philip Kruse, sales manager.

A lot of people did manage to buy, though. The night's tally, recorded with white shoe polish on a showroom window, showed a dealership record of 21 new cars sold. Mr. Kruse says he ordered 20 cars from the sales bank to replace them, including 10 of Chrysler's large cars. In July he had bought nothing from the sales bank.

NEW-MODEL PRODUCTION

Once dealers take most of the sales bank off Chrysler's hands, the company will be ready to plan the production of 1980 models in its plants. (For months now, Chrysler has been building relatively few cars.) Mr. Laux says the company's new policy, like GM's and Ford's, is simple: "We will build cars to dealer orders," many of which are placed 60 to 80 days in advance. "If the orders aren't there, we won't build the cars."

Although that kind of pledge has been made before, many observers believe Chrysler's new operating bosses, Mr. Iacocca and Mr. Laux, will have the resolve to carry it out. "I have to take Mr. Iacocca at his word," says Raphael Cohen, executive vice president of an influential dealer organization. "If they don't have the backbone to keep the sales bank empty, they might as well flush the company down the drain."

Some predict it may take a lot of backbone. Auto sales are currently being stimulated by a rash of price cutting and promotions from all auto makers, not just Chrysler. Once these promotions clear out leftover 1979 models, however, they'll probably end and sales could soften anew.

Mr. Laux says Chrysler's advance dealer orders for September output are in "excellent shape" on most models, and he indicates that a respectable October production is in the offing. But if sales slump again after Chrysler dealers are stocked up with 1980 models, Chrysler's new policy could mean only "sporadic plant openings" late in the fourth quarter, worries Arthur Davis, auto analyst for Prescott Ball & Turben in Cleveland.

[From the Washington Star, Aug. 29, 1979]

SMALL-CAR REVIVAL BRINGS PROFITS, STABILITY TO AMC—NEW EAGLE AIMS AT MAIN STREAM

(By Barrett Seaman)

DETROIT.—With the introduction of its new, four-wheel-drive passenger vehicle, the Eagle, American Motors Corp. has drawn attention to the different course which the "littlest" of the major U.S. automakers intends to follow into the 1980s.

AMC is five times smaller than the No. 3 producer of American cars, financially troubled Chrysler. In fact, now that Volkswagen is producing Rabbits in its New Stanton, Pa., assembly plant, AMC has slipped from No. 4 to No. 5.

Despite the limitations of size, AMC these days is proving itself to be a stable—and profitable—entity in the auto industry.

For fiscal 1978, which ended Sept. 30, 1978, AMC showed profits of $36.7 million on sales of $2.6 billion. By contrast, Chrysler lost more than $200 million for the year on sales of $13.6 billion. After three quarters of fiscal 1979, AMC has earned $73 million after taxes whereas Chrysler has lost more than $260 million in its first six months.

At the same time Chrysler is asking the federal government for $1 billion in aid, American Motors has plans for more than $100 million in capital expenditures, which, according to President W. Paul Tippett Jr., will be generated entirely from internal sources. "We will finance that ourselves with no problems," he says.

AMC commands a miniscule 1.6 percent of the domestic car market. But the company has chosen to focus its energies on specific market segments. All of its cars are small. And the company's corporate average fuel economy numbers are running just over 20 miles a gallon—best of the four U.S. car makers.

None of AMC's passenger cars comes with an engine of more than six cylinders, and the heaviest of the company's three basic lines of cars weighs only 3,250 pounds.

Last year AMC owed its profitability to booming sales of its Jeep vehicles, 162,000 of which retailed during calendar 1978. In the first half of 1979, because of the gas crisis and the relative fuel inefficiency of the Jeep, sales of the almost legendary vehicle sagged 3.3 percent. By year's end, however, the company still expects to sell some 160,000 Jeeps in addition to 156,000 passenger cars.

With the introduction of the Eagle—AMC is confident it will sell all 50,000 it plans to produce—Vice President of Marketing Thomas A. Staudt predicts the firm will increase overall vehicle sales by a third next year—from roughly 300,000 to 400,000.

"We stand a good chance at some significant improvements," says Staudt, a recent acquisition from General Motors' Chevrolet Division. "We hope to move into the main stream of American purchasing considerations."

In July, when overall industry sales were off 10.6 percent. AMC car sales increased 10.5 percent. While industry unemployment now hovers around 70.000, AMC is working six overtime Saturdays to meet demand. In July, according to Tippett, sales of the Concord and Spirit models were up 38 percent over July 1978 totals.

Observing that brand loyalty among car buyers is at an all-time low, Tippett further claims that the trend represents an opportunity for AMC to increase its market share. "We believe the market for the Eighties is headed right for us," he says.

Beyond its plans for market development, American Motors is involved in a steady, if

cautious, expansion of relations with Regie Nationale des Usine Renault of France. By the end of this year AMC hopes to have sold between 15,000 and 17,000 of Renault's mini-compact "Le Car," presently the only Renault model sold through AMC dealerships following a marketing agreement signed last February.

Sometime in 1980, executives of both companies hope, the agreement will be expanded to include Renault's larger sedan, the R-18.

Presently, the two automakers are undertaking a major study aimed at the joint production of a small car that would be built at AMC's Kenosha, Wis., plant. The target model year for production is either 1982 or 1983.

Based on AMC's financial performance to date, the company could be expected to show profits close to $100 million for its fiscal year ending later this month. With the introduction of the Eagle and the growing liaison with Renault, prospects for this once struggling car maker appear brighter than the recent general auto industry news would suggest.●

CHIMNEY SWEEPS WEEK

● Mr. RIEGLE. Mr. President, I wish to call attention to a profession that is currently experiencing a revitalization in our Nation. Many years ago, most homes in the United States were heated through the direct burning of either wood or coal. At that time, everyone was familiar with chimney sweeps, and the important contribution that they made to home safety. The United States then turned to oil, gas and electricity for home heating, and chimney sweeps became somewhat of an anachronism, praised in song and in film, but not a part of everyday life in the 1950's and 1960's.

Today we are seeing a resurgence of wood and coal stoves for home heating. The President has indicated that he will order a wood-burning stove for the White House and has proposed a tax credit for the purchase of such devices. Fireplaces, once thought of as simply decorative elements in a home have become important adjuncts to winter heating systems. With this development, we see the return of the venerable chimney sweep.

Chimney sweeps perform a service that is vital to the safety of millions of homes, and one that few of us are willing to tackle on our own. They remove dangerous residues of the burning process, maintain the proper operation of flues and fireplaces, and are the mainstay in bringing back renewable fuels as a major energy source.

The State of Michigan has declared the week of October 1 through October 7, 1979, as Chimney Sweeps Week. I submit for the RECORD the executive declaration and add my voice of praise for this unheralded profession. They represent a facet of life that few of us think about but is so vital to our comfort and safety. Furthermore, they can provide a wealth of information, gained through years of experience, in proper methods of wood burning, and this education is important given our return to this most basic of energy sources.

The declaration follows:

WILLIAM G. MILLIKEN, GOVERNOR OF THE STATE OF MICHIGAN PRESENTS THIS EXECUTIVE DECLARATION IN OBERVANCE OF OCTOBER 1-7, 1979, AS CHIMNEY SWEEPS WEEK

Many Americans have chosen to fight the energy crisis head-on, conserving by using alternate fuels. They are to be lauded for their initiative and pioneer spirit.

Solid fuel burning is a little known procedure in this generation and additional education is required in maintenance, safety and efficiency.

At the beginning of the 20th century, wood- and coal-burning residential heating plants ranked as the third most frequent cause of home fires. They now rank eighteenth. Chimney sweeps are the sole line of defense to maintain that low occurrence level. They clean the flue, smoke chamber and smoke shelf and remove the foul and dangerous accumulations of creosote, soot and other hazardous materials which are the constant by-products of burning solid fuels.

A new group of individuals, dedicated to safety, has evolved to serve the American public in this area: the American chimney sweeps.

Therefore, I, William G. Milliken, Governor of the State of Michigan, do hereby declare October 1-7, 1979, as Chimney Sweeps Week in Michigan, and urge all citizens with wood- and coal-burning units to have them properly inspected and cleaned to prevent hazards.●

ELEVENTH ANNIVERSARY OF THE SOVIET INVASION OF CZECHOSLOVAKIA

● Mr. SCHWEIKER. Mr. President, 11 years ago, on August 21, 1968, the Dubcek regime's experiment in "socialism with a human face" was brutally terminated when Soviet tanks rumbled into Czechoslovakia to smother any flickering remnants of political liberalization. With ruthless efficiency, the hopes and promising initiatives of the short-lived "Prague spring" were crushed by the cold presence of Soviet armor and the reimposition of an orthodox Marxist government dedicated to the systematic removal of all vestiges of Czechoslovakia's incipient democratization. Moreover, the ex post facto justification for the repressive measures adopted, culminating in the infamous Brezhnev doctrine of "limited sovereignty" within the socialist commonwealth, cast an ominous pall over any potential reformist tendencies in Eastern Europe.

In a world where respect for democratic values and human rights is under constant assault, the memories associated with this particular "Day of Shame" linger painfully. In addition to its centuries-old cultural and ethnic heritage, Czechoslovakia was the first state in Eastern Europe to enjoy the fruits of a genuine liberal democracy, a tradition spawned by the achievement of political sovereignty in 1918 under the leadership of Dr. Tomas Masaryk. Yet the liberal spirit of the Czechoslovakia people and their irrepressible yearning for freedom were nurtured by the persistence of foreign influence since the 15th century. Throughout the period of Hapsburg rule, subjected to the intrigues of great power diplomacy, including a series of upheavals in the 17th century which stifled the growth of political liberties until independence was achieved in 1918, the people's creative spirit and longing for national identity and political self-expression never waned.

Czechoslovakia's history between 1918 and 1938 is similarly notable for a steadfast determination to resist encroachments on its national independence by foreign totalitarian forces, amid the apathy of democratic states willing to accept its sacrifice on the altar of appeasement. At Munich in 1938, a submissive West, disregarding its commitment to the principle of political self-determination, bartered away Czechoslovak sovereignty in a futile attempt to pacify Hitler's insatiable territorial demands. During the Second World War, the exiled Czechoslovak Government attempted to maintain the legal continuity of the political structure inherited from Masaryk, intending to restore democratic rule upon liberation from Nazi dominance in 1945.

The Communist coup of 1948, transforming Czechoslovakia into a Soviet satellite, precluded the rebirth of a liberal democratic policy. Though a powerful Red Army could compel official obeisance to the Kremlin's dictates, it could never eradicate the people's aspirations for freedom or the exercise of basic human rights. This will to freedom has manifested itself on numerous occasions, most prominently during the Dubcek era, an era whose brutal climax shocked the conscience of the civilized world. More recently, the supporters of the Charter 77 Movement have risked official persecution by their valiant efforts to monitor Czechoslovakia's compliance with the human rights provisions of the Helsinki Final Act.

Despite foreign domination and internal repression, typified by the shameful invasion whose anniversary we commemorate, it is a testament to the resilience of the Czechoslovak people that their faith in a future free of coercion has never diminished. Their fortitude in the face of oppression is an inspiration to all who cherish the dream that the ideals embodied in the Helsinki Final Act and the United Nations' Universal Declaration of Human Rights will ultimately overcome all political and ideological barriers.●

THE NATIONAL AQUACULTURE ACT OF 1979

● Mr. STONE. Mr. President, I am taking this opportunity to emphasize the importance of S. 1650, the National Aquaculture Act of 1979, which my distinguished colleague, DAN INOUYE, introduced on August 2, 1979. As an original cosponsor of this measure, I wanted to point out the significance of this legislation.

Today, aquaculture in the United States remains virtually undeveloped. Its potential has been neglected by the Federal Government, as the programs that should support this industry have been scattered across the horizon of Federal bureaus and agencies with no coordination and direction being given. Further, our aquaculture producers must fight

daily against an ever deepening pile of regulations and redtape that inhibit and impinge upon their ability to develop aquaculture in the United States.

Coordination at the Federal level for the programs and authorities that are on the books in order to reduce the burden of unnecessary regulations on aquaculture is a must.

The Congress has recognized this need for some time. In the last Congress we passed the National Aquaculture Policy Act of 1978. The intent of that bill was to provide clear direction and leadership to this infant industry. Unfortunately, the President vetoed the act. His veto was because of his concern that the act included several new programs that might result in increased expenditures. He expressed concerns about these costs and also expressed the belief that there are authorities, albeit scattered among many agencies, to achieve most of the objectives that were sought in the National Aquaculture Policy Act of 1978. The President has pledged to work with Congress and bring the many Federal agencies that have responsibilities in aquaculture together.

I am happy to say we are seeing some additional coordination and cooperation among the Federal agencies. There is a new appreciation for the potential of this industry in the administration. However, I am afraid that in many cases this belief in the purpose and goodness of aquaculture begins and stops with the program people.

It is imperative that we have a national statement of policy in regard to aquaculture. A congressional directive to the administration to give aquaculture the priority it deserves.

Aquaculture can be important to this Nation as a source of food, as a substitute for aquatic imports and I believe as a major export industry. But, aquaculture is a fledgling industry, at a critical juncture. If aquaculture is to achieve its potential it must have public support and investment similar to what we have had for agriculture. This bill is the first step to achieve this end. It will coordinate the existing programs so that we get a maximum effectiveness out of them. It is going to fully assess the burden of regulations on aquaculture at the local, State, and Federal levels. Further it is going to examine the status and need for financial assistance programs, research and other priorities for the development of aquaculture in the United States.

I am pleased to have again had the opportunity to work with my good friend from Hawaii in developing this bill. The evolution of the congressional attitude toward aquaculture mirrors the evolution of the attitudes of aquaculture producers. A few years ago we had divided objectives. Many of us were focusing on narrow aspects of aquaculture we knew. We thought it was a simple issue, however, after long years of work, debate, hearings and research, we recognize the breadth and complexity. While aquaculture, like agriculture, is very species specific and unique to aquatic environments whether they be marine or fresh, warm or cold water, we have also come to recognize that there is a great deal of commonality in aquaculture. For instance, the regulatory difficulties facing producers, marketing issues, data and information needs, water quality and other items, cut across species and specific environments and demand coordination of effort. This is recognized in the bill we are introducing today in behalf of both the Commerce and the Agriculture Committees. I believe this bill will enable us to take the first step on the journey of making aquaculture a viable industry in the United States.

I also believe it is a bill the administration can support.●

WHY NOT THE BEST?

● Mr. ARMSTRONG. Mr. President, the American electorate is becoming painfully aware of the devastating effects of inflation and they are becoming increasingly knowledgeable about who it is and what it is that is causing this such a dramatic erosion of their purchasing power, the greatest since the post-World War II period. A recent excellent column entitled "Why Not the Best?" by Richard Lesher, president of the Chamber of Commerce of the United States, illuminates two things that may not be so commonly known: The fact that the Federal Government actually profits from inflation, and the fact that Federal officials have been busy either exempting or protecting themselves from some of its effects. This column is an outstanding addition to recent commentaries about inflation. I commend it to the attention of my colleagues and ask that it be printed in its entirety in the RECORD.

The column follows:

WHY NOT THE BEST?

WASHINGTON.—Thomas Jefferson, a remarkably brilliant man with an abiding love for his country, once penned these words to his friend John Adams: "I agree with you that there is a natural aristocracy among men. The grounds of these are virtue and talents."

Jefferson was speaking as a true revolutionary, rejecting that old-world idea that power and privilege belong by birthright to one governing elite. And he was also expressing his strong conviction that there are extraordinary possibilities in ordinary people. The small merchant, farmer, printer, blacksmith and carpenter—these were the people he hoped could better their lives and shape America's destiny.

What has become of that noble idea? Are we still encouraging individuals to dream, create, achieve, improve and join together as a nation in the pursuit of excellence? I frankly wonder.

We have just celebrated Labor Day, honoring all those who make America the greatest country in the world. For 24 hours, the nation actually paused to recognize the contributions our farmers, laborers, business people, clerks, scientists and so many others are making. But then it was quickly back to reality, and to a world that, ironically, resembles more and more the one Jefferson and his compatriots rebelled against—one where unchecked power and privilege in the hands of a new elite are gradually smothering the American dream for all who revere it. Consider these facts.

Almost everyone in America agrees that inflation is our single greatest domestic problem; too few understand the federal government promotes inflation because it profits from it. As government's printing and spending of money sends prices up, individuals and businesses seek wage and price increases to offset their new costs. But even though their resulting higher levels of income and profits do not represent a real gain, since they only compensate for inflation, the government automatically taxes them at a higher rate. So bureaucrats have more money to spend on themselves and their programs, but mind you, never quite enough to balance the budget.

What would Jefferson have said about a government grabbing tens of billions of dollars in windfall taxes each year without even asking the public's permission? But of course we're not asked because we're not supposed to know. If too many people catch on—and get mad—the game might end. So we're constantly being reassured the federal government is not the main source of inflation.

But if that were true, how has the federal bureaucracy become our single biggest spender, borrower and employer, growing nearly 50 percent faster than the underlying economy, while paying salaries averaging 40 percent higher than those in the private sector? And if the cost of government is truly inconsequential, why have taxes shot up so much faster than wages and profits, and why do they now consume the largest share of the family budget? Who's kidding whom?

The federal government understands perfectly well the impact of its policies. That is why Congress and the White House granted themselves generous pay increases while lecturing us on the virtue of sacrifice. That is why Congress so neatly exempted itself from regulations it insists everyone else obey. And that is why you must pay the huge Social Security tax increases but federal employees do not, even though a majority of them qualify (through spouse benefits, moonlighting or second careers) for Social Security benefits. What a beautiful game. They never lose!

And here's the knockout punch: Even as government's deficit spending fuels the inflation that destroys the fixed values of private pensions, government officials are protecting themselves at your expense. They are committing your tax dollars to index their own pensions to the rate of inflation. And since federal workers can retire earlier, inflation and time could compound these benefits beyond belief. Twenty years from now, retired federal clerks could be receiving annual incomes of $100,000. Potential commitments like these represent an economic time bomb just waiting to explode.

We can still salvage Jefferson's dream of a better life, but only by addressing these very serious problems and by protecting the common interests of all working Americans. Otherwise the new aristocracy, the federal bureaucrats, will have already answered the question, "Why not the best?," by providing the best of all worlds—for themselves.●

HOMER CAPEHART

● Mr. DOLE. Mr. President, Homer Capehart is dead, and his native Indiana and the Senate itself have lost a staunch and beloved public servant and friend. As a businessman and farmer, Senator Capehart brought firsthand knowledge of the economy and agriculture to his work in Washington. He was a strong supporter of better relations between this country and Latin America, a lifelong advocate of a strong military defense, and a hardheaded foe of communism abroad.

Homer Capehart grew up on the land:

his father was a tenant farmer. Homer went into business as a young man, selling farm machinery and juke boxes, learning early in life the necessity for a strong free enterprise economy. In the 1930 s, when Republican politics were all but smothered beneath the charm and appeal of Franklin Roosevelt, Capehart organized a "cornfield convention" at his farm; 20,000 people came; they formed the grassroots core of a resurgent GOP. Later, when Wendell Willkie won the party's Presidential nomination in 1940, it was Homer Capehart who arranged his tumultuous welcome in Indiana.

Homer Capehart saw much history, and helped to make some on his own. He will be remembered for personifying the productive ethic of America's achievement-oriented people, and for his dedication to citizen participation in the political process. He will be remembered also as a partisan in the finest sense of that word, a man of strong convictions who never shrunk from expressing them, or working for their enactment.

To his wife, Irma, his son and daughter, and all his family and friends, I extended my own sense of loss. Homer will be missed. He will also be venerated.●

GIFTED AND TALENTED CHILDREN

● Mr. JAVITS. Mr. President, the gifted and talented children of our Nation have long been of consuming interest to me, for they represent the future leadership of the United States. Last month, in Jerusalem, the World Council on Gifted and Talented Children held its Third Biennial Conference to discuss international cooperative efforts on behalf of the gifted, and to consider research and exchange programs to promote this most precious human resource.

At the Jerusalem conference, Arthur Lipper, III, an investment banker and, through his efforts as a trustee of the Lipper Foundation, a great friend of the gifted and talented, brought a fresh and insightful perspective to the proceedings. Mr. Lipper forcefully presented the idea that the development of the gifted represent the best hope for future peace and stability in the international political system. Furthermore, as Mr. Lipper states, the creative resources of the gifted of the world can be profitably utilized to solve many of the seemingly intractable problems which face both the developed and less developed nations.

I urge my colleagues to consider carefully his remarks, and I ask that the text of Mr. Lipper's address to the World Council on Gifted and Talented Children be printed in the RECORD.

The material follows:

ADDRESS BY ARTHUR LIPPER III

INTRODUCTORY REMARKS

I usually begin talks at business conferences and conventions with a joke. I won't today—the subject is too serious and humor does not translate well.

It has been asked why are you here and what are your qualifications to address this group. To answer appropriately I must tell you something of Arthur Lipper Corporation, the primary contributor to The Lipper Foundation of which I am Trustee.

Arthur Lipper Corporation which I founded in New York twelve years ago, is today a professional international investor and investment banker. We have active investments, where we either control the company or influence the management, in the United States, Canada, Japan, Singapore, Malaysia, Indonesia, Australia and Israel. Previously we have had interests and offices in Geneva, Amsterdam, London, Beirut, Bahrain and Buenos Aires. The types of businesses include: television and satellite earth stations, oil exploration, venture capital and money lending, sheep raising, insurance, land speculation, magazine publishing and stock and commodity market activities.

For the past fifteen years I have travelled continuously—four to ten Far Eastern visits annually and, during one five-year period, travelling to Switzerland and England 30-odd times a year.

That which we have sought, and to a satisfactory degree have found, is profit. That which I seek in terms of our very active interest in gifted children is profit. Not the kind of profit which is reflected in bank accounts and draws interest, but the kind which may produce an improved quality of life and possibly increased international political stability.

I am not an educator—nor am I even well educated. I am, however, a trained and experienced professional social, economic and political observer and analyst. As a result of my travels and exposures I believe that the world, and particularly the LDC's (less developed countries), are in serious trouble. Inflation, the bubonic plague of this century, when coupled with improved communications, primarily television, creates a frustration and anger within the 90-plus percent of our global population which can only be described as "have nots". Remember that 85 percent of the world's population does not have running water and 56 percent earn less than one U.S. dollar per day.

The present situation of 3–5 percent of the people consuming 90 percent of the goods produced in the world will not—cannot—be permitted to continue. Changes are coming and most, I fear, will be unpleasant for the present "haves", though not necessarily significantly improving the lot of the "have nots".

I believe that identification and development of gifted children represents the most likely means of our influencing or impacting the future socio-economic and resultant political changes and that therefore an investment of money and energy in this cause is indeed a constructive and highly leveraged (geared for the Brits present) investment. Being a "have", the profit I seek is political stability. The world's barn is burning and not all of the horses can be saved.

As to why I am here, the answer is that Dan Bitan was kind enough to offer me the opportunity to make a presentation. I took it because you are important people to meet and communicate with and are involved in a vital effort.

PREPARED REMARKS

All attending this Conference either are already, or have the potential to be, leaders. Being here in Jerusalem is appropriate as almost 2,000 years ago, three wisemen, presumably also leaders, sought, only 10 kilometers from here an Infant perceived by them to be a uniquely gifted child and their future leader. I suggest that today it is of greater importance for our ordained appointed and elected leaders to reverse the process and seek future wisemen.

One of the results of this Conference, and the fortunately increasing number of meetings of a similar nature, can and should be the more effective seeking and identification of wisemen in the form of gifted and talented children who have the recognized or unrecognized potential for making significant contributions to their own as well as our society.

Some years ago I read the following statement in a school publication:

"One of America's most tragic wastes of natural resource is the loss of the potential for social contribution which is inherent in economically deprived, gifted children.

"Properly identified at a sufficiently early age, through culture free, non-verbal testing, the very young child can be provided with the environmental, economic and motivational support necessary for full development as a positive social contributor.

"Without such early identification, the socio-economic pressure imposed upon the economically deprived child who possesses superior cognitive ability is likely to result in either a "dropping out" or only a desire to achieve improved personal life style. The chosen or available means of obtaining a better life style may not be socially desirable. Therefore their truly constructive potential, from the standpoint of society, may be forever lost.

"We urge the economically secure to look with concern into our society's future. A better life for all will be possible only when the 'gifted among the deprived' are identified, and helped, early enough in their life and experience cycle to make a substantial difference to them and to society."

These thoughts seem to me to be applicable to all societies and especially to those less fortunate than America's. Specifically analyzed they are:

1. Identified early enough, poor but gifted children can be given medical, financial and emotional support which probably will lead to the development of positive social attitudes.

2. Not identified and assisted the kids may either not achieve their potential or may use their talents solely for the purpose of bettering their own lives, regardless of the means employed or the effects on others.

3. All gifted children, including poor kids, properly motivated and educated have the potential for significant societal contribution.

4. Those fortunate enough to be economically secure have a particular interest in and need to provide for developing the means of identifying and assisting these children in order to prevent their talents from becoming employed in activities which may be destructive in socio-economic as well as personal terms.

Is there any doubt that many of the leaders of emerging and developing countries could have been identified as being potentially gifted children? How many of today's insurgent leaders could similarly have been identified? I think many—probably most. It is known and acknowledged by many educators and penologists that in developed countries the prison and criminal population contains a larger proportion of gifted and talented persons than the population as a whole. The "crime" for which we, and they, are being punished could be described as "The Great Brain Robbery". Giftedness, unrecognized and therefore without constructive focus or direction, clearly results in a higher than normal level of frustration and anger. Talented malcontents, who probably are inarticulate, perhaps even unaware of their hunger for education are a threat to the stability of any system of government. The greatest underachievers are the unrecognized and undeveloped gifted.

In a society where there is not now, and may never be, enough of many basic goods and services, the leaders of that society are forced to make hard decisions as to allocation of natural resources. Which investment of the country's available assets is likely to yield the greatest return? Can there be any other answer than that the people themselves in all countries are the assets possessing the greatest potential? Clearly not all of the people of any country are equal in their potential. Is it not, therefore, the epitome of good judgment and basic common sense to

try to determine which children are, if given the opportunity for development, likely to have the greatest potential for social contribution? And, if identified as having greater potential, should not a greater than minimum or usual investment of available resources be made in the growth of these particular children? Such a disproportionate and unequal investment, assuming the identification process is valid, whereby the children identified as gifted flourish and reach their potential, must benefit society as a whole.

Egalitarian and liberal concerns and demands for equal education and opportunities for all children are emotionally understandable and politically expedient. They are, however, practical only in those societies so rich, fortunate and protected that there is no perceived need to develop the resources of the country to the fullest extent possible. And even that country must be willing to deliberately reduce significantly the numbers, through electing to pursue a policy of non-identification and therefore subsequent non-development, of future scientists, educators and social leaders who might otherwise have been available to that society. I personally know of no country that rich.

It should, however, be noted that unfortunately the voting American public must think the United States unneeding of maximum future amounts of fully developed talent as the federal budget, which reflects legislation passed by public opinion sensitive elected representatives, provides for more than $1,000 for each learning disabled American child versus only $2.42 per gifted and talented child, and the $2.42 represents a 64 percent increase over last year. In other words, more than one billion dollars for the 8–10 million disabled versus less than seven million dollars for the 2.6 million children estimated to be gifted and talented. Only a country as rich, and seemingly secure, as America could manifest such a compassionate, politically expedient and non-self interested public policy. It may interest you to know that the individual states invest roughly five times as much in so-called special education projects, also more or less in the same 400-to-1 ratio.

It is interesting to note the number of proudly proclaimed programs for gifted child identification and development which many of the Socialist and Communist countries have as a stated and de-facto matter of public policy. Is it not strange that the capitalist countries, so quick to make use of all other "natural" resources—including the labor of their own and other countries—have been slower to recognize and secure the benefits accruing from the development of their own gifted children?

Perhaps it is simply a matter of necessity which dictates national policy, perhaps the wealthy nations have not yet sensed the compelling need for broad social progress, based upon the future contributions of the gifted, as have some of the non-capitalist countries. Whatever the reason, capitalist nations will be pushed harder, and perhaps farther, than would otherwise have been the case, because they have virtually ignored the potential represented by the gifted, while the non-capitalist nations have been forced or have been sufficiently farsighted enough to embrace and nourish these assets.

Developing countries, regardless of political orientation, as well as socio-economically deprived communities within developed countries, have important natural resources just sitting there . . . in their mothers' laps or on their mothers' backs. Oil is one universally recognized important form of energy. Of equal or perhaps even greater potential importance is the future contribution of our yet unidentified and nurtured gifted.

Finally, in terms of gifted advocacy I urge each of you attending this Conference to make every attempt to find a means to get the ongoing story of the gifted and their needs and potentials told on your local television stations. Forget about the print media. Future opinion molding will, for the most part, take place through television images. Be it through quiz shows or creative problem solving demonstrations, such as Olympics of the Mind, an excellent program utilizing competitive creative events, or documentaries or dramas or news—get the story of the gifted on television. The independent television stations as well as the TV networks are open to program ideas and the gifted are "upbeat" and the story can be presented positively.

Assisting in the early gifted and talented identification and development process is a most sensible and enlightened self-interest exercise. Let us ask not what we can do for the kids but rather what they can do—if identified and developed for all of us. This is the message and television is the medium.

CLOSING REMARKS

Before closing I wish to accept Dorothy Sisk's suggestion to me that I give some additional specific suggestions for gifted advocacy. We, through The Lipper Foundation, presently, and in the future through the "Gifted Children Newsletter—for parents of children with great promise" (which as a commercial venture Arthur Lipper Corporation is financing and co-publishing with the Learning Magazine organization), urge the following:

1. The organization of conferences with business leaders to focus on why it is in their best interest to assist the gifted and how best they can use the asset once developed.

2. Establishment of boarding schools (publicly funded) to house those identified gifted children whose existing home life is non-constructive in terms of their development.

3. To identify and publicly praise those individuals assisting the gifted. Make use of awards as a means of gaining favorable public attention and relations.

4. Bring to the attention of business leaders specific gifted children in need of assistance. I believe you will be pleasantly surprised by the result of solicitations made on a positive self-interest basis. Also make the pitch for funds using an individual child—I believe the conversion to "cause" involvement will naturally follow the specific case involvement.

We have a number of other ideas we believe will be helpful to the gifted and would privately be most pleased to share them with you.

For the gifted to help us in the future, they need our help now.

Thank you.●

SENATOR HOWARD BAKER—PROUD OF BEING A POLITICIAN

● Mr. LUGAR. Mr. President, in the August 13, 1979 issue of Time, Hugh Sidey offers a brief sketch of the Senate's minority leader HOWARD BAKER and his approach to political life. Mr. Sidey's perceptive column provides valuable insights into American politics at its finest, and I ask that the article be printed in the RECORD.

The article follows:

PROUD OF BEING A POLITICIAN

The de Havilland Sky Hawker is all fueled up. The Hasselblad camera is packed away in its tan case with the Senator's favorite 120-mm lens nestled in leather. He has a clutch of Arthur Adler's summer suits ready for rumpling. Tab, Fresca and coffee by the gallon are in the hold. The ghost of Everett McKinley Dirksen has been signed on. About this time Howard Henry Baker Jr. (5 ft. 7½ in., 160 lbs.) is ready to roll through 26 states, thumping and sweating and striving to be President of the U.S.

There is something bright and burning about this Republican camera nut and son-in-law of the late Dirksen. It is Baker's season. In six months he has come up ten to twelve points in the opinion polls. In the Kentucky hills and along the clear streams of Utah, when they take time to think about politics, there are unusual numbers of queries now about Howard Baker.

Teddy Kennedy this week will be camping in the cool Berkshires, Ronald Reagan is taking off the entire month of August. Jimmy Carter hopes for an interlude soon on an ocean island, savoring a fisherman's solitude. Not Baker.

He will inspect beef cattle and beauty queens and shout to everyone that "I am proud of being a politician!" He will tell his audiences that he is sick and tired of hearing that professional politicians are not worthy of trust, that he is fed up with amateurism.

The Senate minority leader has a remarkable record on the issues. He is responsible, often original and almost always ahead. He dived in to help the President win the Panama Canal Treaty and the arms package for Israel, Egypt and Saudi Arabia. Down at the G.O.P.'s Tidewater Conference he seized the moment and focused on SALT as an occasion for a broad re-examination of the "total military and foreign policy relationship between the Soviet Union and the U.S." It was, in Baker's eyes, time to dispel the tattered remnants of Arthur Vandenberg's bipartisan tradition, something that was right a generation ago, just after World War II, but is not fully applicable in today's psychological struggles.

Baker articulated the dark thoughts that crossed the mind of many a citizen stuck in a gas line. If the big oil companies were gouging the American people, Baker declared, they risked nationalization. Baker was wildly against even the thought of such a measure, but as a professional pol he sensed an ugly mood. His warning nearly cracked the picture windows in Houston's Petroleum Club. Baker's mail showed it.

He went to Moscow and warned Leonid Brezhnev about the doubts the Senate had over SALT. He raised his questions back home, and his state of mind is crucial as the debate rumbles along. When Jimmy Carter came down from the mountaintop in his new leadership robes, Baker, who was not invited to the seminars, swallowed hard, but once again supported his political rival.

"Deep down I'd like to tell him to go to hell," Baker muttered to friends. But he did not. Instead, he said he was "willing to lay aside animosities . . . He is President, we are in a tough time, he's got a big problem, the country has a big problem. And I'm going to give him his day."

Therein is the legacy of Dirksen, who used to reside in Baker's Capitol office, doing Baker's leadership job. "I saw it close up," says Baker. "Right here Dirksen and Lyndon Johnson worked out their differences for the good of the country. They were adversaries but not enemies."

So Howard Baker insists that judgment should be first but politics a close second. That means some solid whacks, as well as support in critical times. Baker was the one who labeled Carter "a yellow-pad President" and suggested that while the President "was saying the right things, I'm not sure he can make them happen." Politics, Baker believes, is results, though even he sometimes pauses to make a few notes. They are always brief enough to go on the backs of envelopes.●

AMTRAK

● Mr. WEICKER. Mr. President, on August 1 the Senate passed S. 712, the Amtrak Improvement Act of 1979. This bill,

which is now in conference, provides for a 2-year authorization for Amtrak appropriations.

During the course of debate on this legislation, I discussed the extent to which foreign governments subsidize their passenger train systems. The Japanese are spending $4.1 billion this year on their passenger rail system, while France is spending $1 billion and Great Britain $728 million. America's commitment to rail passenger services pales in comparison. Since 1971, when Amtrak was created, our Government has spent $76 billion in transportation subsidies, of which only $3 billion has gone to Amtrak. As an example of our Government's misguided efforts, one need only look at the administration's efforts to eliminate 43 percent of the Amtrak system. The $1.4 billion that the administration hoped to save over the next 5 years by the reduction is approximately the amount it will cost for New York City's proposed Westway Highway.

Fortunately, the Senate realized the folly of the administration's plan and substantially increased the final Amtrak system. Additionally, the Senate adopted my amendment to increase by $54 million the authorization for Amtrak's capital acquisitions, thereby enabling Amtrak to purchase the equipment it needs to provide efficient service. It is only by providing Amtrak with the capital equipment it needs that we will even stand a chance of delivering the type of rail service that I believe the people of this Nation have a right to expect.

A recent article in the New York Times underscored the negligence of the United States in providing adequate rail service. The August 19 article, entitled "In Europe, Railroads Still Have Inside Track," noted that France, Britain, Germany and Italy are developing passenger systems that will run at 200 miles per hour. Amtrak trains average only 42 miles per hour, which is 13 miles per hour lower than the highway speed limits. How can we expect Amtrak to compete with the automobile if it cannot provide service at a comparable speed? Clearly, we should be moving in the direction in which the European countries are heading.

Mr. President, I ask that the article entitled "In Europe, Railroads Still Have Inside Track," which appeared in the August 19, 1979 edition of the New York Times, be printed in the RECORD.

The article follows:

IN EUROPE, RAILROADS STILL HAVE INSIDE TRACK

(By Flora Lewis)

PARIS.—Snub-nosed, streamlined, wired for sound, Puffer-billy or the Iron Horse, is alive and well in Europe. Even without the oil crisis, a combination of geographic and political reasons had kept European railroads from lapsing exclusively into the province of nostalgics and toymakers. Now gasoline difficulties have given the rails a new momentum.

But with a difference. The new trend is for comfortable, high-speed city trains; the theory, as Patrick Punt of the International Union of Railways put it, that people will still pay if the service is good. France, Britain, Germany and Italy are developing lines that will run at 200 miles an hour, competing reasonably in terms of speed with planes over distances up to 400–500 miles if the time it takes to get in and out of airports is counted in, and with cars in terms of nerves and reliability when the highways are plugged with traffic.

The controversies, troubles and complaints are not much different from those that led to the near extinction of passenger railroads in the United States, where Congress and President Carter are now arguing over how much rail service to cut (Mr. Carter proposed a 43 percent cutback; a proposal to restore half that is before a House-Senate conference now). But the Europeans' conclusions have not been the same, and they are forcing some lively innovations to justify keeping the 19th century's greatest technological—and as a result social—force for change going through the rest of the 20th.

All European railroads are nationalized. That by no means exempts them from the laws of economics. But it changes the pressures on decision-makers. In France, for example, the Government recently ordered the railroads to halve their current $1 billion annual deficit by 1982. It would have reached $1.5 billion by that date if the current trends continued. The unions—and railroad unions are among the oldest and strongest in Europe—are angry at the implications. There were 514,000 railway workers when the state took over in 1937, 330,000 in 1967, and 263,000 now. Sharper cuts are in prospect. One plan, a subject of bitter argument, proposes shutting down 3,000 of the country's 4,500 stations.

Subsidies are believed to be considerably greater than the statistics show. For one thing, the monopolies reserved for state-owned airlines have kept domestic and intra-European air fares relatively exhorbitant. Paris-Nice, 420 air miles, costs $122 on a no-frills flight with straight-backed seats seemingly designed for dwarfs, a rate of 29 cents a mile. Second-class on a good train is $58 (8 cents a mile) and $87 for first class (12 cents a mile.) It has been calculated that the cost of a flight from Paris to New York has dropped by 72 percent and from Paris to Rio de Janeiro by 58 percent in constant currency between 1950 and now. Paris to Copenhaken has gone up by 6 percent.

Highway freight is constrained by intricate regulations, which French truckers say deliberately favor the railroads, and French railway workers grumble are inadequately enforced.

These hidden supports, as well as union clout, public insistence, and a traditionally more generous attitude about taxpayer subsidies for services which are, in any case, government-owned, helped the European railways survive the automobile explosion. Now the fact that railways can run on nuclear-generated electricity or coal as well as on diesel fuel and help shave oil imports has added to their claim for backing.

Distances between large cities make another important difference in the viability of European versus American railroads.

When the high-speed trains come into service, Paris-Lyon will take two hours, Paris-Lausanne 3½, Paris-Marseille 4½. Paris-Brussels now takes 2½ hours by the best trains; they are scheduled at mealtimes, so that the trip leaves only a few minutes on either side of an excellent lunch or dinner handsomely served on a table at your comfortable seat. There is no way to compress an overland New York-Chicago, or New York-Detroit journey into that kind of convenience.

But all that is not enough to beat the deficits. Since costs are fixed regardless of the number of passengers the European railroads are casting about for frills to lure customers. Eurorail passes, family fares, off-season and off-peak hour discounts have been introduced in country after country to increase revenues. British Railways has developed facilities in both passenger carriages and stations for the disabled so they can travel by wheelchair.

GIMMICKS FOR HOLIDAY TRAVELERS

The French railroads have just launched some new gimmicks, including a special holiday train called Le Cenevol which runs through the scenic areas of the Auvergne and the Cevennes with a special "entertainments" car carrying pinball machines, juke boxes, painting and photography exhibitions, literary readings, tourist guide lectures. Horsemen are offered facilities to board their mounts in one direction and canter back through the mountains. Cyclists have a special baggage car installation for their bicycles. It's the Club Mediterranée principle: Don't just get the guests to a resort, keep them busy and they'll come back.

There are trains on the big vacation runs which offer over-night service with a sleeper for the driver while his auto rides the flat-car behind him to the Riviera.

More and more European cities—Paris, London, Brussels already—have installed direct train service into important airports. That helps air traffic too, because it eases the use of airports that are much farther than usual from central urban areas.

The new trains are sleek, clean and quiet. They are lapsing into the old function of linking the country-side to the town as feeder lines and rural stops are abandoned, but reviving a vigorous competition with later means of transport between not-too-distant cities.

And if they still don't pay their way? Nothing is cheap any more. The pleasure of reading while rolling, or watching the world go by, will cost more but it will get you there, probably right on time. Then, if the railroad stations would recruit porters once again, or arrange curb-side baggage check-in, the romance of the rail might be reincarnated without a flaw. At any rate, the Europeans are trying.●

BERKELEY BURRELL

● Mr. DOLE. Mr. President, one of America's most distinguished black leaders died last week; we would do well to pause and ponder his example. Berkeley Burrell excelled at everything he turned his mind to. He was a successful black businessman when few black Americans were able to break into the economic system called free enterprise. He was an eminent and widely recognized authority on urban affairs, an economist and adviser to 5 Presidents. He worked tirelessly to bring others of his race into all sectors of the marketplace; in broadcasting, in the small business community and in management.

He was a newspaper columnist, a college lecturer, a housing expert. He was prominent in support of his church and community. When Ebony named him one of America's 100 most influential blacks for 6 consecutive years, they were by no means over-estimating this man's impact. But the titles and honors could not in themselves convey his heart, his generosity, his warmth and humanity.

In a day and age when millions of black Americans remain trapped in frustration, their economic aspirations mocked by a Government that takes their support and acquiesence for granted, Berkeley Burrell set an example of what could be attained by a man who sought his rightful share of a free economy's bounties. He earned his share, and helped others to do the same. He inspired young people to emulate his achievements in business and social welfare. He knew, and he passed on to each of us, the message that profits are for

people, and the ultimate social justice is to be found in an economy based on incentive, profit and jobs for all who seek them.

We overlook his lesson at grave peril to a Nation at peace with itself, its historic ideals and its best intentions.

To his wife and family, Elizabeth and I extend our deepest sympathy. The sorrow they feel should be mingled with pride—a pride shared by everyone who knew, or knew of, Berkeley Burrell.●

HANDGUN CONTROL

● Mr. JAVITS. Mr. President, on August 16, Louis Harris released a poll revealing that a solid 78–20 percent majority of the American people favor "a Federal law requiring that all handguns people own be registered by Federal authorities." Results also show a strong percentage (76–26) favor control of the sale of handguns. Further, 23 percent of the adult population say they would vote against someone who is opposed to gun control, in contrast to 7 percent who would vote against a candidate who favors handgun control. These figures indicate that those who oppose gun control are taking more than three times as much of a political risk by their stand than those who favor gun control. I would like to share with my colleagues these poll results and the accompanying article, which evidence again that the majority of Americans continue to support control of handguns, and ask that it be printed in the RECORD. It is up to the Congress to stand for what is right and for what the people properly want.

The material follows:

AMERICANS CONTINUE TO SHOW HIGH LEVEL OF SUPPORT FOR GUN CONTROL

(By Louis Harris)

By a 78–20 percent majority, Americans favor "a federal law requiring that all handguns people own be registered by federal authorities." The massive majority backing of gun control continues at the same high level it has maintained over the past several years, despite the fact that effective gun control legislation has been thwarted in Congress.

In fact, Americans would like to go further than simply registering handguns: by 72–26 percent, a solid majority favors "federal laws which control the sale of guns, such as making all persons register all gun purchases, no matter where the purchases are made." This level of backing for comprehensive gun control legislation has remained about the same throughout the 1970s. But according to the latest ABC News—Harris Survey of 1,496 adults nationwide, it is higher than the 66–28 percent who felt the same way about registration of gun purchases in 1967.

There is also evidence that some of the intensity that has always surrounded the gun control issue is now abating. In 1978, when an 80–18 percent majority favored handgun registration, fully 45 percent of all those who were opposed to such a law said they would vote against a candidate who advocated gun control. Now a lesser 37 percent of the people who side with the National Rifle Association, the established lobbying group against gun control, would vote against a candidate because of this issue. By the same token, in 1978, 33 percent of all those who favored gun control laws said they would vote against a candidate who opposed federal registration of all handguns. This year, a slightly smaller 29 percent feel that way.

It seems that there are far more people in this country who would vote against a candidate who opposes gun control than there are who would vote against a candidate who favors such controls.

Overall, 23 percent of the entire adult population say they would vote against someone who is opposed to handgun control. By contrast, no more than 7 percent would vote against a candidate who favors such handgun registration. This means that those who oppose gun control are taking more than three times as much political risk by their stand than are those who favor gun control.

These results fly in the face of the prevailing wisdom in the halls of Congress and among members of most other legislative bodies in this country. The widespread belief is that the NRA is so powerful in getting its own members to vote against a candidate, that any legislator who favors gun control can be defeated in a close election. The most celebrated case that is cited by opponents of gun control is that of Senator Joseph Tydings of Maryland, who went down to defeat in 1970 after he had helped sponsor gun control bills.

The current evidence from this ABC News—Harris Survey calls into question a longstanding assumption made by many candidates for Congress: that the National Rifle Association is one of the most effective single-issue lobbies on Capitol Hill. And the NRA itself claims it can deliver its members' votes against proponents of gun control, whereas advocates of gun control simply cannot muster their following.

To a degree, this claim of the NRA may be correct, for its members are ardent gun owners who feel keenly about the issue of gun control. The organizations advocating gun control that have been put together specifically to counter NRA pressure, but their track record on getting out the vote on Election Day has not been widely demonstrated.

However, with the intensity of the gun control issue seemingly abating, both among opponents and supporters of handgun registration it may be that the time has come to put the claims of the National Rifle Association to the test.

If Congress were to pass legislation controlling handguns, and those who voted for it were willing to make their vote a major issue in their campaigns, it is likely that the issue would help rather than hinder such candidates. Certainly, such proponents would be able to point to the determined efforts of the NRA and other anti-gun control groups to unseat them over this issue. But if those favoring gun control were not prepared to make it one of the dominant issues in their campaigns, then the field would be left to the NRA, and the will of the majority could be thwarted once again.

TABLES

Between June 13th and 17th, the ABC News-Harris Survey asked a cross section of 1,496 adults nationwide by telephone:

"Do you favor or oppose federal laws which control the sale of guns, such as making all persons register all gun purchases no matter where the purchases are made?"

FEDERAL LAWS TO CONTROL SALE OF GUNS

[In percent]

	Favor	Oppose	Not sure
June 1979	72	26	2
July 1978	73	25	2
October 1975	73	24	3
June 1968	75	14	11
August 1967	66	28	6

"Do you favor or oppose a federal law requiring that all handguns people own be registered by federal authorities?"

REGISTRATION OF HANDGUN

[In percent]

	Favor	Oppose	Not sure
June 1979	78	20	
July 1978	80	18	
October 1975	77	19	

"If a candidate for Congress in your district took a stand opposed to federal registration of handguns, would you vote against that candidate mainly because of his stand on gun control, or not?" (Base: favor federal law requiring registration of handguns.)

VOTE AGAINST CANDIDATE OPPOSED TO GUN CONTROL

[In percent]

	Vote against	Not vote against	Not sure
June 1979	29	63	8
July 1978	33	5/	10

"If a candidate for Congress in your district took a stand in favor of federal registration of handguns, would you vote against that candidate mainly because of his stand on gun control, or not?" (Base: oppose federal law requiring registration of handguns.)

VOTE AGAINST CANDIDATE IN FAVOR OF GUN CONTROL

[In percent]

	Vote against	Not vote against	Not sure
June 1979	37	54	9
July 1978	45	50	5

●

SENATOR HELMS ON THE GOLD MEDALLION PROGRAM

● Mr. McCLURE. Mr. President, the Senate Appropriations Committee recently completed work on the fiscal 1980 appropriations bill for the Department of the Treasury. In that bill was $10,067,000 for the American arts gold medallion program.

As a cosponsor of Senator HELMS' original Gold Medallion Act which is similar to the bill finally enacted, and as a member of the Appropriations Committee, I am deeply concerned about how this program is to be administered.

For this reason, I was greatly interested in an article that appeared in the August 1, 1979, edition of "Coin World," an important source of information on numismatics and currency. Senator HELMS has written on the proposed method of sales of the new gold pieces and he has put forth some guidelines that I hope Treasury will consider.

Mr. President, I ask that the following article entitled, "Congressional Gold Mandate Unfilled," be printed in the RECORD.

The article follows:

IS TREASURY DRAGGING FEET?—CONGRESSIONAL GOLD MANDATE UNFILLED

(By JESSE HELMS, U.S. Senator (R-N.C.))

In the instance of the American Arts Gold Medallion Act of 1978, the Treasury Department appears to be living up to the letter of the law. But is it living up to the spirit?

When I introduced the Gold Medallion Act of 1978 in April of last year, it was intended

that the U.S. Mint produce and market gold pieces in quantities sufficient to compete effectively with the Krugerrand and other so-called "bullion" coins. The version finally approved last fall and signed into law by the President was different from both my bill and the compromise bill approved by the Senate, but it can accomplish what Congress wanted to do.

The bill, as passed, was initially authored by the able young Congressman from Iowa, Jim Leach, and provides for a minimum of one million ounces of gold to be manufactured into one ounce and one-half ounce medallions each year for five years. The design would be changed annually, and the medallion would be sold at a price equal to the market price of gold plus costs.

What now seems in doubt is whether Treasury officials will implement the law in the way that Congress intended.

Briefly, here is the way it seems Treasury will administer the program: $1.6 million will be requested this year to take advantage of a low bid on producing the gold blanks. The blanks will be 90 percent gold, 10 percent copper.

Then $10 million will be asked for fiscal 1980 (starting Oct. 1, 1979) to produce and sell 1.5 million medallions; one million, one-half ounce medallions honoring Marian Anderson and one-half million one-ounce medallions honoring Grant Wood.

The bill states that a "minimum" of one million ounces of gold in medallion form be sold. Treasury is putting a ceiling of one million ounces on the 1980 production run.

In addition, though the bill has been on the books for eight months already, it seems obvious that even if all goes as hoped, medallions won't be sold until June of 1980—eight months into the fiscal year. That means that 1.5 million pieces will have to be sold in only 16 weeks.

The method of merchandising? Posters and mail order forms will be stuck in U.S. Post Offices. Individuals will be able to take one of the 10 million forms to be printed by the Mint and then call a toll-free number. A recording will explain that day's price of the medallions, as determined by the world price, plus costs of production and distribution. A certified check in that amount with the form postmarked by that evening would entitle the buyer to a medallion by return, registered mail.

The quantity to individuals will be severely limited: Perhaps only one or two per order.

Once the 1.5 million pieces are gone, that would be that for 1980. The next issuance would wait until fiscal 1981.

As most readers of *Coin World* know, the Treasury Department has opposed the medallion program from the start. It has been suggested that the method Treasury has chosen to administer the program could well be designed to provoke enough criticism of it to cause Congress to cancel the gold medallion program altogether.

I do not believe that the officials in the Treasury Department are malicious in this regard, but there are a number of things that might be changed—and can be changed—to see that this program gets off to a good start.

First, as to the concept of supply and demand. (An aspect of economics which is, sadly, foreign to most bureaucrats.) How might it work, if the marketplace were allowed to function?

Under the law, the price that can be offered is "set" by what the marketplace dictates to be the price of bullion, plus what the costs of production and marketing might be. According to the law of supply and demand, that means that the expected demand for the product will probably be either above or below the number of medallions offered in fiscal 1980.

In order to change demand (the quantity desired), a seller would expect to raise or lower the price. If I wanted to exactly find the price the market set for a specific quantity of things on a given day, I would hold an auction. The market would determine the price. But since, under the law, the price is "set," that means that it is incumbent on the sellers to adjust the supply.

The supply should be the number of medallions that are desired at the "fixed" price. That is exactly how, for example, the Krugerrand is sold.

Now, if I want to artificially constrict demand so that I will just be able to sell what I have at the price I set, I could, for example restrict demand by excluding some buyers or limiting buyers to only one or two medallions. (Does this sound familiar to those who were involved with the first Carson City silver dollar sales—that cost far more than expected and required new legislation to finally dispose of the coins?)

I could also restrict demand by cutting the time allowed for purchasing, such as the last quarter of the year. And, in addition, I could restrict marketing to government preventing private marketers from having sufficient supplies to make promotion campaigns economically practical.

In effect that is exactly what Treasury proposes to do.

Now, in the Treasury's favor, we must note that this is the first time in 50 years that a U.S. gold piece has been produced in quantities. The U.S. Bicentennial gold medal was limited to several thousands, and sold at a fixed price by the American Revolution Bicentennial Administration. This program is new and big—gross sales of over a quarter of a billion dollars.

Why cannot Treasury get some opinions from the "pros" in the field?

Why should it be administered in such a way as to raise the question, "If I wanted to scuttle the Gold Medallion program, how would I go about it?"

Let's take, for example the question of determining demand. The Treasury wants to make sure that it doesn't end up with tons of golden images of Grant Wood sitting in the basement. It also wants the easiest way to explain the operation of a program to Congress and Budget officials.

Well, why not turn, at least in part, to that neglected institution, the marketplace? Why not for example, offer for delivery in four or six months any number of medals to whomever wants them at a price that will be determined later, using negotiable letters of credit? In other words commit people ahead of time to buying the medals yet to be produced.

How many gold medallions would the marketplace be willing to absorb a few months down the road at a price equal to the bullion price on that day plus $5 or $7?

If people are willing to make that kind of commitment, Treasury could lose no money. Production schedules could be adjusted. Promotion campaigns could be privately financed, and demand would be measurable.

Obviously, the largest group of medallions purchased under such arrangements would probably be by dealers or banks or organizations wanting them for resale or investment. But, there is no reason why individual, private purchases could not also be conducted through the Mint.

In fact, a broader market for the medallions made by dealers would help insure the investment of those who purchased through the Mint itself.

But, the Treasury is worried about profiteers, or those who might "corner" the market. Well, no market can be cornered if the supplier stands ready to meet the demand. And as to profiteers, why is it we see such a lively market in Krugerrands, with often very low margins, and all without the helping hand of the U.S. government?

Is it not clear when the law says that the medallions should include costs to cover marketing, the cost of marketing might be born by those who are willing to commit funds ahead of time and thus perhaps be eligible for a small discount on future delivery? Perhaps this could be something close to the amount of interest earned on the money in the months Treasury holds it before shipping medallions.

Then there is the question of profit. Republic National Bank Vice President Fred Bogart made one of the more memorable statements at the Senate hearings on the Gold Medallion Act, when he said that he'd guarantee that the government would suffer no loss if he could be given the annual medallion production at the bullion price plus production costs.

If fact, the often byzantine accounting system of the U.S. government insures that the American Arts Gold Medallion Program will be one of the biggest profit makers in the federal budget.

Gold is on the books at the "official" price of $42.22 per ounce. As a result the "cost" of the medallions will be about $5 or $7 plus $42.22 for the one-ounce medallions, and $21.11 for the half ounce medallions. Oh, throw in a couple cents for the copper.

At today's prices (as I write this, gold hit a record $281), the profit of the one ounce medallion will be at least $200 for each one ounce medallion and about $100 for every one-half ounce medallion. That figures out to a net profit of about $100,000,000 on the one ounce pieces and $100,000,000 on the one-half ounce pieces.

As someone who is concerned about coins and, perhaps, gold and money, I'd like to see *Coin World* reader comments on these ideas. Better yet, send the original to Secretary of the Treasury Blumenthal, and send me a copy. I'll see to it that the panel which will consider the funding for the program, the Senate Appropriations Subcommittee on the Treasury, gets a tabulation of the results.

Tell him what you think the total demand might be, and what you think of the proposed marketing plan. Also, give an estimate of how many medallions you might be willing to buy for whatever purpose.

There seems to be a communication problem here and you can help eliminate it. If I am wrong, then perhaps we should scrap the program and let other nations monopolize the arena. I'm willing to put in some time to do what I can to see that this program works and is changed if it needs be. I'd like your help.●

TAX INCENTIVES FOR FOREIGN INVESTMENT IN U.S. AGRICULTURAL LAND

● Mr. WALLOP. Mr. President, the issue of foreign investment in U.S. real estate has troubled Congress for the past several years. We know that foreign investment in the United States is on the increase, but until recently many questions regarding the extent and nature of foreign investment in the United States have remained unexplored. One of the more troublesome aspects of the foreign investment issue are the tax code and tax treaty provisions that allow foreign investors to escape paying capital gains taxation on the sale of farmland and other forms of real estate. The problem posed by this exclusive tax advantage is that the tax break prevents our own farmers and investors from competing effectively in bidding for farmland.

At the request of Senator TALMADGE, chairman of the Senate Agriculture Committee, the General Accounting Office has recently published a report shedding additional light on the question of foreign

investment in U.S. farmland. "Foreign Investment in U.S. Agricultural Land—How It Shapes Up" addresses many of the policy questions involving foreign investment in U.S. land, but its chapter on the tax treatment of foreign investments is especially useful. The GAO concludes that:

The elimination of tax advantages available to foreign but not U.S. investors would eliminate one of the factors that may be inhibiting potential U.S. purchasers from effectively competing with potential foreign purchasers of U.S. land.

Mr. President, the conclusions of this study lend further support to the Treasury's position that these tax advantages should be eliminated. The GAO report provides more evidence that Netherlands Antilles corporations are the most important foreign purchasers of U.S. land. It is common knowledge that by investing through a Netherlands Antilles corporation, foreign individuals and corporations can take advantage of the attractive tax breaks provided through treaty agreements with the Netherlands Antilles.

Mr. President, the tax questions relating to foreign investment in U.S. real estate have been addressed by the GAO, the Department of Agriculture, and the Department of the Treasury. Each of these government agencies have concluded that there is no reason to provide foreign investors a capital gains tax exemption on real estate that is denied our own investors. On June 25 the Senate Finance Committee's Subcommittee on Taxation and Debt Management held hearings on legislation that would require foreign investors to pay capital gains on the sale of U.S. farmland. The committee heard testimony from the American Farm Bureau Federation, the Department of the Treasury, independent tax experts and other witnesses, all of whom agreed that the foreign investor tax break should be changed.

There is no reason to delay passage of legislation that would change the tax treatment of real estate sold by foreign investors. I invite my colleagues to join in this effort by cosponsoring S. 208 and close a capital gains tax loophole available only to foreign investors. I urge the Senate to act quickly to change this unfair and harmful section of the Tax Code.

Mr. President, I ask that the portion of the GAO report dealing with tax advantages afforded foreign investors be printed in the RECORD.

The report follows:

FOREIGN INVESTMENT IN U.S. AGRICULTURAL LAND—HOW IT SHAPES UP

2. *Nationalities and tax advantages of foreign purchasers:*

The 224 foreign purchases of agricultural land that GAO identified in the review counties involved 173 foreign purchasers. Most of the 248,146 acres were bought by purchasers from the Netherlands Antilles, Belgium, West Germany, France, and Switzerland. GAO did not find Arab investors to be a factor. Most of the Antilles corporations were owned by Swiss, Belgian, and Italian investors.

Foreign investors who buy U.S. real property have U.S. tax advantages (involving primarily capital gains) not available to U.S. citizens who may wish to invest in that same property.

CONCLUSION

GAO believes elimination of the tax advantages foreign investors have would remove a factor that may be preventing potential U.S. purchasers from competing effectively with potential foreign purchasers. Legislation pending in the 96th Congress would remove the capital gains tax advantage. This would also raise U.S. Treasury revenues.

CHAPTER 3: NATIONALITIES AND TAX ADVANTAGES OF FOREIGN PURCHASERS

The 224 foreign purchases of agricultural land in the review counties during the 18-month period involved 173 foreign purchasers. They were affiliated with at least 30 different foreign countries. In some cases, we were unable to identify the specific country involved. In other cases, the investors-of-record were actually firms owned by individuals or firms from other countries. Although most purchasers' agents or attorneys were very helpful in providing ownership information, some would not go beyond admitting that the purchasers were European or foreign and some refused to provide any information on the subject.

FOREIGN AFFILIATIONS OF PURCHASERS OF AGRICULTURAL LAND IN REVIEW COUNTIES

The foreign affiliations of the 173 purchasers-of-record are shown in the following table.

Foreign affiliation	Acres purchased		Transactions	
	Number	Percent of total [1]	Number	Percent of total [1]
Netherlands Antilles	89,860	36.2	52	23.2
Belgium	34,792	14.0	3	1.3
West Germany	22,989	9.3	30	13.4
France	12,665	5.1	11	4.9
Switzerland	11,825	4.8	12	5.4
Europe (country not identified)	8,467	3.4	11	4.9
Austria	8,428	3.4	1	.4
Canada	8,269	3.3	39	17.4
Venezuela	7,967	3.2	1	.4
Great Britain	6,583	2.7	6	2.7
Liechtenstein	6,582	2.7	3	1.3
Netherlands	5,842	2.4	10	4.5
Mexico	5,190	2.1	4	1.8
Switzerland, West Germany, and Canada [2]	5,179	2.1	3	1.3
Singapore	2,755	1.1	1	.4
Luxembourg	2,641	1.1	1	.4
Sweden	2,452	1.0	2	.9
Hong Kong	1,547	.6	3	1.3
Italy	922	.4	3	1.3
Bahamas	578	.2	4	1.8
Liechtenstein, Panama, Canada, and Switzerland [3]	355	.1	4	1.8
Cayman Islands	214	.1	1	.4
Iran	213	.1	3	1.3
Japan	202	.1	1	.4
Philippines	197	.1	3	1.3
Denmark	153	.1	1	.4
Australia	107	(4)	2	.9
Panama	95	(4)	1	.4
South Africa	90	(4)	1	.4
Japan and France [5]	86	(4)	1	.4
India	78	(4)	1	.4
Spain	64	(4)	1	.4
Taiwan	59	(4)	1	.4
Turkey	38	(4)	1	.4
Indonesia	26	(4)	1	.4
Country unknown	636	.3	1	.4
Total	248,146	[6] 100.0	224	[6] 100.0

[1] Percentages based on projected data could differ.
[2] Foreign-owned partnership comprised of German, Swiss, Canadian, and U.S. citizens.
[3] Foreign-owned corporation comprised of Panamanian, Liechtenstein, Swiss, and Canadian citizens.
[4] Less than 0.1 percent.
[5] Foreign-owned corporation comprised of Japanese and French citizens.
[6] Numbers do not add due to rounding.

Some of the countries and territories listed above are known as tax havens because residents of and firms incorporated in these areas have particularly attractive tax advantages regarding their investments in the United States. These so-called tax havens include the Netherlands Antilles, Switzerland and Liechtenstein. While we did not inquire further into the ownership of the Swiss and Liechtenstein investors, we did obtain additional information on the Netherlands Antilles purchasers.

One of our purposes in following up on the ownership of the Antillean purchasers was to determine whether concerns expressed by various individuals and sources that Arab interests may be buying U.S. agricultural land were well-founded. As the following section shows, we did not obtain any information showing that Arab interests were involved in any of the Antillean purchasers.

PURCHASES BY NETHERLANDS ANTILLES CORPORATIONS

As the table on pages 20 and 21 shows, Netherlands Antilles purchasers bought more acreage than any other foreign purchasers—89,860 acres, or 36.2 percent. These purchasers accounted for 45 of the 173 purchasers-of-record. The Netherlands Antilles—two groups of islands in the West Indies—are part of the Kingdom of the Netherlands. The islands are covered by an income tax treaty with the United States under which Netherlands Antilles corporations are entitled to certain tax benefits with respect to income derived from sources within the United States. (See pp. 31 and 32.)

It is very difficult to determine the true ownership of Antilles corporations. Antillean law allows shareholders of investment corporations to remain anonymous. This is advantageous to owners who may desire anonymity for various reasons. The president of a large real estate exchange which functions as a clearinghouse for foreign investors looking for U.S. property told us, for example, that investors from some foreign countries frequently buy property through Swiss banks and large law firms and incorporate in offshore tax havens such as the Netherlands Antilles. He said that such purchasers usually do not publicize their investments in countries other than their own because of possible legal repercussions of their countries' currency control laws.

Through the cooperation of agents and attorneys for Antillean corporations and other sources, we obtained information on the nationality, but not identity, of most of the corporations' owners. The Antillean firms that bought the most acreage (60 percent of the 89,860 acres bought by Antillean firms) were owned by Swiss and Belgian investors, as shown on the following page.

Residence and/or nationality of owners	Purchases by Netherlands Antilles corporations: Acres: Number	Acres: Percent of all foreign purchases	Transactions: Number	Transactions: Percent of all foreign purchases
Switzerland	28,181	11.4	5	2.2
Belgium	25,488	10.3	3	1.3
Italy	12,096	4.9	8	3.6
France, Italy, or West Germany [1]	10,603	4.3	15	6.7
Liechtenstein	4,772	1.9	1	.4
Netherlands	4,313	1.7	6	2.7
Hong Kong	1,247	.5	2	.9
Spain	479	.2	1	.4
Europe (country not identified)	459	.2	1	.4
Country unknown	2,222	.9	10	4.5
Total	89,860	[2] 36.2	52	[2] 23.2

[1] The agent who represented the 11 Netherlands Antilles corporations that made these 15 purchases told us that each corporation was owned by an individual, family, or group of friends from either France, Italy, or West Germany. He would not associate any corporation with a particular country.

[2] Numbers do not add due to rounding.

Combining the results of this analysis with the data in the table on pages 20 and 21 shows that six Belgian purchasers actually bought the most agricultural land—60,280 acres, or 24.3 percent—with Swiss purchasers being second—40,006 acres, or 16.1 percent. A revised ranking of the foreign affiliations of the purchasers buying more than 1,000 acres of U.S. agricultural land is shown on the next page.

Foreign affiliation	Acres purchased: Number	Acres purchased: Percent of total	Transactions: Number	Transactions: Percent of total
Belgium	60,280	24.3	6	2.7
Switzerland	40,006	16.1	17	7.6
West Germany	22,989	9.3	30	13.4
Italy	13,018	5.2	11	4.9
France	12,665	5.1	11	4.9
Liechtenstein	11,354	4.6	4	1.8
France, Italy, or West Germany	10,603	4.3	15	6.7
Netherlands	10,155	4.1	16	7.1
Europe (country not identified)	8,926	3.6	12	5.4
Austria	8,428	3.4	1	.4
Canada	8,269	3.3	39	17.4
Venezuela	7,967	3.2	1	.4
Great Britain	6,583	2.7	6	2.7
Mexico	5,190	2.1	4	1.8
Switzerland, West Germany, and Canada	5,179	2.1	3	1.3
Country unknown	2,858	1.2	11	4.9
Hong Kong	2,794	1.1	5	2.2
Singapore	2,755	1.1	1	.4
Luxembourg	2,641	1.1	1	.4
Sweden	2,452	1.0	2	.9

The Netherlands Antilles corporations bought agricultural land in six States (Arkansas, California, Georgia, Illinois, Montana, and Texas). Most of the land they purchased was in Montana (52,900 acres), California (26,356 acres), and Texas (7,029 acres). These purchases accounted for more than half of the total acres of foreign-bought agricultural land in the review counties in Montana and California and almost half of the acres purchased in Texas.

Of the seven Netherlands Antilles corporations which purchased the 52,900 acres in Montana, three were Belgian-owned firms which bought 25,488 acres and four were Swiss-owned firms which bought the other 27,412 acres.

Thirty-two Netherlands Antilles corporations purchased the 26,356 acres in California. Of these, 8 were Italian-owned firms which bought 12,096 acres and 11 were German, French, or Italian-owned firms (we had no further breakdown) which bought 10,603 acres. We could not identify the nationalities of the owners of nine other corporations that bought 1,182 acres. The owners of the remaining four corporations were from Hong Kong or Europe.

Two Netherlands Antilles corporations purchased the 7,029 acres in Texas. One, a Netherlands-owned firm, bought 2,257 acres; the other, a Liechtenstein-owned firm, bought 4,772 acres.

Ownership of the Netherlands Antilles firms which bought agricultural land in the other three States were as follows:

	Acres
Arkansas:	
One Spanish-owned firm	479
Georgia:	
One Netherlands-owned firm	1,509
One firm—owner's nationality unknown	1,040
Total	2,549
Illinois:	
One Netherlands-owned firm	547

FOREIGN AFFILIATIONS OF PURCHASERS BY STATE

The greatest numbers of different nationalities were represented by foreign purchasers in 4 of the 10 States—Arkansas, California, Georgia, and Washington. A listing, by State, of the countries and purchased acreage follows. (For this listing, the owners of the Netherlands Antilles corporations are included according to their country of residence or nationality.)

State and foreign affiliation	Foreign purchases: Acreage	Foreign purchases: Percent of total
Arkansas:		
West Germany, Canada, and Switzerland	5,179	42
Luxembourg	2,641	22
Netherlands	2,374	19
West Germany	960	8
Switzerland	500	4
Spain	479	4
France	168	1
Total	12,301	100
California:		
Italy	12,254	27
France, West Germany, and Italy [1]	10,603	23
Liechtenstein	6,582	14
Europe	3,398	7
West Germany	3,324	7
Hong Kong	2,794	6
Canada	2,020	4
Country unknown	1,182	3
Switzerland	1,016	2
Belgium	620	1
Bahamas	578	1
Mexico	350	[2]
Cayman Islands	214	[2]
Netherlands	172	[2]
Iran	133	[2]
Panama	95	[2]
India	78	[2]
Spain	64	[2]
Taiwan	59	[2]
Great Britain	46	[2]
Turkey	38	[2]
Total	45,620	[3] 100
Georgia:		
France	10,004	23
Austria	8,428	19
Europe	5,528	13
West Germany	4,416	10
Great Britain	3,253	8
Switzerland	3,047	7
Singapore	2,755	6
Sweden	2,452	6
Country unknown	1,676	4
Netherlands	1,509	4
Australia	107	[2]
South Africa	90	[2]
Total	43,265	[3] 100

State and foreign affiliation	Foreign purchases: Acreage	Foreign purchases: Percent of total
Illinois:		
Netherlands	818	56
Italy	637	44
Total	1,455	100
Iowa:		
West Germany	302	42
Great Britain	272	37
Denmark	153	21
Total	727	100
Kansas:		
West Germany	5,264	64
France	2,493	31
Switzerland	332	4
Iran	80	1
Total	8,169	100
Montana:		
Belgium	59,660	62
Switzerland	27,412	28
Venezuela	7,967	8
West Germany	1,160	1
Canada	30	[2]
Total	96,229	[3] 100
Pennsylvania:		
Great Britain	3,012	68
West Germany	1,302	29
Italy	127	3
Total	4,441	100
Texas:		
West Germany	6,261	38
Liechtenstein	4,772	29
Netherlands	4,514	27
Switzerland	1,086	7
Total	16,633	[3] 100
Washington:		
Switzerland	6,613	34
Canada	6,219	32
Mexico	4,840	25
Netherlands	768	4
Switzerland, Panama, Canada, and Liechtenstein	355	2
Japan	202	1
Philippines	197	1
France and Japan	86	[2]
Indonesia	26	[2]
Total	19,306	[3] 100
Total	248,146	

[1] No breakout by specific country.

[2] Less than 1 percent.

[3] Numbers do not add because of rounding.

TAX INCENTIVES FOR FOREIGN INVESTMENT IN U.S. AGRICULTURAL LAND

Foreign investors who buy U.S. real property, including agricultural land, have certain U.S. tax advantages not available to U.S. citizens who may wish to invest in that same property. We did not obtain information on the extent to which any taxes required to be paid to the foreign country involved may offset the advantages available to foreign investors under U.S. tax laws and regulations.

The key determinant for U.S. income tax purposes is whether or not U.S. source income derived from the foreign source investment capital is considered to be effectively connected with a U.S. trade or business. This problem is discussed in a recent Treasury Department report[1] on the tax treatment of income from, or gain or loss realized on the sale of, an interest in U.S. property owned by nonresident aliens and foreign corporations.

Under U.S. law, if a nonresident alien or foreign corporation purchases U.S. real property and operates the property as a business, income derived from the investment (including capital gains) is taxed by the United States on a net basis and at rates applicable to U.S. taxpayers.

Capital gains realized by nonresident aliens and foreign corporations on the sale of U.S. investment property are not subject to U.S. tax if such gains are not "effectively connected" with a U.S. trade or business. Ordinary, "noneffectively connected" income from the investment property is taxed on a gross basis (without allowable business deductions) at a flat rate of 30 percent or at a lower rate if permitted by a tax treaty between the United States and the foreign country. With respect to ordinary income, the difference between a tax based on gross income and a tax based on that same income less allowable deductions can be substantial. If a foreign investor is not engaged in a U.S. trade or business, the investor may elect to have income from the U.S. investment property (such as payments received under a sharecropping or lease arrangement) taxed on a net basis as if it were effectively connected with a U.S. trade or business. This election is usually irrevocable if made under the Internal Revenue Code. It is annual if made under the Netherlands Antilles treaty.

The Treasury report concluded that, although most foreign investment in U.S. real estate either constitutes a U.S. trade or business or, at the election of the taxpayer, is taxed as if it were, foreign investors rarely incur a capital gains tax on the sale or disposition of their property holdings. The evidence is that foreign taxpayers are adept at using the various planning techniques available under present law which allow them to avoid the capital gains tax. Some of these techniques are as follows:

1. Foreign investors who are engaged in a U.S. trade or business may sell their U.S. real property on an installment basis and postpone receiving most or all of the payments until later years when they are no longer engaged in a trade or business. Any gain attributable to the payments in the years after the sale is not treated as effectively connected with a trade or business and therefore is not taxed.

2. Foreign investors may generally exchange U.S. real property held for productive use or investment for other property of a like kind, without recognizing any capital gain. If the property acquired in the exchange is located outside the United States, the capital gain realized on the subsequent sale of that property would not be subject to U.S. tax.

3. Foreign investors may invest in U.S. real estate through a real estate holding company incorporated outside the United States and avoid paying a capital gains tax on the sale of the real estate by the company or on the sale of the stock of the company by the foreign investor. One of the following two planning techniques would ordinarily be used.

First, if the real estate holding company sells the property and liquidates within 1 year, distributing the sales proceeds to the foreign shareholders, the capital gain realized by the company is not recognized for U.S. tax purposes.

Also, the shareholders would generally not be taxed on the gain when they exchanged their stock in liquidation for the sales proceeds of the real property because the shareholders are not considered to have been engaged in a U.S. trade or business by reason of their stock ownership.

Second, if the foreign investors sell their stock in a foreign real estate holding company which owns U.S. real estate, they are not subject to U.S. tax on the gain realized since the sale of the stock does not give rise to U.S. source income.

4. Many U.S. tax treaties with foreign countries permit foreign investors who are not engaged in a U.S. trade or business, but who elect to have their U.S. real estate income taxed on a net basis, to revoke that election in the year in which the real estate is sold. This means that with proper planning, foreign investors can elect to have income from their U.S. investment taxed on a net basis while the investment increases in value, and then revoke the election in the year they sell their land to avoid paying a capital gains tax.

THE NETHERLANDS ANTILLES TAX TREATY

Firms and individuals doing business through the Netherlands Antilles have the following tax advantages regarding their investments in the United States.

The Antilles profits tax on business income earned in the United States by Antilles firms is generally imposed at an effective rate of only 2 or 3 percent.

The Antilles has no estate, gift, or inheritance tax and no tax on capital gains, dividends, interest, or Antilles-source investment income paid to nonresidents.

The Antilles tax treaty with the United States allows for reduced U.S. taxes on income not connected with a U.S. trade or business by allowing foreign investors to elect annually whether to have the income taxed net of deductions.

The Antilles allows residents of other countries to incorporate in the Antilles and thereby take advantage of its tax treaty provisions with the United States. Consequently, investors from countries that have no tax treaties with the United States or whose tax treaties do not provide for an anuual net basis election can substantially reduce their taxes on income and capital gains from their U.S. investments by incorporating in the Antilles and making the net basis election.

The Antilles allows its corporations to keep secret the identity of their shareholders. This makes it possible for investors from other countries that may have strict laws limiting investment of capital in foreign countries to circumvent such restrictions by incorporating in the Antilles.

Further details on the taxation of foreign investments in U.S. agricultural land and other real estate are discussed in the Treasury report.

SUMMARY AND CONCLUSIONS

Various individuals and sources have expressed concern that Arab interests may be buying U.S. agricultural land. We did not find this to be the case although we recognize that we did not probe beyond the nationality of the first level of ownership except in the case of the Netherlands Antilles firms. Most of the foreign-bought acreage was bought by Western European purchasers. The motives and other information regarding these purchases are discussed in the next four chapters.

The largest acreage of foreign-bought agricultural land was purchased by Netherlands Antilles firms which appear to have distinct tax advantages over U.S. purchasers. Other foreign purchasers also may have tax advantages in their U.S. property investments. Without considering any possible broader implications of such action, we believe that elimination of tax advantages available to foreign, but not U.S., investors would eliminate one of the factors that may be inhibiting potential U.S. purchasers from effectively competing with potential foreign purchasers of U.S. land. The Department of the Treasury favors elimination of these tax advantages to foreign investors. According to Treasury's report, taxing capital gains on the sale of U.S. agricultural land alone would raise U.S. Treasury revenues by an estimated $22 million in 1979; taxing capital gains on all U.S. real estate sold by foreign taxpayers would raise Treasury revenues by $142 million. The report states that the balance of payments impact of such action cannot be estimated with any precision but would probably be relatively small.

Two bills introduced in the 96th Congress (S. 208 and H.R. 3106) would generally subject to U.S. tax the capital gains of foreign investors from the sale of farmland, land suitable for farming, or rural land. Another bill (S. 192) would tax nonresident alien individuals and foreign corporations on their capital gains on all U.S. property—real estate, stocks, bonds, and so forth. Hearings were held on S. 208 and S. 192 in June 1979.●

[1] "Taxation of Foreign Investment in U.S. Real Estate," Department of the Treasury, May 4, 1979. A summary of this report was included in a Joint Committee Print on Tax Treatment of Foreign Investment in the United States, prepared for the use of the Senate Committee on Finance by the staff of the Joint Committee on Taxation, June 22, 1979.

PROGRESS, REMEMBER?

● Mr. JAVITS. Mr. President, for some time now, I have been calling for the adoption of policies to stimulate U.S. productivity growth as the highest priority. This was the theme of my Senate speech of February 6 (C.R.—1100) and, more recently, has become the raison d'etre for the Senate Republican Economic Policy Declaration, which was developed by a task force under the design of the Economic Policy Subcommittee, which I chair.

I am no longer alone in stressing the urgency with which we must act to revitalize our country's productive capacity and to modernize our business plant and equipment. In fact, the conclusions of the last two reports of the Joint Economic Committee, on which I serve as the Ranking Senate Republican member, serve to underscore my justifiable concerns with our sagging productivity performance and our weakened capacity to compete head-on with overseas suppliers.

Mr. President, over the recess, the New York Times printed an article entitled, "Progress, Remember?" written by Mr. Reginald Jones, chairman of the board of General Electric, in commemoration of the Thomas A. Edison centennial of light. Those of us who know Mr. Jones know that we can always rely on

his wisdom, be it written or oral, to make us that much richer than we were before sharing it. In his article, Mr. Jones pinpoints the source of our Nation's economic ailments as our neglect of science and technology—the "energizers" of our economic process. I concur with his view and support his argument that we must tilt our economic policies in such a way so as to offer some encouragement for those in our society who are willing to risk time, talents and money in ventures that could make life better for our people.

Some of the specific suggestions which Mr. Jones makes to encourage investment in technological innovation are already incorporated in the Republican legislative package to which I referred earlier. Others, particularly in the area of antitrust and regulation, concern the removal of inhibitory barriers to investment in new technologies. But the meat of the request that Mr. Jones makes of us is really more abstract and focuses on our fundamental attitudes toward competition, risk-taking, and progress itself. He asks us to reestablish a system that rewards talent and ingenuity, that stresses a standard of reasonableness for the resolution of economic problems, and that rejects the notion of limits and boundaries to our knowledge and development. It is alarming to realize that so evidently reasonable a request would require change of massive proportions to accomplish it.

Mr. President, I commend Mr. Jones for his excellent statement and urge my colleagues to take careful note of this most instructive set of recommendations so that we in the Senate will be able to work together to foster the type of social and political environment that will encourage an economy of progress to which Mr. Jones refers.

Mr. President, I ask to have Mr. Jones' article from the New York Times of Friday, August 24, printed in the RECORD.

The article follows:

PROGRESS, REMEMBER?

(By Reginald H. Jones)

FAIRFIELD, CONN.—Inflation, unemployment, declining productivity, trade deficits, disenchantment with government, loss of international position—all these are related directly to our recent neglect of the science and technology that energize our economic processes. And so there is, fortunately, a growing consensus, as we celebrate the Thomas A. Edison centennial of light, that we must do something about it before it's too late.

Unfortunately, under the Keynesian economics of recent decades, our tax structure has been sharply tilted against savings, investment and innovation. Additional tax changes are required to improve the crucial ratio of risk to reward that is the basic determinant of the level of business investment in the process of innovation.

Such changes could include programmed annual reductions in the corporate tax rate; improved capital recovery allowances to make up for the under-depreciation caused by inflation; relief from the double taxation of corporate dividends; additional improvements in the tax treatment of capital gains and losses; extension of the investment tax credit for new building; a reduction in the marginal tax rate on all individual income from 70 percent to 50 percent.

Tax incentives targeted specifically at research and development should be broadly based—not be restricted to certain types of such activity or certain politically chosen technologies. Similarly, the incentives should be nondiscriminatory or neutral in their application—that is, they should be available to all taxpayers, all companies and all parts of the country.

Here are some research-and-development incentives that might be instituted at relatively modest cost to the Treasury.

1. Flexible depreciation for equipment and special-purpose structures used in research and development. The taxpayer could elect to depreciate his investment in such assets in full in the year of acquisition or over any period.

2. Flexible depreciation for purchased patents and other intangible items of technology, such as know-how and secret processes. The unequal treatment of purchased and internally acquired patents and technology discourages the purchase and commercialization of new inventions and limits inventors' market opportunities.

3. A special deduction equal to 120 percent of research-and-development expenditures. Such a provision would cost about $2.4 billion a year. It would reduce the effective tax rate for companies that are efficiently investing in research and development, thus increasing their cash flow for additional innovation.

What else can we do to stimulate technological innovation?

One necessary element must be to revitalize university research. Perhaps the Government's grant funds for such research should be tied to the growth rate of the gross national product as a matter of policy. This would provide the universities with the planning stability they need. University grants and contracts must also be increased to cover full costs, or their research-and-development facilities will deteriorate to the danger point.

Increased share of the market that results from new technology should not be considered in monopoly cases. Otherwise, why bother to risk the money on developing new products and bringing them to market?

Antitrust cases are being conducted on the spurious assumption that the only competition that counts is United States competition; that United States companies must be broken up or limited while foreign governments are doing everything in their power to increase the size and capability of our foreign competitors. Yet, many of the most promising new technologies require the scale of worldwide markets in order to justify the costs. Antitrust policies that inhibit competing worldwide in high technology are flatly contrary to the public interest.

The capacity of the regulatory bureaucracy to inhibit investment in new technology cannot be overstated. What we need is not an end to Government regulation but some reasonable accommodation: some effort to balance the benefits against the costs, some encouragement for those who are willing to risk their time, talents and money in ventures that could make life better for our people.

Our fundamental need is a social and political climate that favors technological progress. We used to have it. We don't anymore. We have begun to accept limits to scientific inquiry, limits to technological innovation, limits to economic growth. If science has brought us problems—as it has—then the answer is more knowledge, not less. If technology has brought us problems—as it has—then the answer is better-managed technology, not a slow slide back to the poverty and squalor that most people had to endure in the falsely idealized past.●

MORAL ISSUES INHERENT IN ENERGY POLICY DECISIONS

● Mr. KENNEDY. Mr. President, for the past 2 years, the National Council of Churches of Christ has undertaken a study of the moral issues inherent in energy policy decisions. I was pleased to see that the NCCC concluded that conservation and increased energy efficiency should be the keystone of national energy policy. Their committment to protection of the poor and increased employment as central goals of energy policy are equally important.

I request that a summary of their report be printed in the RECORD.

The summary follows:

THE ETHICAL IMPLICATIONS OF ENERGY PRODUCTION AND USE

INTRODUCTION: ETHICAL GUIDELINES ARE NECESSARY IN THE PRESENT ENERGY SITUATION

The purpose of this Policy Statement is to clarify the values which should inform decisions about public energy policy, to set forth broad guidelines for decision-making, to indicate criteria by which energy technologies can be assessed, and finally to suggest some public policy positions and appropriate actions by churches and individual Christians.

The National Council of the Churches of Christ addresses the energy issue from a conviction that Christians must be guided by values based on the Biblical witness to creation, redemption, stewardship, justice and hope. These values should shape the policy decisions necessary to meet the profound challenge facing humanity: how to share limited amounts of energy fairly without poisoning ourselves by poisoning the wider environment.

Energy sources on which societies have become dependent are being used up. Threatened shortages increase the risk that hazardous energy technologies may be developed and used, threatening world stability and the ability of the earth to sustain life. Technical experts not only disagree on the conclusions they draw from facts; they disagree on the facts themselves. In such a threatening and bewildering atmosphere, ethics must provide important guidelines for energy policy decisions.

Energy use must not exceed the limited natural resources available, or overtax the ability of the environment to absorb pollution. Priority in energy use should be given to the satisfaction of basic human needs such as food, shelter, health, and clean air and water. Human dignity demands the widest participation in policy decisions which seek to meet these requirements.

THEOLOGY PROVIDES THE BASIS FOR OUR ETHICS

Human beings are made by God as persons-in-nature, co-creators in reciprocal relationships with everything else that God has made. As an integral part of creation, humanity shares in its finite nature. Only after making this basic affirmation does the Bible declare that humans are distinctive because they are created in God's image. Persons are unique in their capacity to respond to God in faith and hope, to their human neighbors with love, and to the nonhuman part of creation with respect and responsible care.

Humanity has often selfishly distorted the divine commission to exercise dominion over the earth into an unlimited license to exploit the material world and weaker persons. This perversion of dominion into domination is a sin and is one of the underlying causes of the energy crisis. When faith in the Creator and in the Kingdom of God is re-

placed by faith in human ability to solve all problems by technical means, humanity has also fallen into the sin of idolatry.

The obedient fulfillment of God's command calls for persons to think and work together both as accountable stewards of the whole earth and as bold advocates for fairness in the human community.

The Bible makes clear that the fertility of the earth—its ability to sustain human life in the peace and justice of *Shalom*—is intimately bound up with the protection of justice in the social order. Human faithlessness and injustice to our neighbor could destroy the creation. The definition of "neighbor" is now being radically expanded to encompass all humans in past, present and future generations, as well as the rest of creation. The range of our ethical responsibility must expand to conform to the fact that using advanced technology greatly increases the range in time and space of the consequences of human actions.

THE ETHIC OF ECOLOGICAL JUSTICE

We are called to embrace an ethic that takes into consideration the claims of those involved and endangered neighbors who, in the present energy debate, are necessarily voiceless because they do not yet exist, or because they exist in the nonhuman creation.

Ecological justice is such an ethic. It is an ethic for all members of the community of life, inspired by Christian hope for the fulfillment of God's promises assured us in the resurrection. It provides guidelines for human choice and action. An ecologically just society will be guided by the values of sustainability, fairness and participation.

Sustainability refers to the earth's limited capacity to provide resources and to absorb the pollution resulting from their use. Sustainability requires that biological and social systems which nurture and support life not be depleted or poisoned. The concept of sustainability defines the limits within which all should participate in the equitable satisfaction of needs.

Fairness refers to distribution of energy resources on the basis of need, and to an equitable distribution of the total benefits and costs. Fairness embodies, among other things, the rights of today's generation and those yet unborn.

Participation is a component of fairness in that the individual community member must take the responsibility and must have the opportunity to be involved in determining public policy and the hierarchy of values which guide that policy.

ECOLOGICAL JUSTICE INDICATES GENERAL GUIDELINES FOR DECISION-MAKING

Creating a just energy policy is difficult because inevitably some ethically desirable goals must be "traded off" against other goals which are also good. Precisely because such decisions are not simple, they should be made only after maximum public consideration, with conscious awareness of what good goals are being sacrificed, and agreement that the sacrifice is necessary. The ethic of ecological justice indicates some general guidelines which should apply when decisions are being made about energy policy:

I. If using a technology poses a risk of irreversible global damage, great prudence and caution should be exercised in deciding about its use. The greater the risk, the less moral justification there is for its use.

II. The survival needs of those who are below the minimum material standard of living should be met before the wants of those above that standard. Since survival depends on energy, it should be distributed by a standard that insures adequate food, health, housing, and clean air and water for all.

III. The views of those who will be affected by a particular action should be heard in the decision-making process.

IV. The effect on future generations of today's decisions must be considered.

V. Those who receive the benefits of energy decisions should, as much as possible, bear the costs.

VI. Regardless of their size or political influence, all countries should have access to full and responsible participation in arenas in which research and policy decisions are made which will affect their energy futures.

VII. Quality of life considerations—such as human dignity, satisfaction in employment, community cohesion and religion—must be considered along with technical and economic factors.

ECOLOGICAL JUSTICE INDICATES CRITERIA FOR ASSESSING TECHNOLOGIES

Ecological justice is an ethic of means as well as an ethic of ends. An ecologically just society cannot be achieved by using a technology which violates the values of fairness, sustainability and participation. The Environmental Impact Statement has been one means by which the effect of a technology on our natural life-support system can be monitored and controlled. No such legally enforceable method exists to assess and control the social impacts of a technology on the quality of life of individuals, communities and political institutions. Among the areas affected by technologies are public health, employment, safety, income distribution, community cohesion and civil liberties.

No single energy technology can realistically be expected to supply all human needs: a diversity of resources and different-sized systems will be necessary. No energy system will be free of contradictions and compromises, but ideally each technology pursued will violate as few of the following criteria as possible:

Safe: protective of the human and natural environment, and not threatening irreversible global damage.

Appropriate to human nature: not requiring infallibility or error-free performance from humans or machines.

Flexible: capable of timely change—even reversibility—during development and use in order to adapt to unpredictable events, such as unexpected health hazards.

Non-destructive to other necessities of life: for instance, not removing good agricultural land from food production or polluting necessary water supplies.

Resource-saving: using renewable energy sources rather than non-renewable—for instance, water power rather than oil.

Resilient: capable of absorbing shocks—for instance, oil embargoes, severe winters—without causing major social disruptions.

Fair: capable of having its benefits and costs allocated fairly to all, including future generations—for instance, not requiring one group to suffer genetic damage in order that another group may have electricity.

Comprehensible: capable of being understood, with information freely available, so that those citizens who wish to can participate responsibly in decisions.

Non-violent: difficult to use directly or indirectly as a weapon—for instance, not able to be easily made into a nuclear bomb.

Employment-producing: not replacing jobs with energy-intensive machinery, especially in areas of high unemployment.

Pluralistic: assuring a diversity of options, cultures, life-styles and opportunities, and encouraging a scale that permits choice and control by the user.

Appropriate: most nearly matched to the society to be served—for instance, small-scale and local where the need is mainly in small communities—and producing the kind of energy most nearly matched to the work to be done—for instance, electricity for telecommunications, solar for hot water.

Aesthetic: pleasing to the senses and enjoyable to work with.

ECOLOGICAL JUSTICE INDICATES U.S. ENERGY POLICY OUTLINES

U.S. energy policy should be in accord with the ethic of ecological justice and the guidelines and criteria it suggests. Such policy needs careful development to prevent severe social and economic dislocation. The ethic of ecological justice suggests some elements of a national energy policy which the NCCC Governing Board would support:

We support efforts to conserve energy and to use it more efficiently. Not using energy unnecessarily is the safest and cheapest "energy resource". Continued education about the necessity for and practical ways of saving energy is needed. Laws and regulations deterring conservation and recycling of materials should be adjusted.

We support publicly-funded energy-conserving projects designed in a way that will provide new skills and jobs for the unemployed. Such projects include winterization and insulation of homes, small-scale appropriate energy technologies and public transportation.

We support programs to limit fuel consumption that do not rely primarily on raising prices, which places an intolerable burden on the poor, the elderly and those with fixed incomes.

We support increased government research and development funding, subsidies and other incentives to expand the practical application of appropriate energy technologies based on renewable energy resources such as solar energy, including wind and water. Some of these are already developed; large government subsidies to other energy processes should be diverted to make appropriate technologies more readily available—for instance, freeing transportation of its inefficient dependency upon petroleum.

We support a national energy policy which does not rely on a long-term large increase in the burning of coal. Besides increased health and safety risks to workers and the general public from using more coal, extensive burning of fossil fuels may cause irreversible damage to the world's atmosphere, changing weather patterns and so threatening food production and the continued habitability of large areas of the earth. However, some increase in coal use over the short term is reluctantly accepted as necessary to avoid increased use of nuclear energy or economic dislocation caused by severe energy shortages.

We support a national energy policy which will not need to utilize nuclear fission. Secure handling of nuclear wastes over thousands of generations and safe operation of nuclear plants require that humans and their machines operate without endangering human beings or the enviroment. Human beings are not infallible; they will make mistakes, and machines will fail. The result may be irreversible damage to the environment and to the human genetic pool.

We support a continued ban on the commercial processing and use of plutonium as a fuel in the United States, and stringent efforts to reach worldwide agreement banning such use of plutonium. Commercial use of plutonium can result in proliferation of nuclear weapons. The potential misuse could result in pressure to curtail civil liberties in order to prevent such a threat.

We support the rapid development of enforceable regulations to require a social and environmenal impact statement of a technology before it is widely used and the monitoring and control of its use to prevent social and environmental damage.

We support U.S. policy which seeks to share technologies internationally without impos-

ing capital-intensive energy technologies on other countries.

We support full U.S. cooperation in international efforts to ensure equitable distribution of necessary energy supplies and the rapid development and deployment of appropriate technologies based on renewable energy resources such as solar energy, including wind and water.

THE CHALLENGE TO CHRISTIANS AND TO THE CHURCHES

The Governing Board of the National Council of the Churches of Christ calls upon the society of which it is a part to enact energy policy which fosters the values of sustainability, fairness and participation. The institutional church and each of its members as individuals and as citizens must challenge traditional modes of thought and behavior. The NCCC Governing Board urges each Christian, each member communion of the National Council, and the Council itself, prayerfully to seek guidance for a faithful response to the challenge facing us all. As possible components of such a response, the following suggestions are offered for use by Council agencies, denominations and their members:

Study materials which deal with energy issues in the context of ethics.

Monitor the energy use of households, local churches, judicatories or national agencies by means of careful and inclusive record-keeping over a period of time. Include everything from the use of products made from non-renewable energy resources to the energy used getting to meetings.

Examine these energy-use records and act to conserve energy by eliminating unnecessary use.

Develop methods by which to take advantage of government and voluntary programs designed to help poor communities, the unemployed and the elderly meet high energy bills and with conservation and job programs.

Join with others to monitor utility and energy industry regulatory agencies. Monitor local, state and national building codes, regulations and legislation. Monitor utilities and energy companies which service you or in which you have stocks. Work to bring business practices and government regulations and legislation into harmony with the values of sustainability, fairness and participation.

Voting results: 120 in favor; 26 against; 1 abstention. The Antiochian Orthodox Christian Archdiocese of North America records its negative vote.●

BENEFITS OF INCREASED ENERGY PRODUCTIVITY

● Mr. KENNEDY. Mr. President, I wish to print in the RECORD today a recent article from the Washington Post which summarizes a large number of studies which conclude that increasing energy productivity is one of the most promising methods of increasing our energy security while improving the economy. These studies reaffirm the importance of moving aggressively on legislation that Senators JACKSON, DURKIN, and I, along with cosponsors HATFIELD, TSONGAS, BUMPERS, MATSUNAGA, WALLOP, BAUCUS, PERCY, and MELCHER, recently introduced, amendment 388 to S. 1308, (introduced on August 2, 1979).

Any balanced energy program must include a major effort to increase energy productivity as its central element.

The article follows:

CONSERVATION PROJECTS WIDELY VIEWED AS MOST PROMISING ENERGY SOURCE

(By Katherine Ellison)

The titles of the studies sound almost evangelical: "The Good News about Energy," "The Easy Path Energy Plan," "Energy Future." That a rash of researchers is promoting "unique" plans to save energy after six years of on-and-off national shortages is not surprising. What is surprising is they are generally saying the same thing.

All claim the most promising untapped source of energy is the 30 to 50 percent of national use they estimate is wasted every year by inefficient cars, buildings and appliances.

Conservation, they say, could cut 2.5 million barrels daily from the 8 million barrels the nation imports. The synfuels program, by contrast, about 200,000 barrels a day. And conservation is much cheaper.

Some studies estimate the recovery cost of the "conservation barrel" at as little as one-ninth the price of a "synfuel" barrel, which could run as high as $45.

Individual consumers can save money through a variety of simple energy-saving measures costing little or nothing to implement. The Union of Concerned Scientists estimates "the potential may exist to economically reduce heating bills by 50 percent or more in the typical household" with little or no change in comfort.

"All of Carter's measures tend to mean higher prices for oil, but most conservation strategies result in lower overall costs," according to USC researcher Vince Taylor.

Experts also foresee vast national savings on larger conservation projects, though this point many of these would not pay for themselves in the current economic environment. Proponents are calling on federal government to supply the missing incentives.

"The administration should reverse their goals for conservation and synfuels—then they'd have a reasonable chance of achieving them. They have no chance now," commented Daniel Yergin, co-author of a recent Harvard study on energy.

A report by the Council on Environmental Quality this year said federal emphasis on "energy productiivty" would lead to "more efficient and durable products and buildings, automobiles with higher fuel economy . . . and new, more efficient industrial processes." These advances could be attained with a 30 to 40 percent cutback on energy consumption, the report added.

Some headway has been made along these lines since the 1973 Arab oil embargo shocked Americans into watching their energy consumption more carefully. Since about that time, the amount of energy consumed per unit output has been falling at nearly 1.4 percent each year. But decades of cheap, abundant fuel have made energy-wasting a national pastime. West Germany, with a standard of living similar to that of the United States, uses only half as much energy per person, according to the Department of Energy.

Ingrained attitudes, law and policy reinforce the pattern of waste. Appraisers and contractors are reluctant to see the enhanced value of homes with energy-saving additions. Landlords renting out houses may include the utility bills in the rent, upping energy use by residents as much as 25 percent. City dwellers throw away reusable bottles for lack of any reason to return them.

Laws that impose utility-type regulations on industries that could "cogenerate" electricity as a by-product are preventing changes that might save millions of barrels of oil each day, according to DOE spokesman J. Michael Power.

Today only about 4 percent of U.S. industries use waste steam to generate power. About 56 percent did in the 1930s, said Jan Acton, a researcher at the think-tank Rand Corp. But in later years energy utilities "very deliberately gave volume discounts" making it cheaper for industries not to worry about such efficiencies, he added.

Now most industry is reluctant to move into cogeneration because plants selling extra power from the process would be reclassified as "utilities," and as such invite harsher regulatory treatment, according to Power. The problem is being reviewed by the Federal Energy Regulatory Commission, he said, but in the meantime is costing about 4 million barrels of oil-equivalent energy each day. "Until industry knows what government policy is going to be, any investment is going to be risky," Power remarked.

DOE, he added, is "trying to get away from regulating industry," choosing instead to explore cost sharing for conservation investments and joint research.

For years, government energy researchers have studied potential fuel-saving techniques; their work gets as detailed as quantifying the change in temperature achieved by wearing or not wearing a hat (.2 degrees F). But most experts now enthusiastically point to larger scale measures for conservation.

A recent Princeton University study calls for spending an average of $1,500 per house to diminish the 50 percent portion of national heating energy it estimates is wasted each year. The study recommends that the government train a squad of "house doctors" to examine homes for inefficient insulation and fuel use.

A CEQ report in March called for a stepped-up program of standards for auto, building and appliance efficiency, along with federal encouragement for firms exploring cogeneration and utilities opting for time-of-day pricing.

A CBS-New York Times poll the day after President Carter's speech last month found more than 90 percent surveyed were prepared to make sacrifices for conservation, such as driving slower or less often and adjusting their thermostats.

But few Americans are aware of how little sacrifice simple conservation measures demand, according to CEQ's John Davidson.

"We're trying to get away from the ideal of conservation as people sweating in a building," he said.

Most energy specialists have their own list of tips for painless conservation in the home or car. The following ideas are culled from lists circulating from the Environmental Protection Agency, DOE, CEQ and Rand.

Home. About 20 percent of total national energy demand goes to heating and operating appliances in residential buildings. Some of this demand could be cut by: keeping refrigerator coils clean (increasing efficiency up to 10 percent); turning off water heaters while away (reducing that annual drain by about .1 percent for each day); caulking and weather-stripping ceilings and walls; eliminating unnecessary hot water laundry rinses; replacing gas pilot lights with electrical ignitors, and turning off yard lamps.

Cars. Transportation takes about a quarter of energy use. Some simple measures can reduce the bite of that portion taken by cars.

Radial tires may increase efficiency by 6 to 7 percent; standard instead of automatic transmissions save 5 to 6 percent, and turning off air conditioners may save up to 20 percent.

Poorly tuned engines and under-inflated tires can impose a 4 to 6 percent penalty on fuel usage; properly inflated tires alone may save 3 percent of consumption. Yergin estimated that the savings attainable by keeping the national auto fleet properly maintained could "perhaps be equivalent to half the oil flowing from Alaska."

However, Yergin noted the increasing trend toward self-service stations will probably lead to worse, not better maintenance.

Conservation would be easy and pleasant if all of the country had California's climate. If so, the success of Davis, Calif., would be a logical national objective.

City officials in that college town recently claimed to have cut consumption of natural gas by 37 percent and electricity by 18 percent since 1973. They say they've done it by taking advantage of the temperate-to-hot, dry climate. The city government said bicycles are used for about 25 percent of all local trips. Officials encourage new houses to be well-insulated, and old ones to be retrofitted. And they require new buildings to be constructed so that their largest windows absorb the winter sun.

Concentric instead of "leapfrog" development keeps driving distances down, and a new city ordinance allows business and professional people to work in their homes, eliminating some commuting altogether.●

HEALTH COSTS

● Mr. BUMPERS. Mr. President, I have frequently advocated controlling health costs through competition. Many Government regulations protect inefficient medical care providers and hold back innovations in the medical care.

A recent article appeared in the New England Journal of Medicine by Clark Havighurst and Glenn Hackbarth, which explains how a more competitive health-care market would probably be more effective in controlling health-care costs and could reduce Government regulation.

We have not given enough attention to the manner in which private health insurance could be changed to reward innovations that control costs without more Government regulation.

This may seem like a dream at a time when health costs are spiraling and more Government regulation is on the horizon. However, competition has worked well in Minnesota's Twin Cities, and it could work well in other localities.

I recommend this article in light of the upcoming debate on the hospital cost containment legislation.

Mr. President, I ask that the article from the New England Journal of Medicine be printed in the RECORD.

The article follows:

PRIVATE COST CONTAINMENT

(By Clark C. Havighurst, J.D., and Glenn M. Hackbarth, J.D.)

Abstract. Physicians should recognize that a more competitive health-care market would provide the best defense against government regulation. Aside from group-practice health-maintenance organizations, the cost-containment steps that might be taken in such a market are not well understood. In particular, little attention has been paid to how private health insurers might redefine their coverage to limit the cost-increasing effects of third-party payment. Insurer-provider agreements negotiated in a competitive environment would seem to be especially promising. Competing insurance plans would be variously organized and operated according to provider and consumer preferences. Traditional doctor-patient relations as well as fee-for-service payment could be preserved. The antitrust laws, while curbing concerted effort to prevent change, should assure that physicians are not exploited by dominant buyers. Lucrative opportunities already exist for enterprising and efficient providers. (N Engl J Med 300:1298-1305, 1979)

We believe that the only truly responsible position for the medical profession to take in its defense against increasing government encroachment is to support a competitive market in which total health-care spending and the level of doctors' incomes are determined by smoothly working market forces that ultimately reflect the preferences of consumers as well as providers. This article explores the nature of privately initiated cost containment as it could be expected to emerge in such a competitive market. We hope to persuade the medical profession to accept and participate in the developments needed to make private solutions feasible as an alternative to government controls.

A critical point, however, is that the private solutions advocated here do not include those sponsored by organized medicine, such as the "Voluntary Effort." Far from appealing to organized medicine to come forward with "private-sector" remedies of its own, this article assumes that all profession-sponsored developments that potentially affect prices, even if their immediate effect is to lower them, will ultimately be held to violate the federal antitrust laws. Although this view will surprise some physicians, we hold that it is legally correct because the profession's sponsorship of change is inconsistent with the freedom of individual economic actors that is essential to make the competitive marketplace function. In our view, the medical profession should forsake collective economic action in defense of particular modes of medical practice and pursue collective political action on behalf of the competitive market as the ultimate arbiter of how much should be spent on health care and how it should be allocated.

We have elected to discuss private cost containment largely in abstract terms. The more common approach of applauding specific developments, such as health-maintenance organizations (HMO's) and second opinions, would plunge us immediately into unnecessary controversy and obscure the essential points. Moreover, existing cost-containment mechanisms may not provide a reliable basis for predicting a market-determined future, because they are only a sampling of a wider range of possibilities, some of which may prove superior to anything now in use. The essence of the market strategy is, after all, that evolution and adaptation in response to the revealed preferences of both consumers and providers should determine ultimate outcomes. Much of the discussion here is thus frankly speculative—designed not so much to prove what would actually happen in a relatively free market as to suggest the nature, range and richness of the possibilities.

RELATIVE ROLES OF HEALTH INSURANCE AND HMO'S IN A MARKET-ORIENTED SYSTEM

Our analysis differs from common conceptions of the market strategy in that we anticipate a greater role for private health insurance and a comparatively less central role for the prepaid-group-practice variety of HMO. Market advocates have often appeared to rely on group-practice HMO's as the primary vehicle with which to introduce competition and increased cost consciousness into health services.[1,2] Because of the emphasis that such HMO's have received, including their intended promotion under the federal Health Maintenance Organization Act of 1973, there is now a common tendency to equate the market strategy with their development. But the federal law's encouragement of one set of desirable initiatives has had the effect of discouraging others that might serve the public as well or better.[4]

Although HMO's offer many important improvements over traditional mechanisms, they may sacrifice the productivity, commitment and personal element that characterize traditional medicine at its best. Prepaid groups are also difficult to start and cannot quickly exert a powerful competitive influence, and many areas may be unable to support enough groups to make competition meaningful. Finally, HMO's have become a rallying point for government interventionists, who prefer to dictate to consumers and providers, rather than to enhance their freedom of choice. For all these reasons, it is desirable to identify new opportunities for experimentation and change that lie on the broad—and largely unexplored—spectrum from traditional financing mechanisms to federally subsidized group-practice HMO's.

IDENTIFYING THE TRUE CAUSES OF THE MARKET'S PAST FAILURES

Almost all major proposals for reforming the health-care system assume that the prevalence of third-party financing assures a colossal market failure that must be dealt with by extraordinary governmental means. More specifically, the assumption is that health insurance, though necessary to protect people against unbearable costs, is so destructive of cost consciousness that price competition among providers of health care is impossible. The private insurance industry itself confirms this assumption by disclaiming any ability to do more than it is currently doing about health costs. Physicians, hospitals and Blue Cross and Blue Shield plans, though they seem to take a more positive attitude, do not contemplate an increase in competitive developments that would seriously disrupt the status quo. Their position is not that competition can be made to work but that they can be trusted not to abuse their dominant positions in the market.

The assumption that health insurance precludes price competition in medical markets should be more carefully examined. Private insurers in other fields have taken steps to curb the natural propensity of consumers to spend the insurer's money on benefits not worth their costs. In non-medical fields, insurers recognize this phenomenon—called "moral hazard" by economists—as a problem that they must combat if they are to compete effectively. They therefore employ insurance adjusters, multiple estimates, fixed cash benefits and other mechanisms to control their costs.

The primary cause of the persistent rise in healthcare costs is not moral hazard itself, but the unwillingness of providers and insurers to experiment with new technics to control its impact. Health insurance is now too comprehensive, and it features administrative approaches and claims policies that indulge, rather than counteract, moral hazard. Until some changes are made, we cannot presume that the existing level of health-care expenditures is a true expression of consumer preferences. Only when it can be argued that the competitive process has operated freely and fostered innovations that reflect consumer preferences will the market be a plausible alternative to government regulation.

To be sure, the severity of the moral-hazard problem associated with health insurance is not entirely the fault of health insurers. By treating employer-paid health-insurance premiums as a nontaxable fringe benefit for both income-tax and Social Security-tax purposes, the tax laws encourage every wage-earning family to pay as many of its medical bills as possible through employer-purchased insurance. Comprehensive insurance, covering many easily budgetable expenses, allows consumers to pay medical bills with dollars that have not been subjected to previous taxation. Similarly, tax subsidies make purchasers of insurance more tolerant of the prevailing "no-questions-asked" approach to claims review. If taxes

Footnotes at end of article.

were not a factor in private decisions to insure, consumers would feel the full force of the trade-off between financial protection and exposure to moral hazard.[5] For the most part, private choices could be trusted not to introduce more distortion into the demand for medical care than is warranted by the need for protection against unmanageable costs. Heavier co-insurance, larger deductibles and exclusion of both highly discretionary items and minor budgetable items would probably be standard. Insurer efforts to police spending would also be more common and generally approved as a service to those who are insured.

Although the tax law may not be changed soon, other more remediable factors also inhibit the private sector's cost-containment efforts. The core of the problem is the questionable competitiveness of the insurance industry, which is both heavily regulated and largely exempt from the antitrust laws. Weak competition among insurers is not inevitable, however, since there are many firms and it is relatively easy to enter new markets. Furthermore, major insurance purchasers are becoming increasingly cost-conscious and may soon force insurers to change their traditionally noncompetitive ways. Most important, innovation in cost containment should be greatly facilitated by the new interest in applying the antitrust laws to the medical profession. Concerted professional resistance, such as that encountered after previous insurer innovations,[6] is now recognized as a violation of the antitrust laws.[7] There is thus some basis for hope that insurers' mutual forbearance from competition in cost containment, reflecting a tacit conspiracy heretofore conveniently policed by unorganized medicine, will soon break down, unleashing competitive innovation and potentially rapid change.

Setting aside the antitrust risks in resisting private cost containment, we think that the medical profession should recognize that, if it is serious about wanting to avoid governmental domination of the system, its long-term interests require that the private sector have greater freedom to work on the cost problem.

POSSIBLE INSURER STRATEGIES

Before private insurers are embraced as appropriate vehicles for cost containment, it is necessary to decide how the insurance contract can accommodate emerging concerns about costs without overstepping the limits of the insurer's appropriate role. Private-sector cost containment is in large measure an administrative problem that must be addressed in a competitive environment. Both providers and consumers must be satisfied with a plan's various elements, which should include not only the price charged or paid, but also fairness and freedom from undue administrative problems. Numerous conflicting interests must be addressed, and the plans that are most successful in accommodating these conflicting interests will be most successful in the marketplace. Plans that are too cumbersome will not and should not survive in a competitive market.

Insurer cost containment must not occur by controlling medical practice. Instead, in accord with traditional insurance concepts, cost containment should simply define the limits of insurance coverage. Exclusions from coverage that are strategically imposed for cost-containment purposes could affect any of several of the insurance policy's dimensions. Monetary exclusions, including deductibles, co-payment requirements and limits on the amounts payable in particular circumstances, are one set of possibilities. Another possible approach is to exclude particular treatments or procedures, or to include them only if certain conditions are met. Still another cost-containment strategy would be to exclude from coverage (or include on less advantageous terms) services rendered by providers who refuse to accept the insurer's administrative requirements or fee schedule or who are simply not known to be efficient or co-operative. Insurance purchasers, comparing premiums with the coverage given, might rationally choose policies with any of these types of selective coverage, thereby accepting, in return for a lower premium, some financial risk or some restriction on their free choice of provider. These various departures from traditional indemnity policies, which offer unrestricted choice of provider and largely accept providers' decisions on what costs to incur and what charges to make, suggest the conceptual basis for innovations that competing insurers can be expected to adopt.

It is important to recognize that a coverage limitation in an insurance policy is nothing more than that. An exclusion from coverage does not necessarily imply anything about the appropriateness or inappropriateness of the excluded treatments or procedures, or the competence or efficiency of any providers whose services are not covered. All that is involved is a voluntary contractual limitation on the right of the insured to draw on the common fund. Because we are not dealing, for the moment, with patients who are indigent, it can be assumed that the patient can usually pay for any additional care that he and his physician agree is desirable. Therefore, any service exclusions that plans might adopt should not become the subject of a debate over what is or is not good medical practice or over the medical "need" for the excluded service in particular circumstances. Likewise, exclusion of individual providers from a plan's coverage cannot be legitimately called into question so long as the market is competitive and therefore offers providers alternative opportunities. Competing plans must ordinarily be presumed to supply what consumers want.

The concern that a coverage limitation might sometimes impose a real hardship on the insured must not be overstated, for the object in designing coverage should be to include anything that is both essential and expensive. Although this object may not be perfectly achieved at reasonable cost, the rare cases of actual inability to pay for noncovered but necessary treatment should be easily handled by the health-care system's remaining capacity for extending free care. Whereas a governmental requirement to assure some coverage of catastrophic expenses may seem necessary to prevent "free-riding" on the health-care system's charitable impulses, it is not inappropriate to rely implicitly to some residual extent on providers to buffer any serious side effects of competing insurers' cost-containment efforts.[8] Physicians should recognize that insurer-sponsored exclusions from coverage or limitations on freedom of choice may well be in the best interests of insured groups, and that it is within the power and traditional responsibility of providers to prevent the rare case of severe hardship to an individual.

The discussion below distinguishes between two fundamentally different approaches to redesigning health-insurance coverage. The first approach would exclude some services from coverage or otherwise limit the insurer's payment, whereas the second approach would limit the providers who are eligible to provide covered services. Although implementation may blur the basic distinctions, these two approaches differ substantially in the extent to which patients must face the trade-offs involved in specific treatment decisions. The first approach contemplates many joint patient-physician decisions; the second approach, on the other hand, relies on consumer choice primarily in the selection of a plan. Which of these conceptually valid approaches consumers and providers would prefer depends on many circumstances.

SELECTIVITY IN BENEFIT PROVISIONS

One strategy for offsetting moral hazard would be to include in insurance policies many more details on the services covered and the terms of coverage than are now included. Even though administrative problems limit the complexity that can be introduced and the tax law further reduces the savings that complexity might achieve, greater selectivity in benefits still seems to offer a responsible approach to cost containment within traditional insurance arrangements. Blue Cross' recently announced policy of not paying for laboratory tests routinely performed (without a doctor's order) on hospital admission[9] is an obvious example of the kind of measure that can be taken. However, Blue Cross' action avoided challenging the prevailing, but inappropriate, principle that an insurer should pay for anything that a physician orders in good faith.

Exclusion of a particular service from coverage may be appropriate for many reasons unrelated to medical need or circumstances. In large measure, the need for insurance against a particular risk is a function of the income level of the insured, as well as his savings and preferences about risk-bearing. Thus, expenditures that are small relative to income and other factors can be met out of pocket. In addition, care that is highly discretionary, and therefore particularly subject to moral hazard, could appropriately be excluded from coverage even though there might sometimes be a burdensome expense and no question about medical appropriateness. The effect of an exclusion from coverage is, of course, to require the physician and patient to undertake a benefit-cost assessment, taking all the immediate circumstances into account. The physician would be expected to act in the time-honored capacity of professional adviser and fiduciary, with responsibility for the patient's financial situation as well as his health. In our view, this form of cost containment could be highly attractive. Carefully analyzed, this approach makes cost containment the ultimate responsibility not of the insurer, which merely defines and enforces coverage limitations, but of the physician-fiduciary acting in consultation with the patient.

With this conceptual framework established, it is possible to suggest some specific exclusions from coverage that the insurer and insured might jointly decide to be rational, especially if the tax laws were changed to eliminate the incentive to overinsure. A likely development would be an increase in the size of annual deductibles, to perhaps as much as 10 per cent of income.[10] Most physician-patient encounters would then take place without insurance in the picture. Of course, more comprehensive coverage would be appropriate for subsidized, low-income persons, since they could not be expected to bear a substantial self-insurance risk.

Even if a major shift to higher deductibles occurred, serious cost-containment problems would still exist beyond the threshold. This challenge could also be addressed by selectivity in coverage. For example, a plan might exclude (or include only with a very large co-payment) experimental treatments and unproved technology, highly discretionary items and hospital stays beyond some minimum (in cases without special complications). In setting these limits, different plans could be expected to reach different conclusions. Far from signifying a need for a regulatory or professional arbiter of correctness, such differences of opinion are the essence of the democratic marketplace, where change in technology and in the standards of medical practice are most appropriately tested.

Another insurer strategy might be to require, as a condition for insurer payment, that prior authorization be obtained for some

Footnotes at end of article.

elective hospitalizations and surgery. Under such a policy, a plan would not pay for services where appropriateness had not been confirmed in advance through agreed-upon procedures. Exclusion from coverage would not imply that the doctor's advice was misguided—only that the plan would not pay for something in the gray area. Because, in a competitive market a plan would have to satisfy both consumers and providers about the fairness of the mechanism employed in making these decisions, hardship should be kept to a minimum. The principles used in making the decisions would undoubtedly vary from plan to plan, but one legitimate approach would be strict limitation of coverage for care that was not obviously essential, leaving patients and physicians to face choices under the constraint of the patient's own resources.

Where exclusions from coverage occur, the insurer might lend the patient the money needed to finance the treatment, if the patient and physician should elect to proceed with it. Not only would this approach spare the patient any immediate financial hardship and assure that needed care was not foregone because of a cash-flow problem, but it would also undercut any implication that an insurer's refusal to pay for a procedure resulted from doubt about its medical legitimacy. The plan would have to accept a considerable risk of bad debts, but the insured group might find this way of avoiding hardship less costly than the alternative of underwriting free care for all.

The effectiveness of detailed coverage limitations would depend heavily on provider co-operation. In traditional open-panel insurance plans, such cooperation has been difficult to obtain. Physicians have frequently helped patients make maximum use of their insurance coverage, ordering unnecessary hospitalization and stretching diagnoses to bring treatments within the insurance policy. Thus, unless insurers can obtain provider co-operation in the administration of coverage limitations, those forms of cost containment cannot work.

The most straightforward way of enlisting provider co-operation is through provider-participation agreements that spell out in detail the physician's and the plan's respective responsibilities. Participation agreements have been widely used in service plans in the past and are used under Medicare and Medicaid. It would seem easy enough to adapt them to give individual providers specific responsibilities in the cost-containment effort, such as a duty to seek prior authorization or predetermination of benefits. Such participation agreements could be written so as to make coverage limits effective without interfering with the doctor-patient relation or the practice of medicine.

Some physicians may fear that limits on private insurers' coverage, if administered along the lines suggested, would be indistinguishable from governmental controls. Yet there are profound differences that should make the market alternative attractive. In the first place, insurers would not use administrative controls unless their cost was less than the net benefit derived; government programs, not facing competition, operate under no such constraint and frequently squander resources unproductively. Secondly, participation in a given plan would be voluntary, not compulsory, and providers would have to be persuaded to participate; they would not do so if alternative plans were more attractive. Thirdly, the crucial distinction between regulation and coverage limitation—that a coverage limitation does not interfere with or secondguess medical judgment—would probably be more scrupulously observed in a private system.

Although the foregoing speculations contain some suggestions that may seem extreme, the point is not that all these things will happen but that, in a functioning market, private participants will seek the strategies that best accommodate the various conflicting interests. Gradual evolution, featuring experimentation and adaptation, is much more likely than the upheaval associated with mandatory governmental programs. Our guess is that, if the tax laws were changed, large deductibles would remove a great deal of care from the insurers' province, leaving benefit limits and administrative controls to operate mostly in cases of expensive, catastrophic disease. In these costly situations, close monitoring would be justified, although provider participation agreements would lead to many insurer-provider relations based on trust, thus lightening petty administrative burdens.

SELECTIVITY TOWARD PROVIDERS OF COVERED SERVICES

A different strategy by which health insurers could control costs involves selectivity not primarily in terms of benefits but in terms of providers whose services are covered. The essential element in this strategy is a health plans ability to deny to certain providers the right to draw on the insurance fund. By adopting any of a variety of closed-panel arrangements, a plan could assure that only providers who economized to its satisfaction would serve the insured group at the insurer's expense. One way in which insurers might find such providers is to turn to provider groups that imposed—or were willing to impose—formal or informal controls on their own members. The impetus to seek the right balance between economy and spending on enhanced quality, convenience and other desirable features would come ultimately from the competitive environment, which would motivate both the plan and the providers to meet consumers' expectations.

The closed-panel concept has long since demonstrated its efficacy in prepaid group practices. More recent variations on the concept, known generally as "individual practice associations" (IPA's), have involved less integration of the participating physicians and retained the fee-for-service mode of payment. Although they have not been as thoroughly tested as group-practice HMO's, IPA's are less radical departures from traditional concepts and therefore seem unlikely to raise new concerns about quality. By the same token, their efficiency remains open to question, but, as experience in the Minneapolis-St. Paul area has shown, the IPA can be reasonably efficient if it faces competition.[11]

Although the term "IPA" appears in the federal HMO act, the closed-panel concept may be adopted without accepting the comprehensive benefit package and other restrictions imposed by the federal statute. The nature of physicians' associations with a plan may vary widely. The participating providers may be identified only by individually signed agreements with the insurer, or they may constitute a large and fully integrated multispecialty group practice not previously rated separately for insurance purposes. A plan could set up what Ellwood has called a "health care alliance" [12] by including one or more hospitals in the provider panel along with the physicians.

Under any of the contemplated closed-panel arrangements, the insurance premium would reflect the cost experience of the covered providers. In effect, therefore, the insurer would be marketing the group's particular ability to deliver good care for less money. In contrast, traditional insurance, covering care rendered by any provider, averages the high-cost and low-cost providers together in arriving at experience-rated premiums. Consumers are not rewarded for choosing lower-cost providers, and providers are denied the opportunity to capture any of the savings from their comparative efficiency, including a more conservative approach to hospitalization. Several multispecialty group practices have adopted the prepaid-group-practice HMO model to profit from their own efficiency. The same opportunity would be available to organizations of physicians and hospitals who, instead of adopting the prepaid-group-practice model, could persuade an insurer to underwrite them independently of other fee-for-service providers and market them as an added option, a health-care alliance, to employment groups.

The initiative in organizing an IPA or a health-care alliance can come either from the insurer or from the physicians themselves. In view of insurers' traditional passivity and noncompetitiveness (and their expectation that they will be given a major role under national health insurance without changing their behavior), physicians may be the more promising source of innovation. The rewards for efficient providers who discover ways to market their efficiency would seem to be potentially large. Judging from HMO experience, efficient practice and reduced hospital use can yield 10 to 40 per cent savings,[13] no more than a fraction of which would have to be shared with consumers to induce their enrollment in the plan. Higher fees negotiated with the insurer, perhaps well above traditional fee screens, would thus be entirely compatible with lower premiums to consumers. Although competition might in time force greater sharing of savings with consumers, a well established plan with a good reputation should always be able to command a premium price and reward its physicians handsomely.

Fee-for-service physicians should recognize the advantages of consolidating their market position early, before competition and an increasing supply of physicians have their full effect. Indeed, physicians who cling too long to traditional financing mechanisms will probably find that they are increasingly dependent on government programs and that the more attractive opportunities have already been seized by others. Although there should be no doubt that the private market will always reward professional excellence, physicians who establish themselves earliest in strategic positions will have the best chance for future security.

Whereas certain types of physician-sponsored IPA's are promising vehicles for carrying out the market strategy, other types are barriers to its implementation and present severe antitrust problems. IPA's that are closely associated with organized medicine cannot be regarded as among the initiatives that are key to the market solution, even though they may have been stimulated by competitive threats from HMO's or the aggressiveness of third-party payers. Although all physician-sponsored IPA's, as joint ventures organized by competitors, must bear scrutiny under the Sherman Act's prohibition of combinations in restraint of trade, some will appear better than others. A plan of the closed-panel variety, while eliminating some competition among the participating providers, has potential competitive benefits as well and would violate the law only if it threatened to dominate the market. On the other hand, a profession-sponsored open-panel plan serving a defensive purpose for the profession as a whole raises serious antitrust concerns. Reflecting these concerns, the Federal Trade Commission has considered proposing a rule prohibiting a physician organization from controlling a plan in which more than a specified percentage of the physicians in a community participate.

The medical-society IPA is another in the profession's long line of heretofore successful attempts to accommodate pressures for change without losing control of its economic environment. Organized medicine has always

Footnotes at end of article.

adopted reforms in time to prevent itself from being overwhelmed by political developments, such as unwanted regulation, or by market forces responding to consumer demands. But profession-sponsored reforms, such as Blue Shield plans in an earlier generation and some IPA's and the Voluntary Effort in the current era, have always been designed so that the profession surrenders as little power as possible and maintains barriers to competitive developments.[6,7] Thus, their prohibition under the antitrust laws is both legally correct and an essential step in improving the prospects for private cost containment.

THE TWO MODELS COMPARED

Under current circumstances, the closed-panel model, based primarily on selection of efficient and competent providers, seems the most promising vehicle for effective cost containment. Redesigning benefit packages to shift specific questionable costs and some hard choices back to consumers is probably too complex to be workable, except for a few specific items. Of course, if the tax law were changed to make large deductibles more attractive, explicit exclusions from coverage would be applicable in only a small minority of costly cases. Until such a tax change is made, however, an approach that would rely more on providers than consumers to make judgments about the cost effectiveness of specific medical options probably holds greater promise. Thus, HMO-type strategies employing the closed-panel concept have dominated the current agenda of reformers interested in solving the cost problem through competition.

The relative attractiveness of the two models would also depend heavily on consumer preferences concerning their direct participation in medical decision-making. Whereas some persons would undoubtedly prefer to place themselves entirely in the physician's hands, others might wish a greater voice in decisions. A plan that uses large deductibles and selective benefits anticipates that the patient will make more choices (though increased participation is not necessary if the physician is trusted to address the trade-offs on the patient's behalf). Such plans would seem most appropriate for persons who wish to retain greater control over their treatment and to have the options spelled out even when that explicitness itself involves somewhat greater cost. Closed-panel plans, particularly those featuring provider prepayment and risk-bearing, allow patients to choose a physician group on the basis of its reputation and style of practice, but with less expectation that they will be allowed to influence spending decisions that concern their care.

Nevertheless, the two conceptual models for reshaping private health insurance may not be so distinct as this discussion makes them appear. On the one hand, plans that rely on provider selection to control costs embody implicit benefit limitations, in that the chosen providers' benefit-cost decisions have the practical effect of limiting coverage. On the other hand, an insurance plan with numerous explicit limitations and exclusions cannot function without excluding providers who are unwilling to adhere to prescribed administrative procedures. Thus, in either case, the plan's ability to hold the physician accountable, subject only to his freedom to pursue other alternatives, is the key. This accountability, plus the influence that consumers exercise over the plans themselves, is the essence of competition in medical care.

THE ISSUE OF FREE CHOICE

As noted earlier, either of the two general approaches that an insurer might embrace in an effort to contain costs would lead it to exclude some providers from the privilege of treating subscribers at the insurer's expense. This common feature will undoubtedly cause the medical profession some concern, given the paramount importance that it has attached to the patient's free choice of physician. In our view, however, the profession has given "free choice" undue emphasis and has used it to legitimize anticompetitive policies and practices. Perceiving a danger to the profession if its ranks should be divided into competing closed panels, the profession coined the code phrase "free choice of physician" and adroitly persuaded itself and others of this value's overriding importance. The campaign for a competitive market in health services requires that the issue of free choice be considered in proper perspective.

A consumer who chooses one closed panel over another or over a plan offering unrestricted choice is exercising a free choice. The only legitimate questions are whether the consumer is offered a reasonable range of choices and whether he has an adequate chance to change plans if he decides that he has made a mistake. An annual opportunity to change plans would seem a sufficient response to the latter question. Minimal regulation can assure that consumers are not duped into selecting utterly inappropriate or financially irresponsible plans; moreover, if they feel the need, patients can purchase care outside the plan.

The appropriate range of choice to be offered consumers in the first place is somewhat more complex. McClure has recently suggested that favorable tax treatment of employer-paid health-plan premiums should be granted only if the employer makes several plans available and makes the same cash contribution regardless of which plan an employee chooses (McClure W: personal communication). There do not seem to be any insurmountable administrative difficulties in offering multiple options. The Federal Employees Health Benefits Plan currently offers a variety of plans to federal employees, and the federal HMO act requires that each major employer offer up to two federally qualified HMO's as alternatives to any other health-benefits plan that it maintains.

Employed consumers should be in a strong position to demand and obtain a range of choice. Nevertheless, employers have perceived a single, free-choice insurance plan with comprehensive benefits to be all that their employees require. It is paradoxical that additional options involving less choice are needed to widen the consumer's true freedom of choice. By the same token, organized medicine's tactic of supporting free choice—but only when cost is not a prominent factor in the consumer's decisions—has long subverted the very principle of consumer choice that the profession has purported to uphold. This subversion of competition should be recognized, along with the tax law and other misguided governmental interventions, as a major source of present difficulties.

THE MONOPSONY PROBLEM

If insurers or other health plans can discriminate among providers on the basis of quality, price and cooperation with cost-containment efforts, they will be able to use their strategic bargaining position to deprive individual practitioners of their accustomed power to set their fees unilaterally or with regard only to the receptivity of the ignorant and (usually) insured patient. Faced with an insurer-developed fee schedule and participation agreement, a physician would have to decide whether to accede or to seek better terms elsewhere. As long as a sufficient number of buyers is competing for his services, the physician cannot complain if the competitive market places a lower value on his services than he does.

In some markets, however, a single insurer might be so dominant that it could treat providers unfairly, using excessive buying power—monopsony power, as economists call it—to drive fees below competitive levels and to dictate practices. Providers are understandably nervous about insurer dominations, and they are entitled to careful and principled attention to their concerns from antitrust enforcers and other market advocates. The antitrust laws should not be used simply to support an antidoctor crusade but should be available to combat exploitation by dominant economic interest wherever it occurs. The Supreme Court has recently held that the antitrust laws are available to test the assertion that a dominant buyer is using insurer-provider agreements to exert its monopsony power over the providers.[15] It therefore appears that neutral principles will be employed in making competition work for the benefit of providers as well as consumers.

Although the medical profession's concern about monopsony is not unreasonable, it is often exaggerated and may disguise a fear of competition itself. Fee schedules will not necessarily harm the providers who are subjected to them, because organizers of competitive plans can be expected to use liberal compensation arrangements as a way of attracting high-quality, efficient providers and to share with them the benefits of their cooperation in the cost-containment effort. More important, any plan that attempts to exploit providers will simply trigger the development of alternative plans that, by paying more, can attract the better doctors and give better care, leaving the low-cost plan at an appropriate competitive disadvantage. Freedom to join (or organize) a competing plan is thus the ultimate protection for providers, as it is for consumers. It is notable that widening the consumer's range of choice, as McClure has proposed, would also benefit the provider by breaking down the buying power of a single employee group and improving a new plan's access to the market.

CONCLUSIONS

That we cannot predict exactly what would happen in a competitive market is no argument for rejecting the market alternative. Indeed, its unpredictability is the best argument for choosing the market approach; if we knew what people would choose, we could legislate that result and be done with it. Even if one believed, as many seem to, that changing consumer incentives and restoring competitive conditions would not affect outcomes appreciably, that is not an argument against making the recommended changes. Once competitive conditions are restored, the result, whatever it is, will be the product of a functioning marketplace, something wholly lacking in the present state of affairs. The need for comprehensive regulation will then be much harder to establish, since it will not be clear why private choices should be second-guessed. The important factor is not so much the result itself—for example, the share of the gross national product dedicated to health care—as the process by which that result is reached. We must establish a process that can be trusted to reveal consumers' preferences and to adapt as those preferences change. The competitive market is more likely to meet these requirements than the political process is.

McClure's proposal that favorable tax treatment of employer-paid premiums should be conditional on the offering of several different health plans would introduce choice and encourage the development of real alternatives that embody the cost-containment technics discussed here. McClure suggests that when employees select a low-priced rather than a high-priced plan, they should be given the savings tax-free. Not only would this feature redirect private incentives and strengthen the case against regulation of the private market, but its political prospects seem bright; members of unions or other groups now accustomed to high-priced benefits would not face higher taxes under this system, as they would under other systems proposed for tax reform. Even if the tax treatment of employer contributions is not changed so that employees can capture any savings tax-free, McClure's proposed change would still be beneficial. It

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Footnotes at end of article.

deserves the support of everyone interested in heading off an expanded governmental role in private medicine.

Although continuation of tax subsidies is desirable, the existing tax subsidies for the purchase of health insurance would not automatically justify government regulation, which may still be criticized as more self-aggrandizing than socially imperative. Tax subsidies are common in the overall economy and do not, in themselves, invalidate reliance on the marketplace to allocate resources. Moreover, if government lacks the will to change tax rules to improve private incentives, it is fair to ask that it accept the consequences of that choice and not meddle further in the private market. Even with the tax laws as they are, the private market can be made to function usefully, although the equilibrium it seeks will obviously be affected by the tax subsidy. In short, heavy-handed regulation is not even a second-best strategy when compared with the market's ability to correct the defects in private insurance that are not tax-induced.

FOOTNOTES

[1] Havighurst CC: Health maintenance organizations and the market for health services. Law Contemp Probl 35:716–795, 1970.

[2] *Idem*: Speculations on the market's future in health care, Regulating Health Facilities Construction. Edited by CC Havighurst. Washington, DC, American Enterprise Institute for Public Policy Research, 1974, pp 249–269.

[3] Enthoven AC: Consumer-choice health plan. N Engl J Med 298:650–658; 709–720, 1978.

[4] McClure W: On broadening the definition of and removing regulatory barriers to a competitive health care system. J. Health Polit Policy Law 3:303–327, 1978.

[5] Feldstein M. Friedman B: Tax Subsidies, the Rational Demand for Insurance and the Health Care Crisis (Discussion Paper Number 382). Cambridge, MA, Harvard Institute for Economic Research, 1974.

[6] Goldberg LE, Greenberg W: The effect of physician-controlled health insurance: U.S. v. Oregon State Medical Society. J. Health Polit Policy Law 2:48–78, 1977.

[7] Havighurst CC: Professional restraints on innovation in health care financing. Duke Law Journal 1978, pp 303–387.

[8] Havighurst CC, Blumstein JF, Bovbjerg R: Strategies in underwriting the costs of catastrophic disease. Law Contemp Probl 40:122–195, 1976.

[9] Altman LK: Blue Cross-Blue Shield moving to curb routine hospital tests. New York Times, February 7, 1979, p A1.

[10] Feldstein M: The high cost of hospital and what to do about it. Public Interest 48:40–54, 1977.

[11] Christianson JB: Do HMOs Stimulate Beneficial Competition? Excelsior, Minnesota, Interstudy, 1978, pp 12–20.

[12] Reynolds JA: A new scheme to force you to compete for patients. Med Econ 54:23–42, March 21, 1977.

[13] Luft HS: How do health-maintenance organizations achieve their "savings"?: rhetoric and evidence. N Engl J Med 298: 1336–1343, 1978.

[14] Federal Trade Commission: Staff report on medical participation in control of Blue Shield and certain other open-panel medical prepayment plans. Washington, DC, Federal Trade Commission, 1979.

[15] Group Life & Health Ins. Co. v. Royal Drug Co., 99 S. Ct. 1067 (1979).●

INTERPRETATIVE RULINGS OF THE SELECT COMMITTEE ON ETHICS

● Mr. STEVENSON. Mr. President, on behalf of the Select Committee on Ethics I submit for the RECORD a number of the committee's interpretative rulings on the Senate Code of Official Conduct made pursuant to section 206 of Senate Resolution 110, 95th Congress. These 92 rulings answer questions raised by Members, officers, and employees of the Senate and the public regarding Senate rules 42–50, the franked mail statute and regulations, and other matters. They are presented chronologically by ruling number (beginning with No. 151) with reference to subject and reflect committee action between June 22, 1978, and March 29, 1979. The first 103 rulings were published in the CONGRESSIONAL RECORD on October 7, 1978. Rulings 104–150 were published November 9, 1978.

The committee also responded by letter to 127 inquiries not submitted here for publication. These inquiries were either too specialized to be of general assistance or responses to inquiries duplicated interpretations presented here or previously published. These committee actions number 19 with respect to franking and use of radio and television studios, 6 on letterhead, 13 on conflict of interest, 34 on foreign travel, 15 on gifts, 12 on financial disclosure, 1 on political fund activity, 5 on outside earned income, and 22 on miscellaneous topics.

Interpretative rulings by the committee may be relied upon by an individual involved in a specific transaction or activity which is indistinguishable in all its material aspects from the facts on which a ruling has been made. The committee encourages written requests for rulings on specific situations not clearly covered by the code of conduct.

The committee will continue to respond to written requests for interpretations, treat such requests confidentially, and publish its rulings with appropriate deletions to protect the privacy of individuals who seek committee guidance.

The ruling of the select committee are as follows:

INTERPRETATIVE RULING NO. 151

Date Issued: June 22, 1978.

Applicable Area: Franking.

Question considered: May a Member send out as franked mail the first page of the World Bank's "Monthly Operational Summary," a publication which lists the Bank's proposed projects and which has only recently been made available to the public?

Ruling: The proposed mailing is frankable under 39 U.S.C. 3210. The purpose and intent of the franking statute explains that the official business of Congress pertains to, among other things, "congressional representative functions generally," including "the conveying of information to the public."

In this case, it is possible to characterize the announcement of the World Bank publication accompanied by a page from the publication itself as a "publication containing items of general information," and a "matter of public service." See 3210 (2), (a) (G).

In addition, the intent of restrictions on the use of the frank is to prevent the mailing of purely personal or political matters at public expense. The proposed mailing does not appear to fall into either of those categories.

INTERPRETATIVE RULING NO. 152

Date issued: June 22, 1978.

Applicable Rule: 48.

Question considered: Is a Member a "candidate" for purposes of the franking nd studio restrictions of Rule 48 if his name is on the primary ballot but he will have no primary opposition and no write-in votes are allowed under the applicable state law?

Ruling: The restrictions of Rule 48 are intended to reduce the advantage of incumbent Senators over challengers.

Under the circumstances described, there will be no challengers in the primary election. The Committee therefore believes that the restrictions of Rule 48 are not applicable.

INTERPRETATIVE RULING NO. 153

Date issued: June 22, 1978.

Applicable Rule: 49.

Question considered: Is it permissible for an employee of the Senate to volunteer his or her services during a state, county, or municipal election campaign?

Ruling: Senate Rule 49, Political Fund Activity, prohibits officers and employees of the Senate from engaging in any fund-raising activities for any Federal office. This prohibition does not apply to the two staff assistants designated by a Senator to handle his or her campaign contributions, nor does it apply to state or local campaigns.

Although the Rule does not apply to such state or local elections, previous interpretations on the question of staff activities in campaigns for Federal office would be applicable to state or local elections as well. For example, the Committee on Rules and Administration has stated, in Senate Report 95–241 (95th Cong.), that it "is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties. . . ." In addition, the Committee has stated, in Interpretative Ruling No. 3, dated May 5, 1977, that ". . . Senators should encourage staff to remove themselves from the payroll for periods during which they expect to be heavily involved in campaign activities."

The Committee believes that these statements are applicable to employees of individual Senators, staff of Senate committees, and employees working for officers of the Senate.

INTERPRETATIVE RULING NO. 154

Date issued: June 22, 1978.

Applicable Rules: 48, 49.

Questions considered: (1) Is a Senator whose name appears on a primary ballot considered a "candidate" for purposes of Rule 48 restrictions when the Senator faces no announced opposition but state law authorizes write-in candidates?

(2) May a part-time staff assistant to a Senator, who also works half-time for the Senator's reelection campaign committee, engage in fund-raising activities for the campaign committee?

(3) Is it possible for a staff assistant, while engaged in Senate duties, to become involved to a minimal degree with a campaign-related activity without violating the Code of Official Conduct?

(4) Is it permissible for a staff assistant on the Senate payroll to engage in campaign-related activities during other than normal Senate office hours?

Ruling: (1) The prohibitions imposed by Rule 48 on the use of the frank in mass mailings and on the use of the Senate Recording Studio were intended to restrict the advantages which incumbent Senators might have during a reelection campaign. The Committee previously ruled (Interpretative Rulings No. 137, dated May 24, 1978 and No. 152, dated June 22, 1978) that Senators who do not face a primary election or whose names appear on a primary ballot unopposed, and where no write-in candidates are authorized, are not "candidates" for the purposes of Rule 48. However, when a Senator's name is listed on a primary ballot and state law specifically authorizes write-in candidates, there is a possibility for a con-

tested primary election. As such, the Senator would be considered a "candidate".

(2) A staff assistant, whether full or part-time, may not engage in any fund-raising activities on behalf of a Senator's campaign committee, unless that staff assistant had been previously designated by the Senator under Rule 49 as one of the two staff assistants to the Senator who may handle his or her campaign contributions.

(3) As to the possibility of minimal involvement by a staff assistant with campaign-related business, the Select Committee believes that in a Senator's re-election campaign there might be some inadvertent and minimal overlap between the duties of a Senator's staff with respect to the Senator's representational function and his reelection campaign. However, a Senator has the responsibility to insure that such an overlap is of a de minimus nature and that staff duties do not conflict with campaign responsibilities.

(4) As to the ability of a staff assistant to engage in campaign activities during other than Senate working hours, the Committee on Rules and Administration has said in Senate Report 95-241 (95th Cong.), which accompanied Senate Resolution 188, that, except for the prohibitions of Rule 49 with respect to the handling of campaign funds, it "is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties, and the Committee does not feel there should be such proscriptions. Furthermore, it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties. . . ."

INTERPRETATIVE RULING NO. 155

Date issued: June 28, 1978.

Applicable Rule: 45.

Question considered: May a Senate employee run for state office while remaining on a Member's staff? No campaigning will be done during the employee's regular working hours.

Ruling: Paragraph 3 of Rule 45 on Conflict of Interest places the responsibility upon the Member as supervisor to take such action as he or she considers necessary for the avoidance of conflict of interest or interference with Senate duties.

The Ethics Committee cannot predict whether in fact the outside activity will conflict with Senate duties or will result in a conflict of interest in connection with a particular issue. The Committee suggests that the Member monitor the situation and consider such reductions in Senate duties and compensation as may be appropriate in the future.

INTERPRETATIVE RULING NO. 156

Date issued: June 28, 1978.

Applicable Rule and Area: 43, Foreign Gifts and Decorations Act.

Questions considered: (1) May a Senate employee accept travel-related expenses and an honorarium from a foreign organization in connection with a seminar on the problems of unemployment?

(2) May that employee accept from a foreign government expenses related to a fishing trip on the weekend immediately following the seminar?

Ruling: This ruling is not precedential.

The travel-related expenses in connection with the seminar would be allowed under paragraph 4 of Rule 43 concerning educational programs paid for by foreign organizations. The honorarium, given in consideration for the employee's making the keynote speech and participating in the program, is not prohibited under Rule 43 or the Foreign Gifts and Decorations Act since it is not a "gift."

However, the acceptance of an invitation to a weekend fishing trip, at the expense of a foreign government or one acting as its agent, would be a gift which would not be permissible under paragraph 4 of Rule 43, since the principal purpose of the trip would not be educational. The Foreign Gifts and Decorations Act would also prohibit acceptance of a gift of more than $100 from a foreign government or one acting as its agent unless refusal would "likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States."

INTERPRETATIVE RULING NO. 157

Date issued: June 30, 1978.

Applicable Rules: 42 and 43.

Question considered: Is it permissible for a Senator to accept, in connection with an appearance related to his Senate duties, air transportation to be provided by the Federal Government and other related expenses of travel which are to be provided by a state government? Would the Senator be required to report the receipt of any of these items?

Ruling: In connection with an inspection trip to review areas of a state which are the subject of legislation pending before the Senate, a Senator has arranged that all of the necessary air transportation be provided by the Department of Defense, while the cost of all of the other expenses of the trip will be provided by the host state government. Rule 43, Gifts, excludes from the definition of a gift the payment of the necessary expenses for the performance of services for an organization by a Senator incident to the official duties of his office, including transportation, food, and lodging, if those expenses are paid by the organization for which the services are performed. In this situation, the Committee ruled that the acceptance of the payment of necessary expenses to be provided by the state government would not be prohibited by Rule 43. The receipt of such payment for necessary expenses, whether provided by the state or by an agency of the Federal Government, need not be reported under Rule 42, Public Financial Disclosure.

INTERPRETATIVE RULING NO. 158

Dated issued: July 11, 1978.

Applicable Rule: 42.

Question considered: An individual sought party endorsement for nomination for election to the Senate. He stated that his campaign was directed solely to potential convention delegates, and he took no formal legal steps to file for election. Is he required to file a public financial disclosure statement as a "candidate" under Rule 42?

Ruling: Senate Rule 42 requires an individual who is a candidate to file a Public Financial Disclosure Report, and defines a candidate as an individual who has (1) taken the action necessary under state law to qualify for nomination for election, or for election, or has (2) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to the Senate. The terms "contribution" and "expenditure" are defined for purposes of the Rule as those terms are defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

The individual states that he did not take the steps necessary under state law to qualify for nomination for election, or election. However, the question remains whether he received any political contributions or made expenditures within the meaning of the Federal Election Campaign Act. If he did so, it is necessary to complete and file the Disclosure Report.

INTERPRETATIVE RULING NO. 159

Date issued: July 11, 1978.

Applicable Rule: 45.

Question considered: May a Senate employee accept Federal funds from the Department of Interior to restore certain historic property owned by him?

The employee does not work for nor does his supervisor serve on any subcommittee having oversight of the Department of Interior.

Ruling: Rule 45 of the Senate Code of Official Conduct relates to conflicts of interest and provides that no employee may receive any compensation (defined by the Special Committee which reported the Code as "financial benefit") which occurs by virtue of influence improperly exerted from the employee's position.

The Committee is of the opinion that no evidence of improper conduct reflecting upon the Senate is suggested in this case. However, under Rule 45 it is the responsibility of the employee's supervisor to ensure that no conflict of interest arises.

The Committee is advised that the Internal Revenue Service has under consideration the question of whether this type of transaction constitutes a taxable sale or exchange or a gift for Federal income tax purposes.

INTERPRETATIVE RULING NO. 160

Date issued: July 13, 1978.

Applicable Rule: 48.

Question considered: Is it consistent with Senate Rule 48 for a Senator to arrange to purchase from a non-Senate organization a copy of its membership or mailing list for use by the Senator in a mass mailing under the frank, where the list will be prepared by the non-Senate organization on mailing address labels which will then be affixed to the franked envelopes by the Senate Service Department?

Ruling: Rule 48, paragraph 2, provides that only official funds of the Senate may be used to prepare any mass mailing material to be sent out under the frank. The Committee has previously ruled* that the preparation of a mass mailing includes the preparation and affixing of mailing address labels.

The Committee has agreed that in order to meet the requirement of paragraph 2 of Rule 48, a Senator who desires to use the mailing list of an outside organization must reimburse that organization for the costs associated with his obtaining such a list. The Committee has previously ruled** that the 10 percent discretionary allowance may be used to purchase mailing lists for use in an official mailing.

To avoid the possibility of a prohibited loan of the frank, the affixing to franked envelopes of the mailing labels obtained from a non-Senate organization must be performed by the Service Department.

INTERPRETATIVE RULING NO. 161

Date issued: July 28, 1978.

Applicable Rule: 46, Federal Election Campaign and Area Act.

Question considered: May excess campaign funds be used to defray the travel expenses of a Member's wife in order that she might attend events in connection with the Member's official duties?

Ruling: The Federal Election Campaign Act of 1971 (specifically, 2 U.S.C. 439a) and Senate Rule 46 allow a Member to defray from his excess campaign funds expenses in-

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*See Interpretative Ruling No. 68, dated September 27, 1977.

**See Interpretative Ruling No. 134, dated May 18, 1978.

curred in connection with official duties. The Ethics Committee considers a spouse's travel expenses to be in connection with the Member's official duties as long as the purpose of the function to which the expenses are incidental is not predominantly social or for personal pleasure.

It should be noted that the regulations of the Federal Election Commission require semi-annual reporting of the use of such funds for official expenses.

The Ethics Committee expresses no opinion as to the tax consequences of using political committee funds to defray official expenses.

INTERPRETATIVE RULING No. 162

Date issued: August 3, 1978.

Applicable Rule: 43.

Question considered: May a Member accept a gift of the use of an apartment from a friend if the apartment is owned by the friend's employer, an organization having a direct interest in legislation? In determining the value of the gift, may the Member divide the total value by the number of members of his family who will be using the apartment?

Ruling: Rule 43 prohibits the acceptance of gifts worth over $100 during a calander year, including gifts of lodging, from organizations having a direct interest in legislation before the Congress. Although the use of an apartment has been offered to the Member by a friend, the apartment is owned by the friend's employer, who maintains a separate, segregated fund for political purposes and is thereby a "prohibited source" under Rule 43.

The Committee has determined in prior rulings* that the "personal hospitality" exception to the definition of "gift" applies only to food, lodging and entertainment enjoyed while a guest in the host's personal residence or on premises leased by the host which are not owned by the host's employer.

Thus, this Member may not accept the offer to use the apartment unless its use is valued at $100 or less.

In determining the value of the use of the apartment, the Member may not divide the amount by the number of his family members who will be using the apartment also.

INTERPRETATIVE RULING No. 163

Date issued: August 3, 1978.

Applicable Rules: 42**, 44***

Question considered: May a Senate employee accept an honorarium for presenting a paper and speaking at a seminar sponsored by a state university, when the funds for the seminar were derived in part from a federal grant?

Ruling: A university is sponsoring a seminar and has asked a Senate employee to present a paper on an issue related to his Senate duties.

Although some of the funding for the seminar was provided to the university by an agency of the Federal government, the university is the sponsor and payor of the honorarium. Therefore no Senate rule would preclude the acceptance of an honorarium from the university.

The Select Committee reminded the employee that if required to file a financial disclosure statement, paragraph 2(a)(2) of Rule 42 requires the disclosure of the source, amount, and date of each such honorarium.

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*See, for example, Interpretative Ruling No. 76, dated October 5, 1977.

**Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

***S. Res. 93 changed the effective date of Rule 44 to January 1, 1983.

INTERPRETATIVE RULING No. 164

Date issued: August 4, 1978.

Applicable Rule: 45.

Question considered: May an employee of a Senate committee purchase a weekly newspaper as an investment?

Ruling: The Committee understands that the editorial operation of the paper will remain in the control of the editor and that as publisher, the individual will receive no compensation and no return on the investment until such time as the paper's history of yearly losses is reversed.

Nothing in Rule 45, Conflict of Interest, precludes the proposed purchase of the newspaper. The Committee notes, however, that at such time as the Senate staff member begins to receive compensation for the investment, paragraph 3 of Rule 45 requires that the nature of this activity be reported to the employee's supervisor on an annual basis.

INTERPRETATIVE RULING No. 165

Date issued: August 4, 1978.

Applicable Area: Franking.

Question considered: May the mailing frank be used by a Senator to mail invitations for participation and informational matter concerning a energy fair, co-sponsored by the Senator, to potential exhibitors, speakers, and other interested persons?

Ruling: The Senator together with several agencies of the Federal Government and a state university is sponsoring a no-profit educational activity dealing with alternative energy technologies and strategies. The Senator proposes to use his mailing frank to write various individuals and organizations to participate. In addition, he proposes to include in the mailing informational matter put together by his office. The preparation and actual mailing will be by the Senator's office.

The Committee previously ruled in Interpretative Ruling No. 72, dated September 29, 1977, that the laws and regulations governing the use of the mailing frank do not preclude the preparation and mailing by the Senate Service Department of matter publicizing a small business conference which is cosponsored by a Senator, several agencies of the Federal Government, and a state university.

The Committee ruled that this prior interpretation would authorize the use of a Senator's mailing frank to mail the invitations and information proposed in this factual situation.

INTERPRETATIVE RULING No. 166

Date issued: August 10, 1978.

Applicable Rule: 45.

Question considered: Does Rule 45, paragraph 6, prohibit an employee who is compensated in excess of $25,000 per year from selling real estate on week-ends under an arrangement whereby his associate broker's license is held by a real estate company?

Ruling 45, paragraph 6, prohibits an employee of the Senate who is compensated at a rate in excess of $25,000 per year from affiliating with a "firm, partnership, association or corporation for the purpose of providing professional services for compensation." The legislative history of this provision indicates that the sale of real estate was intended to be included in the prohibition. Thus, the activity in question would not be permissible.

INTERPRETATIVE RULING No. 167

Date issued: August 10, 1978.

Applicable Rule and Area: 43, Foreign Gifts & Decorations Act.

Question considered: May a staff member attend the inauguration of a foreign president-elect as the guest of that head of state's political party?

Ruling: Rule 43 of the Senate Code of Conduct prohibits the acceptance of gifts valued in excess of $100 from, among other sources, foreign political parties. While Congress has given specific consent to travel involving an international culture exchange and certain travel taking place entirely outside the United States, we do not find that the proposed travel fits within these Congressionally recognized exceptions. Therefore, the Committee believes that the offer should be declined.

INTERPRETATIVE RULING No. 168

Date Issued: August 16, 1978.

Applicable Rule and Area: 43, Foreign Gifts and Decorations Act.

Questions considered: May a Senator accept a gift of stamp reproductions from a foreign government? How is such a gift to be valued for acceptance and possible reporting purposes?

Ruling: The Foreign Gifts and Decorations Act (5 U.S.C. 7342) permits Members, officers, and employees of the Senate to accept tangible gifts from a foreign government with a retail value in the United States at the time of acceptance of $100 or less if the gift is tendered and received as a souvenir or mark of courtesy. Under the Act, procedures for obtaining an appraisal of gifts so received are to be established by the Select Committee as the employing agency for the Senate.*

The Committee is currently drafting regulations implementing the provisions of the Act. Pending enactment of these regulations, the Committee sought estimates of the value of the gift from the embassy of the donor government and a domestic retail dealer in coins and stamps. In their judgment the gift in question was worth substantially below $100. Accordingly, the Senator would be permitted to retain the gift and would not be subject to the reporting or depository requirements imposed under the Act. However, gifts from a foreign government valued at $35 or more must be aggregated for the purposes of the $100 calendar year limitation imposed under Senate Rule 43.

INTERPRETATIVE RULING No. 169

Date issued: August 18, 1978.

Applicable Area: Advisory Opinion on Use of Letterhead.

Question considered: Whether the use of the words "United States Senate" on a Senator's personal stationery or on a "Senategram" (a facsimile of a mailgram), when loaned to a third party for use in a campaign fund-raising effort, is consistent with the Committee's Advisory Opinion on use of a Senator's letterhead Whether the use of the words "Senator John Doe" on a letterhead, when loaned to a third party for use in a campaign fund-raising effort would be consistent with that Advisory Opinion?

Ruling: The Committee agreed that it would be inconsistent with the Advisory Opinion for a Senator to allow a non-Senate group or organization to make use of the Senator's letterhead which included the words "United States Senate." The Committee agreed that it is the use of the words rather than the type style employed which is regulated by the Advisory Opinion. Thus, a Senator's loan of letterhead with the words "United States Senate" would be prohibited no matter what type style or lettering was chosen by the organization.

The Committee concluded that a Senator is not prohibited by the Advisory Opinion

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*Public Law 95-426 (October 7, 1978), which amended the F.G.D.A., gave the Secretary of the Senate the responsibility for establishing gift appraisal procedures.

from allowing a non-Senate organization to use letterhead identifying the Senator as "Senator John Doe."

INTERPRETATIVE RULING No. 170

Date issued: September 14, 1978.

Applicable Rule: 45.

Question considered: May a Senator employ a member of his staff in a private capacity to do research and perform editorial work in connection with a book the Member is preparing?

The employee would continue to perform services as a regular Senate employee commensurate with the Senate salary received and any work performed in connection with the book will be undertaken in non-Senate working hours. The book will not be offered for sale or otherwise put in the public domain until after the conclusion of all elections during any year in which the Member is a candidate.

Ruling: The Code of Official Conduct does not preclude such an arrangement; however, paragraph 3 of Senate Rule 45, Conflict of Interest, places the responsibility on the Member for taking such action as is necessary for the avoidance of a conflict of interest or interference with Senate duties.

Note: Also, see Interpretative Rulings No. 56, dated September 7, 1977, and No. 128, dated May 12, 1978.

INTERPRETATIVE RULING No. 171

Date issued: September 14, 1978.

Applicable rule: 45.

Question considered: May a Member aid the passage of certain tax legislation by sending letters that set forth arguments in support of the legislation if the Member's spouse practices a profession which would be benefitted by the passage of the legislation in question?

Ruling: Rule 45, paragraph 4, provides that no Member shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further the precuniary interest of his immediate family. However, the legislative history makes clear that in the case of legislation which would have a broad, general impact, such as most tax legislation, the prohibitions of paragraph 4 would not apply. Consequently, the Committee believes that the Member's support of the legislation in question is not in violation of Rule 45.

INTERPRETATIVE RULING No. 172

Date issued: September 19, 1978.

Applicable rule: 43.

Question considered: May a Senator and one or more of his employees accept, within the provision of Rule 43, the offer of a national committee of a major political party to provide the Senator and the employees with the expenses of travel in connection with a nationwide series of appearances by the Senator to promote a particular piece of legislation which was written and sponsored by the Senator?

Ruling: This ruling is not precedential.

Rule 43 excludes from the definition of a "gift" the payment of the necessary expenses, including travel, food, and lodging, in the performance of services for an organization by a Member, officer, or employee of the Senate, incident to his or her official duties, if those expenses are paid by the organization for which the services are performed. The Committee believes that a Senator's participation in a nation-wide series of speeches, press conferences and other events to promote a particular piece of legislation, which was authored and sponsored by the Senator, would be within the official duties of the Senator and his or her staff.

INTERPRETIVE RULING No. 173

Date issued: September 21, 1978.

Applicable rule: 45.

Question considered: Is a former employee on a Senator's personal staff who left Senate employment before April 1, 1978, but who later took a position on the personal staff of another Member which he left subsequent to April 1, 1978, subject to the prohibitions against lobbying imposed under Rule 45?

Ruling: Paragraph 10 of Rule 45 provides, in pertinent part, that:

"If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position."

As the individual left the staff of the first Member prior to April 1, 1978, the effective date of Section 10 of Rule 45, he would not be subject to the prohibitions of that section with respect to that Member or his staff. However, if the individual becomes a registered lobbyist or is employed or retained by a company which is a registered lobbyist for the purpose of influencing legislation, the section would apply to any Member for whom he worked, and to the staff of any Member or to the Members or the staff of any committee for which he worked, in any position he left after April 1, 1978.

INTERPRETATIVE RULING No. 174

Date issued: September 21, 1978.

Applicable rule: 44*.

Questions considered:

(1) For purposes of the Rule 44 limitations upon the acceptance of honoraria, what is considered to be the date of acceptance?

(2) Does Rule 44's $1,000 limit per appearance made by a Senator apply to an appearance made in 1978 for which payment is not received until 1979?

Rulings:

(1) Rule 44 of the Code of Official Conduct, which takes effect on January 1, 1979, limits the amount of outside earned income, including honoraria, which a Member may earn in a calendar year. For purposes of applying the limit on outside earned income (as well as reporting the receipt of honoraria under Rule 42) the Select Committee on Ethics considers time of "receipt" to occur when payment is received. This is consistent with 2 U.S.C. 4411, as amended by Public Law 95-216 (effective December 20, 1977).

(2) Rule 44 limits a Member's receipt of honoraria to $1,000 per appearance, speech, or article, effective January 1, 1979.* In fairness to those Members who make an appearance in 1978 for which payment may not be received until 1979, the $2,000 limit in effect for 1978 (2 U.S.C. 4411) would be deemed applicable. However, these amounts would be charged against the 15 percent limit on outside earned income, in keeping with the rule cited in the paragraph above.

INTERPRETATIVE RULING No. 175

Date issued: September 21, 1978.

Applicable area: Code of Official Conduct.

Question considered: May a Senator donate a copy of an art book prepared by the Architect of the Capitol to political party officials for fund-raising purposes?

Ruling: A Member's donation of property, given to him in his capacity as a Member of the Senate, to another individual is not prohibited by any specific provision of the Code of Conduct, nor does it appear to violate any regulations of the Joint Committee on Printing or the Senate Rules Committee. The Committee is concerned, nevertheless, that the use of such public property to raise funds for a political party could reflect discredit upon the Senate.

That concern is in the Committee's judgment an adequate basis upon which to decline to approve the practice with respect to donations of public property to groups organized for profit and political organizations.

INTERPRETATIVE RULING No. 176

Date issued: September 22, 1978.

Applicable rule: 43.

Questions considered:

(1) May a Senator accept a life membership in an association which is registered under the Federal Regulation of Lobbying Act of 1946?

(2) May a Senator accept an honorary membership in a national hall of fame?

Ruling:

(1) Because the association is an organization registered under the Federal Regulation of Lobbying Act, it is therefore deemed to have a direct interest in legislation before the Congress for the purpose of the prohibition on gifts having an aggregate value exceeding $100, as set forth in Senate Rule 43. However, since the sole financial benefit which would accrue to the Senator would be the value of the association's dues, which are $15 per year, the Committee is of the opinion that the acceptance of a life membership in the organization would not be improper.

(2) The national hall of fame is not a registered lobbyist nor does it maintain a separate segregated fund for political purposes. Thus, the prohibitions of Rule 43 would not apply to an honorary membership in this organization. The Committee has further determined that the acceptance of the honorary membership would not be improper.

INTERPRETATIVE RULING No. 177

Date issued: September 26, 1978.

Applicable rule: 45

Question considered: May an officer or employee of the Senate be retained on the Senate payroll for a period of time equal to his or her accrued annual leave after the officer or employee has terminated his or her Senate duties and has accepted a new position outside the Senate?

Ruling: In some Senate offices, it is customary that when an employee leaves the Senate to accept new employment and that individual has any accrued annual leave, the individual is retained on the Senate payroll for a period of time equal to the unused leave, despite the fact that the individual has ceased to perform his or her Senate duties and may in fact have already commenced the new employment.

In such a case, paragraph 3 of Rule 45 on outside employment for compensation, directs the employee to report to his or her supervisor (defined in paragraph 11 of Rule 45) the nature of such employment and that it then becomes the responsibility of the supervisor to take such action as is necessary to avoid any conflict of interest.

When the employee notifies his or her supervisor and the supervisor takes any necessary action to avoid a conflict of interest, Rule 45 would not prohibit retaining an employee on the Senate payroll for a period equal to his or her accrued annual leave.

INTERPRETATIVE RULING No. 178

Date issued: September 29, 1978.

Applicable areas: Foreign Gifts and Dec-

*The Senate in S. Res. 93 (96th Cong.) on March 8, 1979 delayed the effective date of Rule 44 until January 1, 1983.

orations Act and Mutual Educational and Cultural Exchange Act.

Question considered: May a Senate employee accept an invitation to participate in a seminar where the sponsor, a foreign government, has offered to provide the necessary expenses of travel, including transportation, food and lodging?

Ruling: Article I, Section 9, Clause 8 of the Constitution prohibits employees of the Federal Government, absent the consent of Congress, from accepting any gift, to include the expenses of foreign travel, from any foreign government. The Congress has consented to the acceptance of such gifts in two specific instances, the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2458(a)) and the Foreign Gifts and Decorations Act (5 U.S.C. 7342). The Committee ruled that the proposed arrangement would not fit within either of these two narrow exceptions and therefore, the constitutional prohibition would prevent acceptance of the offer.

INTERPRETATIVE RULING NO. 179

Date issued: September 29, 1978.

Applicable rules: 42*, 43.

Question considered: Under what circumstances may a Senator accept an invitation from a personal friend to be a weekend guest at a private club? Do the details of the invitation have to be reported by the Senator?

Ruling: In this instance, the invitation was extended to a Senator by an individual who was the chief executive officer of a corporation. Neither the officer nor the corporation maintained a separate, segregated fund for political purposes nor were either registered under the Federal Regulation of Lobbying Act of 1946 and therefore neither were "prohibited sources" within the meaning of paragraph 1(b) of Rule 43. Therefore the Senator could accept the gift of a weekend at the club.

Though the gift of the expenses for the weekend could be accepted, Rule 42, Public Financial Disclosure, requires the Senator to disclose the source, a brief description of, and the value of any gifts of transportation, food, lodging or entertainment aggregating $250 or more provided during a calendar year by any one source.

INTERPRETATIVE RULING NO. 180

Date issued: September 29, 1978.

Applicable area: Franking.

Question considered: May a Senator supply franked labels to the Library of Congress for the purpose of shipping surplus books to an educational institution in the Senator's home state? The Joint Committee on the Library has established a policy which requires these books to be shipped directly to the institution, and the Library of Congress would be unable to pay the shipping charges involved in the event the books are not sent under the Senator's frank.

Ruling: Section 3215 of Title 39 of the United States Code states:

"A person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association. This section does not apply to any standing, select, special, or joint committee of the Senate, House of Representatives, or Congress, composed of Members of Congress, or to the Democratic caucus or the Republican conference of the House of Representatives or the Senate."

The regulations governing the use of the frank state that the use of the frank is a privilege which a Senator must view as a personal responsibility and which must be vigilantly safeguarded against abuse. While the specific exceptions set forth in the statutory prohibition against the loan of the frank do not cover the situation described, a review of the legislative history indicates that Congress clearly intended to permit books from the Library of Congress to be sent out under the frank to libraries and other persons.

Given the circumstances outlined above, it is the Committee's opinion that it would be permissible for a Senator to delegate to a member of his staff the responsibility for ensuring that his frank is used for the purpose of shipping the books from the Library of Congress to the educational institution involved in such a manner as to avoid any misuse, such as the diversion of franked labels, which could constitute an improper loan of the frank.

INTERPRETATIVE RULING NO. 181

Date issued: September 29, 1978.

Applicable rules: 44*, 45.

Question considered: May a full-time staff member conduct academic research for a non-profit foundation at a university? The staff member would receive a grant of approximately $12,000 from the foundation for the research which he intends to conduct during the evenings and on weekends.

Ruling: Rule 45 of the Senate Code of Official Conduct relates to conflict of interest, and paragraph 2 of that rule prohibits employees from engaging in outside activity for compensation which is inconsistent or in conflict with official duties.

Under Rule 45, paragraph 3, it is the responsibility of the staff member's supervisor to make the initial determination that the outside activity presents no conflict of interest and to take such action as is necessary for the avoidance of a conflict or interference with Senate duties. Based upon the evidence submitted, the Select Committee is of the opinion that no conflict of interest is suggested in this case.

The Committee notes that should the staff member be compensated at an annual rate in excess of $35,000, Rule 44 on outside earned income, which becomes effective on January 1, 1979, would be applicable.

INTERPRETATIVE RULING NO. 182

Date issued: September 29, 1978.

Applicable rule: 49.

Question considered: Does Rule 49 prohibit a Senate employee from handling funds to be raised after the general election by a state party organization for the purpose of paying off the campaign debts incurred by the party's candidates for federal, state and local offices?

Ruling: Rule 49 prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for the nomination or election of any individual for any federal office. This prohibition does not apply to a Senate employee who is one of the two persons designated by his supervising Senator to perform any of those functions on the Senator's behalf.**

The prohibition in Rule 49 is not applicable, however, to participation by Senate employees in state and local election activities. If those activities, and a Senate employee's participation in the activities, were to be clearly divisible from any of the organization's activities performed in connection with any federal election, the employee would be permitted to participate in fundraising activities related to state and local elections. However, if the proposed activities would involve the raising of a common fund to discharge the party's political debts on behalf of all of its candidates, whether federal, state or local, the Committee believes that, even if the proceeds of the fundraising activities were to be apportioned between federal candidates and state and local candidates, a Senate employee's participation in the fundraising activities would be prohibited under Rule 49.

INTERPRETATIVE RULING NO. 183

Date issued: September 29, 1978.

Applicable rules: 45, 46, 49.

Question considered: Does a Senator's utilization of the services of a student intern whose living and travel expenses are to be paid by a corporation during the three months of the intern program constitute an impermissible defrayal of official expenses under Rule 46?

Ruling: The utilization by a Member of the services of interns who are compensated, i.e., receive living and travel expenses from non-Senate funds, raises a question under Rule 46 which permits the defrayal of office expenses from only four sources. While the Senate Code of Official Conduct contains no specific exception to Rule 46 for expenses in connection with internship programs. Rule 49 does implicitly approve of the practice of utilizing the personal services of individuals who are not compensated by the Senate. In essence, Rule 49 calls for these individuals to comply with the Code of Conduct, and, in certain cases, requires their supervisors to file quarterly reports with the Select Committee.

In light of the fact that Rule 49 would be rendered meaningless were a Member not permitted to utilize the services of an individual compensated with non-Senate funds, the Committee has determined that the sponsorship of student intern programs is not an impermissible defrayal of official expenses under Rule 46.

It should be noted that the utilization of the services of an intern compensated by non-Senate funds could give rise to a conflict of interest question under Rule 45 should the intern be given an assignment with a Senate Committee having primary legislative jurisdiction over the activities of the intern's sponsor or over any agency of the Government charged with regulating the sponsor's activities.

INTERPRETATIVE RULING NO. 184

Date issued: October 6, 1978.

Applicable rule: 46.

Question considered: The Committee was asked to reconsider its ruling of July 18, 1977, which held that under Rule 46 a Senator could defray official expenses with funds from the Senator's own political committee. The request to reconsider took issue with the previous ruling's implication that the funds of other political committees could not be used to defray official expenses.

Ruling: In April 1978, the Committee held public hearings on Rule 46 and subsequently in August 1978 a majority of its Members agreed to propose an amendment to Rule 46 to permit the defrayal of official expenses from the funds of political party committees (national, state, and senatorial) as well as from the funds of a Senator's principal campaign committee.

The Select Committee submitted the proposed amendment and its accompanying report on October 11, 1978, as S. Res. 584 and Report No. 95–1320. The resolution was referred to the Committee on Rules and Administration.

NOTE: S. Res. 584 was not considered in the 95th Congress. On January 25, 1979, the

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*Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

*S. Res. 93 changed the effective date of Rule 44 to January 1, 1983.

**See also Interpretative Ruling No. 32 (dated June 17, 1977) and No. 45 (dated July 20, 1977).

Select Committee again submitted the proposed amendment and its accompanying report as S. Res. 25 and Report No. 96–1. The resolution was referred to the Committee on Rules and Administration.

INTERPRETATIVE RULING No. 185

Date issued: October 11, 1978.

Applicable area: Franking.

Question considered: May a Member enclose in correspondence with constituents and others a subscription form to a magazine published by a state game and parks commission?

Ruling: Section 3210(a)(1) of Title 39 of the United States Code states that the franking privilege is to be used "to assist and expedite the conduct of the official business, activities and duties of the Congress of the United States." Although Section 3210(a)(3)(A) authorizes the use of the frank for "mail matter . . . regarding programs, decisions, and other related matters of public concern or public service," such matters are specifically limited by the Regulations Governing the Use of the Mailing Frank to those relating principally to the Federal Government.

Since the publication itself appears to relate principally to recreational activities within the state and the subscription flyer thus relates to matters of state and local concern, as opposed to those relating principally to the Federal Government, it would not be appropriate to include the flyer in a franked mailing.

INTERPRETATIVE RULING No. 186

Date issued: October 11, 1978.

Applicable rule: 44.*

Question considered: Do the honorarium limits provided in Rule 44 apply to honoraria payable to a person which are paid instead at the person's request to a charitable organization selected by the payor from a list of five or more charitable organizations provided by that person?

Ruling: Under those circumstances, consistent with 2 U.S.C. 4481 (as amended in December, 1977), the Committee would not consider an honorarium to have been "accepted" for the purposes of Rule 44.2(c) (effective January 1, 1979). Consequently, the amounts donated would not count toward the $25,000 limitation in that paragraph.

INTERPRETATIVE RULING No. 187

Date issued: October 11, 1978.

Applicable rule: 42, **43.

Question considered: May a Senator accept from a friend payment for the cost of refreshments to be consumed at a staff "going away" party?

Ruling: Rule 43 of the Senate Code of Official Conduct prohibits the acceptance of gifts worth over $100 in a calendar year by a member from "prohibited sources," including registered lobbyists or persons employed by them for lobbying purposes, as well as the officers, directors or lobbyists of an organization that maintains a separate, segregated political fund. As long as the donor does not fit within those categories (and he is not a foreign national), the Senator is not prohibited by Rule 43 from accepting a gift from him having a value in excess of $100.

If the gift is made to the Senator by a non-prohibited source, he or she would be required to disclose its acceptance under Rule 42.2(b), should the value exceed $250.

*S. Res. 93 changed the effective date of Rule 44 to January 1, 1983.

**Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

INTERPRETATIVE RULING No. 188

Date issued: October 11, 1978.

Applicable rules: 43, 45.

Question considered: Would it be improper for an officer or employee of the Senate to leave the Senate payroll for a period of time in order to accept an invitation to participate in an extended seminar being offered by the organization with an interest in legislation pending before the Congress?

Ruling: In this situation, the non-Senate organization has invited an employee on the personal staff of a Member to participate in an extended seminar concerning the business activities and interests of the organization. The organization has stipulated that Senate staff participating in the seminar must agree to leave the Senate payroll for the duration of the seminar. While participating in the seminar, the organization will compensate the staffer at a rate equal to his or her Senate salary and will provide room and board. At the conclusion of the seminar, the employee will return to the Senate payroll.

The Committee ruled that if the arrangements between the non-Senate organization and the employee constituted a bona fide, non-governmental, employer-employee relationship, i.e., a relationship in which the employee would perform a service commensurate with the compensation to be provided by the organization, then the arrangement would not constitute a prohibited gift under Rule 43.

The Committee further held that while the arrangement did not appear to violate any specific provision of Rule 45, Conflicts of Interest, paragraph 3 of the Rule directs that the employee must inform his supervisor of the existence of any outside employment for compensation when such employment commences and the nature of that employment. The paragraph then directs that the supervisor must take such action as is necessary for the avoidance of conflict of interest or interference with the employee's duties to the Senate.

INTERPRETATIVE RULING No. 189

Date issued: October 11, 1978.

Applicable rules: 42*, 43, 44**.

Question considered: May a Senate employee, who is taking annual leave to speak at a seminar in London not in connection with Senate duties, accept an honorarium and travel expenses from the two British companies that are sponsoring the seminar?

Ruling: Rule 43 of the Senate Code of Official Conduct prohibits the acceptance of gifts from foreign nationals. However, the definition of "gift" does not include payments for which consideration of equal or greater value is received. The Senate employee's participation, according to the invitation from the seminar's sponsor, would seem to be consideration for the travel expenses and honorarium which the sponsors intended to pay. Under these circumstances, the staffer's acceptance of the travel expenses and honorarium in question would not be prohibited by Rule 43.

INTERPRETATIVE RULING No. 190

Date issued: October 11, 1978.

Applicable rule: 44***.

Question considered: Would proceeds from the sale of a Member's phonograph album be exempt from the limitation on earned income imposed under Rule 44?

Ruling: Paragraph 3(b) of Rule 44 excludes from the definition of "outside earned income" royalties from books and proceeds from the sale of creative or artistic works. The legislative history of Rule 44 indicates that royalties from books were exempted on the basis that they are not directly or necessarily related to actual personal services rendered, and because royalty income is, in effect, a return on a prior investment of time and energy which is largely beyond the direct control of the Member.

The provision relating to proceeds from creative or artistic works (other than books) does not specifically exempt income received from the sale of less than all the rights in a property (e.g., an exclusive distribution or marketing arrangement). However, the legislative history of the provision supports the inference that income generated by the sale of creative or artistic works was intended to be treated in the same manner as royalties generated by the publication of a book. Accordingly, the Committee is of the opinion that proceeds received in connection with the sale of a phonograph album would be exempt from the limitations on outside earned income imposed under Rule 44.

*Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

**S. Res. 93 changed the effective date of Rule 44 to January 1, 1983.

***S. Res. 93 changed the effective date of Rule 44 to January 1, 1983.

INTERPRETATIVE RULING No. 191

Date issued: October 16, 1978.

Applicable area: Franking.

Question considered: May a Senator send out a franked mass mailing which contains material reprinted from the CONGRESSIONAL RECORD, when the reprint has been reset to make the material more legible?

Ruling: The franking statute (39 U.S.C. 3212) and Regulations Governing the Use of the Mailing Frank permit the franked mailing of reprints from the CONGRESSIONAL RECORD, including speeches or reports contained therein, provided such material is otherwise frankable under section 3210. The fact that material has been placed in the RECORD does not in and of itself make it frankable.*

Assuming the content of the proposed mailing would be frankable, there is no provision in the statute or regulations which would prevent the reprint from being made more legible by the resetting of type used in the RECORD. The Select Committee believes that the franking statute's use of the term "reprint" would include such a practice.

This response should in no way be construed as a ruling on the issue of whether the material which appeared in the CONGRESSIONAL RECORD is, in fact, frankable. The Committee would need a more complete description of such material in order to rule on that question.

INTERPRETATIVE RULING No. 192

Date issued: October 16, 1978.

Applicable rules: 42**, 43.

Question considered: Would Rule 43 on Gifts, which is applicable to all Members, officers, employees, their spouses and dependents, prohibit the acceptance of certain travel arrangements offered by the employer of a spouse when the employer is a "prohibited source" within the meaning of paragraph 1(b) of Rule 43?

Ruling: In this situation, soon after their wedding, the spouse of a Senate employee

* See Interpretative Ruling No. 40, dated July 1, 1977, where the Committee ruled that the "personal reference rule" is not applicable to CONGRESSIONAL RECORD excerpts.

**Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

will be temporarily assigned by her employer to a project in another location some distance from Washington, D.C. The project is scheduled to last for several months and will require some weekend work. As a result, the employer, registered under the Federal Regulation of Lobbying Act of 1946 and thus a "prohibited source" for purposes of Rule 43, would implement an existing company policy which provides the spouse with weekend round-trip airfare to and from Washington. On those occasions when the spouse will be engaged in weekend work, the employer has offered to fly the Senate employee to his spouse's location.

Paragraph 2(a)(7) of Rule 43 excepts from the definition of "gift" anything of value given to the spouse of a reporting individual by the employer of the spouse in recognition of the services performed by the spouse. In this factual situation, the Committee ruled that this exception would be applicable to the offer of round-trip airfare, whether the actual user of the ticket was the Senate employee or the spouse. The Committee also ruled that this arrangement was also excepted from the definition of "gift" under Rule 42, Public Financial Disclosure, and therefore need not be reported.

INTERPRETATIVE RULING No. 193

Date issued: October 17, 1978.

Applicable rules: 42*, 43.

Question Considered: May a Senator accept travel expenses from an official of a district's political party organization in return for his appearance at a rally sponsored by the organization?

Ruling: Rules 42 and 43 except from the definition of "gift" anything of value, including transportation, for which consideration of equal or greater value is received.

Under certain circumstances travel incident to a political appearance, which is not in connection with the appearing Member's own election, meets this "consideration" exception. If the Senator is appearing at the invitation of the party official, and if the proposed appearance is in consideration for the cost of the Senator's travel, then the acceptance of those expenses would not be deemed to be a gift for purposes of Rules 42 and 43.

INTERPRETATIVE RULING No. 194

Date issued: October 18, 1978.

Applicable rule: 49.

Questions considered: May Senate employees engage in campaign activities on their own time and away from federal facilities? Is it permissible for a Senate employee, following adjournment of the Congress, to utilize unused vacation time to work full-time in a campaign? Would there be any restriction which would prevent a full-time Senate employee from having his Senate salary reduced while continuing to work for the Senate on a part-time basis in order that the remainder of his time could be devoted to campaign activities?

Ruling: The Committee on Rules and Administration has stated in Senate Report No. 95-241 (95th Cong.), accompanying Senate Resolution 188, that "is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties . . . it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties . . ." The Select Committee on Ethics believes that this statement is applicable to employees of a Senate committee and those persons employed by an officer of the Senate as well.

Prior to the filing of S. Rept. No. 95-241, the Select Committee ruled* that it is preferable for a Senator to either reduce the salary or remove an employee from the Senate payroll when the employee intends to spend additional time on campaign activties, over and above leave or vacation time. The Committee recognizes that staff members ought to be able to use bona fide vacation time for political campaign activity. As long as an office has an established and reasonable annual leave policy, and as long as an employee takes no more than the amount of time normally allowed for such leave, the Committee believes that an employee may engage in campaign activities during that time. It should also be noted that the Committee has ruled that the restrictions of Rule 49, on the handling of campaign funds, are applicable to all persons who are on the Senate payroll, even though they might be paid at a reduced rate.

INTERPRETATIVE RULING No. 195

Date issued: October 18, 1978.

Applicable rules: 46, 48.

Question considered: May a Member borrow from another Senator computerized mailing lists for the purpose of communicating with constituents?

Ruling: The loan of a mailing list to a Member gives rise to a question under Rule 46 of the Senate Code of Official Conduct. Although the Code does not contain any specific restrictions on the source of a mailing list, the Committee has interpreted Rule 46 to mean that a Member may not accept goods and services in connection with the carrying out of official Senate duties unless they are paid for with funds from one of the four sources listed in the rule. This would normally mean that the provision of a mailing list free-of-charge would constitute an impermissible in-kind contribution to an office account.

However, the Committee has ruled** that in-kind services provided by agencies of the Federal Government are not subject to the Rule 46 restrictions, and goods and services provided by other Members of Congress would appear to be similarly excepted. Therefore, the use of a Member's computerized mailing lists would not be in violation of Rule 46.

Should the borrowing Member intend to incorporate the mailing list in the Senate's computer facilities, he or she should be aware that Rule 48, paragraph 5, allows the use of those facilities only if the lists bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation.

INTERPRETATIVE RULING No. 196

Date issued: October 26, 1978.

Applicable rule and area: 48 and Franking.

Question considered: May an agency of the Federal Government with whom a Senator is cosponsoring a conference print and affix labels to franked envelopes to be used in mailing the invitations to the conference? The envelopes would be returned to the Senate Service Department for stuffing and mailing.

Ruling: Paragraph 2 of Senate Rule 48 states that only official funds of the Senate shall be used to purchase paper, print or prepare mass mailing material to be sent out under the frank. The Committee has determined however that under the circumstances described it would not be a violation of Rule 48(2) for an agency of the Federal Government to print and affix address labels to franked envelopes to be used for the conference, provided such printing and labeling services are generally available to all Members of the Senate.

Chapter 4, Paragraph 2 of the Regulations Governing the Use of the Mailing Frank "is a privilege which Senators and others must view as a personal responsibility and which must be vigilantly safeguarded against abuse." One such abuse would be an improper loan of the frank in violation of Section 3215 of Title 39 of the United States Code. This Committee has previously ruled (Interpretative Ruling No. 66, September 26, 1977) that the processing of franked mail by an outside organization would constitute an improper loan of the frank because of the opportunity for abuse, such as the alteration of material or the diversion of franked envelopes, that would be presented. However, the Committee has determined that it would be permissible for a Member to delegate to his or her staff the responsibility for ensuring that the process of affixing address labels to the franked envelopes to be used in the conference is carried out by the agency in such a manner as to avoid any misuse which could constitute an improper loan of the frank.

INTERPRETATIVE RULING No. 197

Date issued: October 31, 1978.

Applicable rule and area: 49, Code of Official Conduct.

Question considered: Is it proper for Senate staff members to utilize annual leave time to carry out campaign-related activities?

Ruling: Except for Senate Rule 49, which prohibits anyone other than two designated employees from handling campaign funds, no rule expressly forbids campaign activity by staff members.

The Select Committee has previously ruled* that it is preferable for a Senator either to reduce the salary or to remove an employee from the Senate payroll when the employee intends to spend a substantial amount of time on campaign activities, over and above leave time.

The Committee recognizes that Senate staff members ought to be able to use bona fide vacation time in whatever way they wish, including participation in a political campaign. So long as staff takes no more than established and reasonable annual leave, the Committee is of the opinion that staff may engage in campaign activities.

Rule 49's restrictions on the handling of campaign funds by only two designees would, of course, remain applicable.

INTERPRETATIVE RULING No. 198

Date issued: November 6, 1978.

Applicable rules: 46, 48.

Question considered: Would it be permissible under paragraph 1 of Rule 46 for a Senator to accept, at no cost to him, a computerized mailing list of the names of members of a national labor union in the Senator's home state from another Member of Congress from that state, in order to communicate with the Senator's constituents?

Ruling: While the Code of Official Conduct does not contain any specific restriction on the source of mailing lists acquired and used by Senators, the Select Committee has previously interpreted** Rule 46 to prohibit a Senator from accepting any goods or services in connection with carrying out of-

*Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

*See, for example Interpretative Rulings No. 3, dated May 5, 1977, No. 5, dated May 11, 1977, No. 6, dated May 11, 1977, and No. 22, dated May 26, 1977.

**See Interpretative Ruling No. 72, dated September 29, 1977.

*See, for example, Interpretative Rulings No. 3, dated May 5, 1977, No. 5, dated May 11, 1977, No. 6, dated May 11, 1977 and No. 32, dated June 17, 1977.

**Interpretative Ruling No. 44, dated July 18, 1977.

ficial Senate duties, including communicating with constituents, unless those goods or services are paid for with funds available to the Senator from one of the four designated sources listed in paragraph 1 of Rule 46.

However, the Committee has also ruled* that in-kind services, when provided by agencies of the Federal Government, are not subject to this restriction. This ruling was based, in part, on a prior determination of the Federal Election Commission which stated that the Federal Government was not considered a "contributor" for purposes of the Federal Election Campaign Act.

Based on this ruling, the Committee held in this case that goods and services provided to a Senator by other Members of Congress are excepted from the limitations of Rule 46 and therefore that the acceptance of this computerized mailing list at no cost from another Member of Congress would not violate Rule 46.

However, the Committee reminded the Senator that should he incorporate the mailing list in the Senate computer facility, Rule 48, paragraph 5 would require that the list bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation.

INTERPRETATIVE RULING No. 199

Date issued: November 6, 1978.

Applicable rule and area: 46, Franking.

Questions considered: Would it be proper for a Senator to conduct from his home state office a telephone survey of his constituents to find out what issues are of concern to them in order to develop legislative priorities? In so doing may a Senator:

(1) Use members of his staff and volunteers to conduct the survey?

(2) Use the Senator's frank to mail the surveys in bulk to his home office?

(3) Accept the offer of a private group to use their telephone facilities free of charge; and

(4) Use telephone facilities provided by a Federal agency in the home state?

(5) Use Senate allowances to a) rent a telephone bank and b) pay for use of computers of a non-government organization to compile the survey results?

RULINGS

(1) Telephone surveys of a Member's constituents, when undertaken to better inform the Senator of the views and concerns of his constituents, have been held by the Committee to be permissible under the Code of Official Conduct. The Committee has previously ruled** that Rule 46 does not prohibit the use of volunteers who perform services for a Senator either in his Washington or home-state office.

(2) The use of the mailing frank to send copies of the survey to a Senator's district office is also proper.

(3) The Committee has consistently ruled that Rule 46 does prohibit a Senator from accepting in-kind contributions of goods and services to defray office expenses. Therefore, it would be improper for a Senator to accept non-governmental telephone facilities which might be offered at no cost.

(4) In contrast, the Committee has previously ruled that the Rule 46 restriction on in-kind contributions of goods and services does not apply when the donor is an agency of the Federal Government or another Member of Congress. (Interpretative Ruling No. 72, dated September 29, 1977) Therefore, telephone facilities provided to a Senator by a Federal agency may be used to conduct a telephone survey of constituents.

(5) The question as to whether Senate allowances might be used to pay for non-governmental telephone facilities and/or computer time comes under the primary jurisdiction of the Committee on Rules and Administration, which approves vouchers drawn against Senate allowances.

INTERPRETATIVE RULING No. 200

Date issued: November 8, 1978.

Applicable rule and area: 46 and Federal Election Campaign Act.

Question considered: May an individual employed in a Senator's office be reimbursed from that Senator's campaign funds for travel expenses (lodging and meals) incurred in connection with the staff member's attendance at a veterans' conference?

Ruling: The Federal Election Campaign Act (2 U.S.C. 439a) provides that campaign funds may be used to defray ordinary and necessary expenses incurred in connection with the duties of a federal office holder. Rule 46 of the Senate Code of Official Conduct provides that otherwise unreimbursed expenses allowable in connection with the operation of a Member's office may be defrayed from, among other sources, funds derived from a political committee.

Therefore, if the staff member's attendance at the veterans' conference is in connection with official Senate duties, funds from the Senator's campaign committee may be used to defray the expenses incident to that attendance.

INTERPRETATIVE RULING No. 201

Date issued: November 27, 1978.

Applicable rule: 42.

Question considered: For purposes of disclosing gifts of $100 or more under Rule 42, is a gift to a Member from several employees of a local high school valued at its total cost, or is the value of the gift divided by the number of individual donors?

Ruling: Rule 42(2)(c) requires the reporting of gifts "aggregating $100 or more from any one source" during a calendar year. The facts of this inquiry regarding the evaluation of a gift raise the question of the meaning of the phrase "any one source," i.e., is the donor of the gift the school, the school employees as a group, or several separate individuals.

If, on the one hand, the gift is from the school or from the employees as a group, then it would be a gift from one source, and the value would be its total cost. If the individuals who contributed toward its cost were solicited along with other school employees with the intent to make a gift from the school or from the employees as a group, or if the individuals when presenting the gift asserted their common association with the school, the presentation would appear to be a gift from one source.

If, on the other hand, the gift is from several persons acting as individuals, for reporting purposes the transaction would be treated as five separate gifts from five individuals and the value of each gift would be the amount that each individual contributed toward its cost. Thus, if the five school employees decided among themselves to make a gift to the Senator and did so without soliciting contributions toward the cost of the gift from school employees as a group or if the employees presented the gift without asserting their common association, then the facts would indicate that the gift is, in fact, from five persons acting as individuals.

INTERPRETATIVE RULING No. 202

Date issued: November 30, 1978.

Applicable rules and area: 42*, 43, Ethics in Government Act of 1978.

Questions considered: May a staff assistant to a Senator accept an invitation to address an association's convention? Would the individual be required to disclose the source and description of reimbursements which he or she received for official travel?

Ruling: Rule 43, Gifts, and Rule 42, Public Financial Disclosure, both except from the definition of "gift" the necessary expenses of the performance of services for an organization by a Senator, officer or employee, incident to his or her official duties, including travel, food, lodging and entertainment, if those expenses are paid by the organization for which the services are performed.

However, Public Law 95–521, the Ethics in Government Act of 1978, requires that reporting individuals, i.e., employees of the legislative branch who have been employed for more than sixty days in the calendar year and are compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS–16, must disclose the identity of the source and a brief description or reimbursements received from any source and a brief description of reimbursements received from any source aggregating $250 or more in value. "Reimbursement" is defined in the Act to mean any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of Title 5, United States Code, the Foreign Gifts and Decorations Act; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434).

INTERPRETATIVE RULING No. 203

Date issued: December 5, 1978.

Applicable rules and area: 42,** 43, 45, Ethics in Government Act of 1978.

Question considered: May a Senate employee accept the necessary expenses of foreign travel from a privately funded, domestic organization in order that the employee might attend a seminar sponsored by the foreign counterpart of the domestic organization?

Ruling: The Select Committee has previously ruled*** that a Member, officer or employee of the Senate may accept the necessary expenses of foreign travel provided by a domestic organization which is the sponsor of the program involving the foreign travel. In this factual situation, while the domestic organization providing the necessary expenses of foreign travel and the sponsor of the program in the foreign country were not one and the same, the Select Committee in agreeing to the proposed travel found that the domestic organization had been created, under the laws of the United States, for the sole purpose of assisting its foreign counterpart in the preparation and presentation of its program. The Committee ruled that the domestic organization which was to provide the necessary expenses of foreign travel and the foreign sponsor of the program were suf-

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*Interpretative Ruling No. 72, dated September 29, 1977.

**Interpretative Ruling No. 74, dated October 3, 1977. The Committee's ruling in this instance applies to surveys fitting the above description and does not apply to a survey which would be used in any manner deemed to be partisan or political.

*Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

**Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

***See Interpretative Ruling No. 105, dated March 9, 1978.

ficiently identical such that the necessary expenses of travel would be excepted from the definition of "gift" under paragraph 2(a) of Rule 43 and paragraph 7(f) of Rule 42. Therefore, with the approval of the employee's Senate supervisor, the employee could accept the necessary expenses of the proposed travel.

While these necessary expenses of travel are not reportable as a gift under Rule 42, if the employee concerned were required to file a financial disclosure statement under the Ethics in Government Act of 1978 (Public Law 95-521), i.e., if he or she were an employee of the legislative branch for more than 60 days and were compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS-16 of the General Schedule during the calendar year, the employee would be required to report the identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value which were received during the preceding calendar year.

INTERPRETATIVE RULING NO. 204

Date issued: December 5, 1978.

Applicable rule: 49.

Question considered: May a Senate employee hold a position as a political party's precinct chairman? One of the functions of the position is the periodic solicitation of funds for state and local candidates. While none of these funds go directly to candidates for Federal election, there have been instances when some of the funds were used for literature in support of local, state and Federal candidates. In the case of this "joint campaign" literature the Federal candidates contribute their own funds to cover their share of the cost of the literature.

Ruling: The Committee has previously determined* that Rule 49's restrictions on staff campaign activities apply to participation in Federal elections and not to state and local elections. So long as the state and local campaign activities are clearly separate and distinct from any activities performed in connection with a Federal election, and the activities do not interfere with Senate duties, a Senate employee would be permitted to participate in them.

The activities proposed in this case do not appear to involve the raising or use of funds for the purpose of supporting Federal candidates. Therefore, the Committee believes Rule 49 would not prohibit those activities.

INTERPRETATIVE RULING NO. 205

Date issued: December 11, 1979.

Applicable rules: 44,** 45.

Questions considered:

(1) What are the rules applying to the donation of honoraria to certain educational institutions when selected from a list of five or more organizations provided to the payor by a Senator?

(2) Does Rule 44's limit on outside earned income apply to proceeds received from partnership income earned primarily through real estate sales?

Ruling: The Committee has previously ruled*** that, for purposes of the $25,000 calendar year limit on honoraria donated to charity, an honorarium payable to a person would not be charged against this limit if paid instead at his or her request to a charitable organization selected by the payor from a list of five or more charitable organizations provided by that person. The term "charitable organization" means those organizations with respect to which a deduction for Federal income tax purposes would be allowable under section 170(c) of the Internal Revenue Code.

This ruling is consistent with the Federal statute which currently limits the acceptance of honoraria, 2 U.S.C. 4411.

With regard to the second question, under Rule 44, outside earned income is defined as "compensation received as a result of personal services actually rendered." Thus, Rule 44's limits would be inapplicable, since the income from the sale of the partnership's capital assets (e.g., real estate) would not fall within the Rule's definition of outside earned income. Income from the sale of a capital asset owned by the partnership would constitute passive or investment income rather than a distribution of income from the active operation of a trade or business.

Paragraph six of Rule 45 prohibits Members from being affiliated with a firm or partnership for the purpose of providing professional services for compensation and prohibits the Member from permitting his name to be used by such a firm or partnership.

INTERPRETATIVE RULING NO. 206

Date issued: December 11, 1978.

Applicable rule: 46.

Question considered: Would Rule 46 prohibit a retiring Senator from directing his campaign committee to donate excess campaign contributions to a tax-exempt, charitable organization which would use the funds to create a scholarship fund for graduate students in the Senator's name?

Ruling: Paragraph 2 of Rule 46 prohibits the conversion of campaign contributions to the personal use of any current or former Senator. While "personal use" is not specifically defined, the Committee does not believe that donation of excess campaign funds to or for the use of a tax-exempt state university to create a scholarship fund for worthy graduate students from the Senator's home state is the type of conversion to personal use prohibited by Rule 46. Similarly, while there may be a nominal or constructive conversion of the funds by the Senator for purposes of inclusion in his gross income for Federal income tax purposes, it may result in a "wash transaction" if an offsetting charitable contribution deduction is available under section 170 of the Internal Revenue Code.

While the Committee ruled that the proposal would not be prohibited by Rule 46, it cautioned that it could express no view as to the consequences of the proposal under the Internal Revenue Code or any other law.

INTERPRETATIVE RULING NO. 207

Date issued: December 11, 1978.

Applicable area: Legislative Branch Appropriations Act.

Question considered: May an employee of one Senate office seek and receive compensation for part-time employment in another Senate office?

Ruling: The Legislative Branch Appropriations Act of 1978 (Public Law 95-94) section 114, as amended by the Legislative Branch Supplemental Appropriation Act of 1978, section 207, authorized the Senate Disbursing Office to compensate an employee for work done in more than one office of a Senator, Senate officer or standing committee, provided that the employee is paid on a yearly rather than an hourly basis.

No provision of the Code of Official Conduct would prohibit an employee of one Senate office from obtaining a part-time position with another Senate office.

The Select Committee suggested that an employee seeking such an arrangement should notify the supervisor of each position of the employment arrangement.

INTERPRETATIVE RULING NO. 208

Date issued: December 13, 1978.

Applicable Rule: 45.

Question considered: May a member of a Senate committee serve without compensation on an advisory committee of an organization which is exempt from Federal income taxation and which receives Federal funds through grants administered by an executive branch agency authorized through the same Senate committee? The staffer's Senate duties do not include responsibility for such programs and the advisory committee on which the staff would serve will neither request nor spend any Federal monies. The staffer's activities would consist of analyzing the goals and internal structures of the organization.

Ruling: Given the circumstances presented, the Committee has no objection to the staffer's membership on the organization's advisory committee but reminds the supervising Senator that Senate Rule 45, paragraph 3, requires him to take whatever action he may consider necessary for the avoidance of any future conflict of interest or interference with Senate duties.

INTERPRETATIVE RULING NO. 209

Date issued: December 18, 1978.

Applicable Rule and Area: 43, Code of Official Conduct.

Question considered: May an organization composed of Senate staff members solicit lobbyists and others with a direct interest in legislation to purchase advertising in the program for a dinner sponsored by the staff organization?

Ruling: Under Senate Rule 43 the following are deemed to have a direct interest in legislation before the Congress:

"(1) a person, organization, or corporation registered under the Federal Regulation of Lobbying Act of 1946, or any successor statute; a person who is an officer or director of such a registered lobbyist; or a person who has been employed or retained by such a registered lobbyist for the purpose of influencing legislation before the Congress; or

"(2) a corporation, labor organization, or other organization which maintains a separate segregated fund for political purposes (within the meaning of section 321 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441(b)); a person who is an officer or director of such corporation, labor organization, or other organization; or a person who has been employed or retained by such corporation, labor organization, or other organization for the purpose of influencing legislation before the Congress."

The Committee determined that solicitation of the advertising from individuals and organizations having a direct interest in legislation before the Congress gives the appearance of improper conduct which may reflect upon the Senate and that the staff organization, therefore, should refrain from making such solicitations.

INTERPRETATIVE RULING NO. 210

Date issued: December 18, 1978.

Applicable Rules and Area: 42*, 43, Ethics in Government Act of 1978.

Question considered: A Senator has been asked to address a meeting of a trade association. Since the association does not have an aircraft, a corporate member of the associa-

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*See Interpretative Ruling No. 182, dated September 29, 1978.

**S. Res. 93 changed the effective date of Rule 44 to January 1, 1983.

***See Interpretative Ruling No. 9, dated May 11, 1977 and Interpretative Ruling No. 28, dated June 7, 1977.

*Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

tion has offered to provide the Senator with transportation aboard one of the corporation's aircraft from a city where the Senator will arrive on a connecting commercial flight to the site of the meeting. May the Senator accept this offer of transportation and under what circumstances would acceptance have to be disclosed?

Ruling: Rule 43 excludes from the definition of "gift" the payment of the necessary expenses of travel, including transportation, food, lodging and entertainment to a Member, officer or employee of the Senate who performs a service for an organization, such as the giving of an address, if those necessary expenses are provided by the organization for which the services are performed. In this factual situation, a corporate member of an organization, but not the organization itself, has offered to provide air transportation for the Senator.

The next question that must be addressed is whether the corporation in question has a "direct interest in legislation before the Congress" as defined by paragraph 1(b) of Rule 43. If the corporation is within this definition, or is a foreign national, Rule 43 would prohibit the acceptance of gifts with a value aggregating over $100 from the corporation in a calendar year. However, necessary expenses of transportation could be accepted from the corporation, provided that (1) the sponsor of the appearance reimbursed the corporation for the value of the transportation or (2) the Senator reimbursed the corporation for the value of the transportation provided.

As to the reporting requirements for such an arrangement, if the Senator or the sponsor of the appearance reimbursed the corporation, no "gift" would be involved and there would be no reporting requirement under Rule 42.

If the corporation is neither a "prohibited source," nor a foreign national, and the corporation is not reimbursed, the transportation may be accepted but would have to be reported as a gift under Rule 42 if the aggregate value from that source exceeded $250 in the calendar year.

However, the Ethics in Government Act of 1978 (Public Law 95-521) requires that all Senators and certain specified Senate employees file a financial disclosure statement which includes the identity of the source and a brief description of "reimbursements," defined in section 107(8) as "any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual, other than those which are (A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof; (B) required to be reported under section 7342 of Title 5, United States Code (Foreign Gifts and Decorations Act); or (C) required to be reported under section 304 of the Federal Election Campaign Act of 1971," and aggregating $250 or more in value and received during the preceding calendar year. Thus, the Senator would be required to report a reimbursement of air travel expenses, if in the aggregate they were valued at $250 or more, provided by either the sponsor of the appearance or the corporation which has offered to provide its aircraft.

INTERPRETATIVE RULING No. 211

Date issued: December 22, 1978.

Applicable Rule: 44.*

Question considered: Does Rule 44's limit on outside earned income apply to salary paid to a Member and his spouse for services rendered to a corporation in which the Member is the sole shareholder? The services rendered are managerial in nature and consume a minimal amount of the Member's time.

Ruling: This ruling is based upon and limited to the specific factual situation above, and the committee does not consider it as a precedent.

Senate Rule 44 limits outside earned income of a Member to 15% of his or her Senate salary in a calendar year. Subparagraph 3(b)(5) of that Rule provides that "outside earned income" does not include:

income from family enterprises, if the services provided by the Senator, officer or employee are managerial or supervisory in nature, necessary to protect the interests in the family enterprise and do not consume significant amounts of time while the Senate is in session.

Based on the information provided, the Committee determined that, pursuant to Rule 44, subparagraph 3(b)(5), the corporation in question is a family enterprise, and the income for services performed by the Member for the corporation would not be considered outside earned income. The receipt of such income would, however, be reportable under Senate Rule 42.

The Committee noted that the restrictions in Rule 44 apply solely to the "outside earned income" of Members and certain Senate officers and employees; thus, the salary received by the Member's spouse would not be subject to the provisions of Rule 44.

*Note: S. Res. 93 changed the effective date of Rule 44 of January 1, 1983.

INTERPRETATIVE RULING No. 212

Date issued: December 22, 1978.

Applicable Rule: 43.

Question considered: May a Senate staff member accept travel on a private aircraft of a company having a direct interest in legislation before the Congress where the purpose of the travel is to enable the staffer to inspect the operation of the company's facilities as part of a factfinding tour?

Ruling: In Interpretative Ruling No. 35, dated June 28, 1977, the Committee determined that a Senator who is on an official business tour may accept travel on private aircraft and other travel expenses, including lodging and food, from a corporation having a direct interest in legislation, when the corporation's installation or property is the principal subject of the inspection tour, when the corporation is, at least in part, sponsoring the tour, and when the trip is for an official purpose.

In Interpretative Ruling No. 69, dated September 27, 1977, the Committee ruled that factfinding in connection with matters of direct interest to a Member, his constituents and the sponsoring organization is a service of public office, and the necessary travel expenses in connection with such a trip are excluded from the definition of a gift for the purposes of the limitations on gifts from prohibited sources under Rule 43. The Committee further determined that the acceptance of necessary expenses by a staff member designated by the supervising Senator would be permissible in such a situation.

Accordingly, the Committee ruled in this case that the staff member's acceptance of necessary travel expenses in connection with the described factfinding tour was permissible.

INTERPRETATIVE RULING No. 213

Dated issued: December 22, 1978.

Applicable Rule: 45.

Question considered: Would there be a conflict of interest or the appearance of a conflict if a private company were to continue paying part of the salary of one of its employees while the employee worked full time for a one year period on the staff of a Senate committee with primary legislative jurisdiction over the activities of the company? Alternatively, would there be a possible conflict of interest if the employee retained his employment relationship with his private company and was also retained, and compensated, by the Senate committee as a part-time consultant?

Ruling: In the situation presented, a private profit-making organization would pay part of the salary of one of its employees for the individual's services as either a staff member or consultant to a Senate committee with legislative jurisdiction over the activities of the private organization. It is the opinion of the Committee that this arrangement might create the possibility of an actual conflict of interest or the appearance of such a conflict due to the jurisdiction of the Senate committee over matters of interest to the private company.

If the committee wished to hire the individual as a part-time consultant and pay him out of committee funds for his services to the committee, an appearance of a conflict of interest might arise since the individual would continue to retain his employment relationship with his private employer. The Committee recognizes that, in certain circumstances, an appearance of a conflict of interest arising from a consultant arrangement might be offset by a Senate committee's need to obtain specific expertise in a given area. The Committee will offer its guidance as to the propriety of such an arrangement where the specialized skills of a particular individual appear necessary.

INTERPRETATIVE RULING No. 214

Date issued: December 22, 1978.

Applicable Rule: 43.

Question considered: May a Member of the Senate accept payment from an entity with a direct interest in legislation before the Congress for expenses he and his spouse incur during a two-day period following the Member's scheduled appearance before the entity? What limitations exist with respect to acceptance of such expenses?

Ruling: An organization with a direct interest in legislation pending before the Congress has invited a Senator to speak to the organization's annual convention and subsequently remain at the convention site for an additional number of days to attend various convention activities. The organization has offered to provide the necessary expenses of transportation, food, lodging and entertainment for the Senator and his spouse during the entire time that the Senator is at the convention. In addition, the Senator has scheduled a briefing by a department of the executive branch in the same city for the day following the conclusion of his appearance at the convention.

Under Senate Rule 43 a Member, officer or employee of the Senate may accept necessary travel expenses from the organization sponsoring his appearance. Such expenses are not deemed to be a gift for purposes of the reporting requirements of Senate Rule 42 nor are they subject to the limitations in Senate Rule 43 on gifts from organizations having a direct interest in legislation before the Congress. The Committee has ruled (Interpretative Ruling No. 89, dated November 21, 1977) however, that such necessary travel expenses would not include any expenses which are associated with unrelated, appearance or activities. Thus, if a second, unrelated, appearance requires additional expenses such as an extra night's lodging, the payment of these expenses by the sponsor of the first appearance would be deemed to be a gift for the purpose of the reporting requirements of Rule 42 and, if the sponsor is an organization having a direct interest in legislation before the Congress, the acceptance of any additional expenses would be subject to the prohibition in Rule 43 on gifts from such organizations aggregating in excess of $100 in a calendar year.

The Committee stated that, if the Senator had remained at the convention for the pur-

pose of participating in convention activities, it would be permissible for the sponsor to cover the necessary expenses incurred in connection with his participation in these activities. If, on the other hand, the Senator had remained at the convention solely for the purpose of attending the Naval briefing, or any other unrelated activity, the additional expenses would be deemed to have been incurred in connection with the second activity and, if paid by the sponsor of the first appearance, would be subject to the provisions of Senate Rules 42 and 43, as noted above.

INTERPRETATIVE RULING NO. 215

Date issued: December 23, 1978.

Applicable area: Nepotism.

Question considered: An individual considering employment in a Member's office asked if it would be permissible to accept the position since the spouse of the Member is a cousin of one of the individual's parents.

Ruling: This Committee is not charged with the responsibility of enforcing Section 3110 of Title 5 of the United States Code, which prohibits a public official (including Members of Congress) from employing or advocating the employment of a relative in the agency in which he is serving. An office, agency or other establishment in the legislative branch is included within the definition of agency. However, the Committee noted that, for the purposes of Section 3110, a "relative" is defined as:

". . . an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, brother-in-law, sister-in-law, stepfather, step-mother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister."

Thus, the stated relationship to the Member would not fall within the prohibitions of Section 3110.

Moreover, based on the facts described, the Committee was of the opinion that employment in the Member's office would not constitute improper conduct which may reflect upon the Senate, nor would it present the appearance of a conflict of interest.

INTERPRETATIVE RULING NO. 216

Date issued: January 5, 1979.

Applicable area: Foreign Gifts and Decorations Act.

Question considered: When a Senator is visiting a foreign country on official business, may he accept transportation, lodging and hospitality from the host country in order to visit areas within that country when no commercial transportation service is available or in circumstances when it would be an affront to the host government to refuse the hospitality?

Ruling: The Foreign Gifts and Decorations Act, 5 U.S.C. section 7342, permits the acceptance from foreign governments of gifts of travel or expenses for travel taking place entirely outside the United States if such acceptance is appropriate, consistent with the interests of the United States and is permitted by the Senate Select Committee on Ethics (as the employing agency for Members, officers and employees of the Senate).

The Committee found that the acceptance of such gifts of travel or expenses for travel (including transportation, food and lodging), under the circumstances described above would be appropriate and consistent with the interests of the United States.

Within 30 days after any Member, officer or employee of the Senate (or his or her spouse or dependents) has accepted travel or travel expenses for travel taking place entirely outside the United States, such Member, officer or employee must file a statement of information with the Select Committee. The Committee's "Dear Colleague" letter of December 12, 1978 sets forth the items to be included in filing that statement.

INTERPRETATIVE RULING NO. 217

Date issued: January 15, 1979.

Applicable rules and area: 42*, 43, Ethics in Government Act of 1978.

Question considered: May a group of Senate employees, who work for different Senators and Senate committees but share responsibilities for energy issues, accept an invitation from an oil producers group and a local Chamber of Commerce to attend a meeting to discuss energy problems and potential legislation, where the Chamber has offered to provide all of the necessary expenses connected with the meeting?

Ruling: Rule 43 on Gifts excludes from the definition of a gift the payment of the necessary expenses of the performance of services for an organization by a Senate staff assistant, incident to his official duties, including travel, food and lodging, if those expenses are paid by the organization for which the services are performed.

Fact finding in connection with matters of direct interest to Members and committees of the Senate, sponsored and paid for by organizations such as a local Chamber of Commerce, is directly related to the Senate duties of staff persons working for such Members and committees.

Accordingly, the acceptance of the invitation and related necessary expenses from the Chamber of Commerce would not be in violation of Rule 43, nor reportable under Rule 42, as long as the Senate employees are providing some service or making some appearance on behalf of the Chamber of Commerce.

The Committee noted that any staff member required to file under Public Law 95–521 must report the identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value during a calendar year.

INTERPRETATIVE RULING NO. 218

Date issued: January 15, 1979.

Applicable rule: 45.

Question considered: What are the restrictions on a former Senate employee's communicating with the Members and staff of a committee for which he used to work? The employee plans to begin the practice of law, and his responsibilities might include occasional discussions with Senators on behalf of a client regarding certain policies of interest to the client.

Ruling: A Senate committee staffer who leaves a committee position and becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or is retained by such a registered lobbyist for the purpose of influencing legislation is prohibited by paragraph 10 of Rule 45 from lobbying Members and staff of the committee for which he or she worked for one year after leaving the committee position. "Lobbying" is defined in paragraph 11(c) of Rule 45 as any oral or written communication to influence the content or dispostion of any issue before Congress.

The Federal Regulation of Lobbying Act of 1946 applies to "any person . . . who . . . receives money or any other thing of value to be used principally to aid, or the principal purpose of which person . . ." is to aid or influence the passage or defeat of any legislation by the Congress of the United States (2 U.S.C. 266) and is not applicable to those persons having only an incidental purpose of influencing legislation (*United States* v. *Harriss*, 347 U.S. 612, 622 (1954).) One who does not meet the "principal purpose" test of the Lobbying Act (i.e., who has only an incidental purpose of influencing legislation) is not required by the Act to register as a lobbyist; consequently, the restrictions of paragraph 10 would be inapplicable to such persons.

However, failure to register under the Lobbying Act when required to do so would not render inapplicable the restrictions in paragraph 10. The Committee believes that if one is engaged in the types of activities regulated by the Lobbying Act, but fails to register under that Act, paragraph 10 of Rule 45 would nevertheless apply to such a person.

The Committee notes for your information that it has previously ruled* that if one or more partners or an associate of a law firm is a lobbyist, then a former Senate employee, if hired in any capacity by that firm, is subject to the one year lobbying restrictions.

INTERPRETATIVE RULING NO. 219

Date issued: January 15, 1979.

Applicable Rule: 44.**

Question considered: What are the limits on honoraria donated to a charity selected by the payor?

Ruling: Consistent with 2 U.S.C. 4411, an honorarium is not considered to have been accepted if the speaker makes a suggestion that the honorarium be given to a charity or other like beneficiary of the payor organization's own choosing. Moreover, the Committee as previously ruled*** that if an honorarium payable to a person is paid instead at his request to a charitable organization selected by the payor from a list of five or more charitable organizations provided by that person, that person will not be deemed to have accepted an honorarium for the purposes of Rule 44. This ruling is consistent with 2 U.S.C. 4411, as amended in December, 1977.

However, if the speaker himself directs that the honorarium be paid to a particular charity or to a charitable organization selected by the payor from a list of less than five provided by the speaker, then the limits of Rule 44 (effective January 1, 1979) would be applicable. That is, the limit for Senators for each honorarium so disposed of would be $1,000 as provided in paragraph 2(a) of Rule 44, and the aggregate calendar year limit would be $25,000 as provided in paragraph 2(c) of Rule 44.

INTERPRETATIVE RULING NO. 220

Date issued: January 24, 1979.

Applicable Rule: 46.

Questions considered: May a Senator accept and use audio and visual tapes which belonged to former Members of Congress? May a Senator accept two free newspaper subscriptions each of which is worth in excess of $100 per yearly subscription?

Ruling: Senate Rule 46 prohibits the acceptance of funds (other than personal and campaign funds) from outside sources to defray expenses incurred by a Senator in connection with official duties. This prohibition includes in-kind contributions of goods and services.

However, exceptions to the rule have been allowed for foods and services provided to a

*Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

*Interpretative Ruling No. 92, dated December 22, 1977.

**NOTE: S. Res. 93 changed the effective date of Rule 44 to January 1, 1983.

***See Interpretative Ruling No. 9, dated May 11, 1977, Interpretative Ruling No. 28, dated June 7, 1977 and Interpretative Ruling No. 186, dated October 11, 1978.

Member by other Members of Congress and by agencies of the Federal governments.* The use of tapes belonging to the former Member would be permissible since it falls within the exception for goods provided by other Members. The acceptance of free newspaper subscriptions, however, would be a violation of Rule 46.

INTERPRETATIVE RULING No. 221

Date issued: January 29, 1979.

Applicable Rules: 42**, 43, 45.

Question considered: May a Senate staff member travel to Paris for an international conference at the expense of a United States association that is also taking part in the conference? The staff member's supervisor has given his approval for the trip.

Ruling: Both Rule 43, which prohibits the acceptance of certain gifts, and Rule 42, which requires the reporting of gifts, exempt from the definition of "gift" the necessary expenses of travel incident to the performance of one's Senate duties, if paid for by a domestic organization for which the services are performed.

With respect to Rule 45 (Conflict of Interest), the Committee has ruled that it is the responsibility of one's supervisor to make the initial judgment that an outside activity presents no conflict of interest either with respect to the time required to engage in the activity or due to the nature of the activity itself. Based upon the facts presented, this Committee has no reason to disagree with the supervisor's approval of this trip.

INTERPRETATIVE RULING No. 222

Date issued: January 30, 1979.

Applicable Rule: 49.

Question considered: May a Senate staff member serve as a member of the board of directors of a political action committee which is primarily concerned with fundraising activity for the campaigns of Senators other than the Senator by whom the staff member is employed?

Ruling: Rule 49 states that, in general, no Senate employee may "receive, solicit, be the custodian of, or distribute" funds in connection with any campaign for Federal office.

Based upon the staff member's description of the duties and responsibilities of a board member the Committee was of the opinion that a staff member in this position would be required to become a custodian of and/or distribute funds in connection with Federal campaigns.

The intent of Rule 49 is to prohibit Senate employees from raising funds for a political campaign unless designated to do so by the Senator in his or her behalf. The Committee has previously ruled*** that it would be a violation of Rule 49 for a Senate employee to serve as a chief administrative officer of an organization whose primary, if not sole, purpose is to solicit campaign contributions. Although Rule 49 authorizes a Senator to designate two employees to become involved in political fund activity on his or her behalf, a staff member is still prohibited from serving as a member of the board of directors of a political action committee if the fundraising activity is primarily for the campaigns of Senators other than his/her Senate supervisor.

*See Interpretative Rulings No. 72, dated September 29, 1977, No. 195, dated October 18, 1978 and No. 196, dated October 26, 1978.

**Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

***See Interpretative Rulings No. 32, dated June 17, 1977 and No. 45, dated July 20, 1977.

INTERPRETATIVE RULING No. 223

Date issued: January 30, 1979.

Applicable Rule: 49.

Questions considered: Are the Committee's prior rulings which interpret Rule 49 to allow the two designated employees of a Senator to engage in limited political fund activity only on behalf of their own Senator a correct interpretation of Rule 49?* If so, does this limitation apply if the Senator specifically instructs his designated employees to assist in fundraising activities on behalf of other candidates or committees?

Ruling: The Committee has considered this request, and has reviewed the rulings in question. It is the opinion of the Committee that the earlier rulings correctly interpret Rule 49. The Committee believes the Rule does not permit political fund activities by designated Senate employees on behalf of anyone other than their employing Senator, even if their Senator were to instruct them to assist other Federal candidates in fundraising activities.

The Committee's interpretation is based on both the specific provisions of Rule 49 and its legislative history. The language of paragraph 1 of Rule 49 was originally adopted by the Senate in 1968 as former Senate Rule 43 (1968–1977). The Select Committee on Standards and Conduct, the predecessor to this Committee, stated in recommending adoption of the provision that a narrow exception was necessary to permit a Senate employee to open mail addressed to his or her Senator and transmit any enclosed contributions without violating the Rule, however, the intent was that the exception be strictly construed. *See* S. Rept. No. 1915, 90th Cong., 2d Sess. 19 (1968). Both the prohibition and exception were again adopted by the Senate on April 1, 1977 as part of the new Code of Conduct. Rule 49, S. Res. 110, 95th Cong., 1st Sess. In the report accompanying S. Res. 110 it was noted that the Rule bars political fund activities in connection with all campaigns for Federal office, yet "reflects the reality that a Senator's office can not be fully insulated from the fundraising process." S. Rept. No. 49, 95th Cong., 1st Sess. 50 (1977). However, concern over the possible misuse of official staff for campaign purposes prompted the Senate to request that the Committee on Rules and Administration report proposals to prohibit such misuse. S. Res. 110, Title III, Section 308.

The Committee further notes that, in addition to the restrictions on campaign activity imposed under Senate rule, there are also statutory prohibitions against certain types of political activity by Senate employees. *See* 18 U.S.C., Sections 602, 603, and 607.

INTERPRETATIVE RULING No. 224

Date issued: January 30, 1979.

Applicable Rule and Area: 49, Ethics in Government Act of 1978.

Question considered: Should the Committee waive the applicability of the Code of Official Conduct, pursuant to paragraph 5 of Rule 49, with respect to several individuals hired by a Senate committee for a limited period on a per diem basis?

Ruling: The Committee believes that based upon the unique qualifications of the individuals who will be performing services for the committee and the limited time period of such employment, a waiver from the applicability of the Code of Official Conduct is appropriate.

The Committee does, however, note that the Ethics in Government Act of 1978, Public Law 95–521, requires that any individual who is an officer or employee of the legislative branch during any calendar year and performs the duties of his position of office for a period in excess of sixty days in that calendar year and who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS–16 of the General Schedule must file a financial disclosure statement with the Secretary of the Senate on or before May 15 or the succeeding year. If a reporting individual were to begin his duties on or after January 1, 1979, section 101(c) of the Act would require such an individual to file a "limited" financial disclosure statement within 30 days of assuming the new position. While this requirement is apparently ambiguous with respect to the requirement of section 101(c) of the Act that disclosure need only be made by those individuals who perform the duties of their positions for more than 60 days in a calendar year, the Select Committee has interpreted section 101(c) to only require limited disclosure, within 30 days of assuming their positions by those employees who begin work on or after January 1, 1979 and who have committed themselves to work or who reasonably believe that they will be working for more than 60 days in the calendar year.*

Should circumstances change after these individuals begin their assignments with the Senate committee, and they either make a specific commitment or come to reasonably believe that they will be working for 60 days or more, these individuals would be required to file disclosure statements pursuant to section 101(c) of the Act immediately upon learning of the changes in their employment arrangements. The Act defines an "officer or employee of the Senate" as an individual, other than a Senator or the Vice President, whose compensation is disbursed by the Secretary of the Senate. The Act contains no authority by which this Committee could grant a waiver of the reporting requirement.

*See Interpretative Rulings No. 32, dated June 17, 1977, and No. 45, dated July 20, 1977.

INTERPRETATIVE RULING No. 225

Date issued: January 30, 1979.

Applicable Rule: 44.**

Question considered: Is the 15 percent earned income limitation of Rule 44 computed on a Senator's base salary or on his actual Senate salary, which might include an additional premium paid to those Senators who hold leadership positions?

Ruling: The 15 percent outside earned income limitation is computed on a Senator's base salary.

Paragraph 1(1) of Rule 44 states that, in the case of a Senator, the aggregate amount of "outside income" shall not exceed 15 percent "the aggregate amount of base salary paid to Senators and disbursed by the Secretary of the Senate. . . ." Senate Report 95–49, which accompanied Senate Resolution 110, the Code of Official Conduct, states at page 37, in discussing the 15 percent outside earned income limitation applicable to a Senator, that "For Senators the 15 percent is calculated by the Senator's base salary."

This interpretation is supported by statements made during a colloquy between several Senators on February 23, 1977 while in a "mark-up" session of the Special Committee on Official Conduct relative to Senate Resolution 110. The transcript of that meeting indicates that the computation was to be made on a Senator's base salary and that all Senators were to be treated equally in this computation, with the recognition that such a computation would, of necessity, discriminate against those Senators who hold leadership positions and receive a premium for such activities.

*Subsequent to this ruling, the interpretation was enacted as an amendment to the Ethics in Government Act of 1978 by Public Law 96–19.

**The Senate in S. Res. 93 (96th Cong.) on March 8, 1979 delayed the effective date of Rule 44 until January 1, 1983.

INTERPRETATIVE RULING No. 226

Date issued: January 30, 1979.

Applicable rule: 46.

Question considered: May a Member use excess campaign funds from his or her principal campaign committee to defray the cost of moving to Washington, D.C., as a newly-elected Senator, as well as the cost of holding receptions and breakfasts for constituents?

Ruling: The use of excess campaign funds is governed by both the Federal Election Campaign Act and Senate Rule. 2 U.S.C. 439a permits such funds to be used for any lawful purpose, including the ordinary and necessary expenses incurred in connection with one's duties as a holder of federal office. In addition, Senate Rule 46 allows Senators to defray office expenses from "funds derived from a political committee;" however, no campaign contributions may be converted to the personal use of any Member. "Personal use," as that term is used in Rule 46 does not include reimbursement of "expenses incurred by a Member in connection with his official duties."

The Committee considers that for the purpose of Rule 46, both the cost of moving to Washington, D.C., as a newly-elected Senator and the cost of holding receptions and breakfasts as a public service to constituents are the kinds of expenses which are incurred by a Member in connection with his or her official duties. Consequently, excess campaign funds from a Member's principal campaign committee may be used to pay these expenses, either directly or as reimbursements should the Member pay the expenses from personal funds.

The Committee notes that this interpretation of paragraph 2 of Rule 46 has no bearing on the question of what kinds of expenses are "official expenses" as that term may be defined by the Senate Rules Committee or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds. In fact, the Committee understands that Government funds may not be used to reimburse a newly-elected Member for expenses incurred when moving to Washington, D.C.

The Committee expresses no view as to the consequences of this proposal under Section 217 of the Internal Revenue Code.

INTERPRETATIVE RULING No. 227

Date issued: January 30, 1979.

Applicable rule: 45.

Question considered: May a Senate employee, whose Senate subcommittee responsibilities include work on oversight and authorization legislation concerning the Federal Government's school lunch program, undertake outside professional activity in the form of service on an advisory committee of a department of a state government? The department promotes the use of agricultural products grown in the state through various school nutrition programs.

Ruling: The advisory committee has been established to review educational materials and to comment on proposed projects for the department relative to a state sponsored program which relies, in part, upon Federal assistance. The Federal assistance is authorized by legislation which is handled by the employee's subcommittee. The department has proposed to provide the Senate employee with an "honorarium" of $500 and expenses, for the employee's attendance at each meeting of the advisory committee.

While the remuneration to be provided by the department is characterized by the payor as an "honorarium," the Committee considers the arrangement to be compensation for recurring professional services.

Paragraph 2 of Rule 45 directs that no employee of the Senate shall engage in any outside professional activity or emplyoment for compensation which is inconsistent or in conflict with the conscientious performance of that employee's official duties. In this factual situation, the Committee ruled that because of the nature of the employee's responsibilities with the employing Senate subcommittee, acceptance of the invitation to serve on the advisory committee could lead to an actual conflict or the appearance of a conflict of interest with the employee's conscientious performance of Senate duties.

INTERPRETATIVE RULING No. 228

Date issued: February 7, 1979.

Applicable rule: 44*.

Questions considered:

(1) Will honoraria donated to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, as amended, be treated for the purposes of Senate Rule 44 in the same manner as such honoraria are treated for Federal income tax purposes?

(2) When a Senator donates an honorarium to a charitable organization may the Senator request the payor organization to indicate to that charitable organization the name of the individual who made the appearance or speech or wrote the article? In addition, may a Senator ask that the honorarium be donated to a charitable organization in the name of another person?

Ruling: The Committee has determined that an honorarium payable to an individual who is a Member, officer or employee of the Senate will be deemed not to have been accepted by the individual for the purposes of both the per appearance and the annual aggregate limitations imposed under Senate Rule 44 if the individual asks that the honorarium be given (a) to a charitable organization of the payor organization's own choice; or (b) to a charitable organization selected by the payor from a list of five or more charitable organizations provided by the individual.** For the purposes of this Rule a charitable organization is one described in Section 170(c) of the Internal Revenue Code. This is consistent with the provisions of 2 United States Code 4411, as amended December 1977. As noted in Interpretative Ruling No. 9, issued May 11, 1977, the Committee recognizes, however, that there is a likelihood that these honoraria would be includable in gross income for Federal income tax purposes and would be deductible from gross income under Section 170 of the Internal Revenue Code if donated to a tax-exempt organization as described above.

In response to question No. 2, the Committee is of the opinion that neither of these procedures would constitute control over the selection of the recipient such that the honorarium would be deemed to have been accepted for the purposes of Rule 44 so long as the recipient is either selected by the payor organization itself or from a list of five or more charities submitted to the payor by the individual.

INTERPRETATIVE RULING No. 229

Date issued: February 7, 1979.

Applicable rules: 42†, 44††, 45.

Question considered: May a Senate committee staff member rewrite a chapter of a legal manual, which work will be done after regular office hours and for which compensation will be $300? The Committee for which the staff member works has no oversight or authorization responsibilities for the funding of the program for which the manual is being written.

Ruling: The Committee is of the opinion that the Code of Official Conduct does not preclude this activity. Payment received for rewriting a chapter would be considered an "honorarium" and therefore would be subject to provisions of Rule 44, which limits the amount of compensation certain individuals may receive, and Rule 42, which requires disclosure of such compensation.

INTERPRETATIVE RULING No. 230

Date issued: February 23, 1979.

Applicable area: Code of Official Conduct.

Question considered: May a Senator remain on a seniority list maintained by a former employer? The Senator would no longer be considered an employee, would receive no compensation or other benefits, and would not be serving on any committee or subcommittee having legislative or oversight responsibilities for the former employer's industry.

Ruling: Given the above circumstances the Committee is of the opinion that such an arrangement neither violates any provision of the Senate Code of Official Conduct, nor would it appear to give rise to an actual or apparent conflict of interest.

INTERPRETATIVE RULING No. 231

Date issued: February 26, 1979.

Applicable area: Franking.

Question considered: May a Senator use the mailing frank to send a statement and an excerpt from the Congressional Record concerning the District of Columbia voting rights amendment to state legislators throughout the country?

Ruling: Section 3210(a)(3)(A) of Title 39 of the United States Code authorizes the franking of mail matter "to any person and to all agencies and officials of Federal, State and local governments regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress." In addition, section 3210(a)(3)(E) specifically authorizes the franking of "mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments."

The Committee ruled that the material is frankable mail matter under Section 3210 since it directly pertains to matters affecting the functioning, working or operating of the Congress and relates to actions of a past Congress.

INTERPRETATIVE RULING No. 232

Date issued: March 2, 1979.

Applicable rule: 48.

Question considered: Is an elected member of the Agricultural Stabilization and Conservation Service considered to be a "government official" as that term is used in Senate Rule 48 for purposes of the provisions relating to mass mailings?

Ruling: In its Interpretative Ruling No. 117, dated April 10, 1978, the Committee defined "government officials", as used in Rule 48, paragraph 4, as follows: Government officials (whether Federal, State or local) include any elected or appointed officials of the United States and of any state or territory or a political subdivision thereof.

The Committee understands that, under 16 U.S.C. 590h(b), members of the A.S.C.S. are either popularly elected, elected by local, county or state A.S.C.S. committees, or appointed by the Secretary of Agriculture. Therefore, members of the Agricultural Stabilization and Conservation Service would fall under the definition of "government official" and thus mass mailings addressed to

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*The Senate in S. Res. 93 on March 8, 1979 delayed the effective date of Rule 44 until January 1, 1983.

**See Interpretative Ruling No. 28, dated June 7, 1977.

†Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

††S. Res. 93 (96th Cong.) changed the effective date of Rule 44 to January 1, 1983.

them would not be required to be registered under Rule 48, paragraph 3.

INTERPRETATIVE RULING No. 233

Date issued: March 9, 1979.

Applicable rule: 45.

Question considered: May a lawyer continue to represent several clients in connection with certain cases after that individual has become a Senate employee? The cases in question are either personal injury cases or matters relating to estate planning and administration. The cases do not conflict with the employee's work for the Senator and the work will not be done during regular Senate office hours.

Ruling: Senate Rule 45.3 requires the supervisor of a Senate employee to make the initial judgment as to whether a proposed outside activity would present a conflict of interest because of either the time required by the activity or the nature of the activity itself. Paragraph 3 of Rule 45 further requires the supervisor to take such steps as he considers necessary for the avoidance of conflict or interference with duties to the Senate. Senate Rule 45, paragraph 6, provides that no Member or Senate employee compensated at a rate in excess of $25,000 a year and employed in excess of 90 days in a calendar year may:

(a) affiliate with a firm, partnership, association, or corporation for the purposes of providing professional services for compensation; (b) permit the individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed.

As the Committee noted in a previous interpretative ruling,* this provision restricts, but also contemplates, some practice outside office hours or on annual leave time.

In this particular situation, the Committee believes that it would not be improper for the Senate employee to finish work on those cases which have been described so long as the individual does so as a sole practitioner of law, i.e., not in connection with a law firm. Specifically, the employee's name may not be used by a law firm nor should he participate in any partnership proceeds of a law firm for work done by him after he has begun Senate employment. In addition, after beginning work as a sole practitioner, it would not be deemed improper for him to distribute to the law firm a portion of any fees earned in connection with those cases begun when he was a partner of the firm, if that portion of the fees distributed to the firm is pursuant to a financial arrangement which existed before he left the firm.

INTERPRETATIVE RULING No. 234

Date issued: March 14, 1979.

Applicable rules: 42**, 43.

Question considered: May a Senate employee accept an invitation to visit a foreign country at the expense of a private, nonprofit foreign organization for the purpose of attending meetings with local business leaders and government officials to discuss matters relating to the employee's official Senate duties?

Ruling: Rule 43 of the Senate Code of Official Conduct prohibits the acceptance of gifts exceeding $100 in value from a foreign entity. However, the definition of "gift" does not include payments for which consideration of equal or greater value is received by the donor. The Committee finds that the staff member's participation in the meeting sponsored by the organization would constitute consideration for the travel expenses to be paid by the organization. Under these circumstances, the acceptance of the travel expenses would not be prohibited by Rule 43.

The expenses received in connection with this trip must be reported as earned income under Senate Rule 42. Furthermore, if the employee is required to file a financial disclosure statement under P.L. 95–521, Ethics in Government Act of 1978, he will be required to report the identity of the source and a brief description of reimbursements received from any source with an aggregate value of $250 or more for the calendar year.

Additionally, the Foreign Gifts and Decorations Act (5 U.S.C. Section 7342) limits the acceptance by Members, officers and employees of the United States Senate (and their spouses and dependents) of certain tangible gifts and gifts of travel or expenses for travel from a foreign government. Certain reporting requirements are imposed upon Members, officers and employees who accept gifts from a foreign government pursuant to the provisions of the Act.

INTERPRETATIVE RULING No. 235

Date issued: March 15, 1979.

Applicable rules: 42*, 44.

Question considered: Do the proceeds from the sale to a national magazine of a series of photographs taken by a Senator fall within the definition of "outside earned income" under Rule 44, paragraph 3(b)?

Ruling: On March 8, 1979, the Senate passed S. Res. 93, which changed the effective date of Rule 44 to January 1, 1983. Consequently, there are no current limits on the amount of outside earned income a Member, officer or employee of the Senate may earn, except for those limits on honoraria which may be accepted under 2 U.S.C. 4411. Outside income is reportable each year under Senate Rule 42.

INTERPRETATIVE RULING No. 236

Date issued: March 19, 1979.

Applicable area: Franking.

Question considered: What is the definition of a "page" for purposes of the personal reference rule in the franking regulations which limits personally phrased references to a Senator in a franked mailing to no more than five per page?

Ruling: The Committee has determined that a "page", for purposes of the limitation on the number of personally phrased references to a Senator in a franked mailing, is each side of an 8½"×11" or 8½"×14" sheet of paper, irrespective of the number of folds utilized in the design of the matter mailed. Thus, if a newsletter is on a legal-size sheet of paper and has print on both sides, it would be a two-page newsletter for purposes of the franking regulations, even if the paper were folded to resemble a four-page "pamphlet". The Committee notes that this interpretation is in accord with the definition of a sheet of paper used by the Committee on Rules and Administration for purposes of Members' paper allowances.

INTERPRETATIVE RULING No. 237

Date issued: March 21, 1979.

Applicable area: Code of Official Conduct.

Question considered: Is it proper for a Senator to contact a Bankruptcy Judge to endorse a motion submitted to the Judge by a group of constituents?

A corporation doing business in the Senator's state is undergoing reorganization proceedings under the Bankruptcy Act. An association of employees and users of the corporation's services in the state has filed a motion to intervene in the Bankruptcy Court proceedings, and the Senator states that the association has asked him to contact the Bankruptcy Judge to express his support for the motion. The Member also states that while he supports the intervention by the association on its merits, he is concerned that direct involvement might be an improper use of Senatorial influence.

Ruling: The Member does not indicate that he intends to become a party in the matter or that he intends to submit an *amicus curiae* brief in conformity with the Court's rules of procedure. Accordingly, the Committee determined that it would be improper for the Member to contact the Bankruptcy Judge in the manner outlined.

INTERPRETATIVE RULING No. 238

Date issued: March 26, 1979.

Applicable rule and area: 45, Ethics in Government Act of 1978.

Questions considered: Would there be an actual or apparent conflict of interest if a committee were to hire, on a per diem basis for a maximum of 60 days, an attorney from a law firm to work exclusively on a single piece of legislation? The attorney would have no other duties or responsibilities as regards any other legislation which might come before the committee. If neither an actual nor an apparent conflict were found would a waiver from the applicability of paragraph 10 of Rule 45, the post-employment lobbying restriction, be appropriate?

Ruling: The Select Committee was informed of the following facts and made the following determinations with respect to those facts: (1) that in the past, certain individuals in the attorney's law firm had been registered under the Regulation of Lobbying Act of 1946; the Select Committee determined that neither the attorney nor any other person associated with his firm were currently registered; (2) that the attorney currently serves as outside counsel to a tax-exempt organization which is engaged in a number of public policy research studies, including one in the area of products liability; the Select Committee determined that while legislation affecting products liability laws has been introduced in the past and may be reintroduced in the current Congress, any legislation would not be referred to the attorney's committee, the tax-exempt organization would have no financial interest in such legislation, the organization is restricted by the Internal Revenue Code with respect to its lobbying activities, and the attorney's duties with the committee would not involve any work or products liability legislation; (3) that the attorney represents several beneficiaries of a trust which has an interest in a Federal condemnation proceeding now underway in a state; the Select Committee determined that while the bulk of funds necessary to effect the condemnation had already been appropriated, an additional appropriation might be sought during the current year and that if this were the case, the attorney's committee would have no responsibility for such an appropriation; (4) that the attorney's law firm is representing a client who is pursuing a claim against the United States for the death of the spouse and the firm may seek the introduction of a private bill of relief in the Senate; the Select Committee determined that if such a private relief bill were introduced, although it would be referred to the attorney's committee, the firm agreed that any recovery from such a private bill would be handled on a

* Interpretative Ruling No. 70, dated September 29, 1977.

**Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

*Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

"pro bono" rather than contingent fee basis and the attorney would not involve himself in any way with the committee's review of the matter.

Based upon these factual determinations, the Select Committee ruled that it did not appear that the attorney's duties to his law firm would present either an actual conflict or the appearance of a conflict of interest with his responsibilities to the committee which proposes to hire him. However, the Select Committee reminded the inquiring Senator, who would supervise the attorney, that paragraph 3 of Rule 45 on Conflict of Interest prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation unless he has described such activity in writing to his supervisor. The rule also places a continuing responsibility on the supervisor to take such action as is necessary for the avoidance of conflict of interest. Thus, any change in the attorney's activities, or those of his law firm and its clients, would be a critical consideration during the time the attorney is employed by the committee.

The Select Committee also addressed the request for a waiver of the post employment lobbying restriction found in paragraph 10 of Rule 45, which is applicable to all Senate employees, including those who are hired as consultants on a per diem basis. Paragraph 5 of Rule 49 authorizes the Select Committee, in its discretion, to grant waivers from the applicability of any provision of the Code of Official Conduct to an employee hired on a per diem basis, "in exceptional circumstances for good cause shown." Should circumstances arise during the period of the prohibition of paragraph 10 of Rule 45, the Committee stated it would consider the appropriateness of a waiver. The Committee said it did not believe a waiver was intended to be used as an inducement to employment against the possibility that an exceptional circumstance might arise at some future time.

The Select Committee also reminded the inquiring Senator that Section 101(c) of the Ethics in Government Act of 1978, Public Law 95-521, requires that a reporting individual who begins his duties with the legislative branch on or after January 1, 1979, must file a "limited" financial disclosure statement within thirty days of assuming the new position. However, the Select Committee has interpreted this provision to apply to employees who have committed themselves to work or who reasonably believe that they will be working for more than sixty days in the calendar year.* The Select Committee stated that should circumstances change and the attorney in question becomes aware that he would be working for more than 60 days, he would become obligated to file the required financial disclosure statement immediately upon learning of the changes in his employment arrangement.

In response to his specific request that any additional Federal laws or regulations pertaining to the hiring of the attorney be cited, the Senator was informed that 18 U.S.C. 203(a)(2), a criminal statute under the jurisdiction of the Department of Justice, would appear to restrict officers and employees of the United States (including the legislative branch) from involvement in proceedings in which the United States is a party. However, the Select Committee noted that the statute provides an exception for certain individuals who are defined as "special government employees", and that the Senator might wish to consider whether the attorney would fall within that status and thus not be subject to the limitation.

*Subsequent to this ruling, the interpretation was enacted as an amendment to the Ethics in Government Act of 1978 by Public Law 96-19.

INTERPRETATIVE RULING No. 239

Date issued: March 26, 1979.

Applicable rules: 42*, 48.

Question considered: May a Senator use the Senate computer facilities to record information necessary for disclosing the receipt of gifts under Senate Rule 42?

Ruling: Rule 48, paragraph 5, prohibits the use of the Senate computer facilities to store, maintain, or otherwise process lists of names and addresses which identify individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation. The Committee has previously ruled * * * that this requirement means that records may not be sorted selectively with the intent of targeting mailings to likely election supporters.

With regard to the keeping of records and administrative details necessary to ensure compliance with the financial disclosure rule, the Committee has ruled*** that staff members may assist a Senator with these duties to the extent reasonably necessary to assure compliance with the rule, since such compliance is a Senate duty.

Likewise, the Committee believes that, if authorized by the Rules Committee, the storing and processing of information for reporting the receipt of gifts under Rule 42 would not be prohibited by Rule 48, paragraph 4, so long as no political designations were included in the data and the records were not used to target mailings for partisan political purposes.

INTERPRETATIVE RULING No. 240

Date issued: March 29, 1979.

Applicable area: Foreign Gifts and Decorations Act.

Question considered: Under what circumstances may a Senator accept a decoration from a foreign government?

Ruling: The Constitution of the United States provides, in Article I, Section 9, Clause 8, that no officer or employee of the Federal government shall accept any gift or decoration from any foreign state "without the consent of the Congress."

Under the Foreign Gifts and Decorations Act (5 U.S.C. Section 7342) (the Act), Congress has consented to the accepting, retaining and wearing of decorations by employees of the United States, subject to the approval of the employing agency, which are "tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance." Without the approval of the employing agency, a decoration is deemed to have been accepted on behalf of the United States, and becomes the property of the United States. The decoration must then be deposited with the employing agency within sixty days of its acceptance.

The Select Committee on Ethics has been designated as the employing agency under the Act for Members, officers and employees of the United States Senate for the purpose of approving the accepting, retaining, and wearing of decorations. In the opinion of the Committee, a judgment as to whether the decoration meets the statutory standard cited above can best be made after it has had an opportunity to review the citation accompanying the award of the decoration. The Committee believes, therefore, that it would be appropriate to receive the decoration with the understanding that the question as to whether the decoration may be retained or worn will be made by the Committee upon its receipt of a copy of the citation or such other supporting documentation as may be available.

* Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

** See Interpretative Ruling No. 44, dated July 18, 1977.

*** See Interpretative Ruling No. 60, dated September 13, 1977.

INTERPRETATIVE RULING No. 241

Date issued: March 29, 1979.

Applicable rules: 46, 48.

Question considered: Is it permissible for a non-profit, non-partisan educational and business organization to print and affix mailing labels to envelopes bearing a Senator's frank to be used in a mass mailing to members of that organization in that Senator's state?

Ruling: Senate Rule 48.2 requires that only official Senate funds be used "to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank." In addition, Senate Rule 46 prohibits the use of funds or in-kind contributions of goods or services from sources other than those enumerated in the Rule to defray expenses incurred by the Member in connection with his official duties.

The Committee has ruled that in-kind services provided by Federal agencies are not subject to the prohibitions discussed above of Rule 46 or of Rule 48.2 if such services are generally available to all Members of the Senate.* However, these exceptions to Senate Rule 46 and Rule 48 would not be applicable in this situation. Accordingly, a Senator must reimburse an outside organization, out of official Senate allowances, for the reasonable cost of the labels and of the printing and labeling services provided by that organization in connection with a franked mass mailing.

The Committee further notes that, in Interpretative Ruling No. 66, dated September 26, 1977, it ruled that the affixing of mailing labels, by an outside organization, on franked envelopes which previously had been stuffed and sealed in the Senate would constitute a transfer of franked envelopes in violation of Section 3215 of Title 39 of the United States Code. That provision states that "a person entitled to use a frank may not lend it or permit its use by any committee, organization, or association "not itself entitled to use the frank." In the Committee's view, the opportunity for misuse or diversion of franked envelopes, even though previously stuffed and sealed by the Senate Service Department, is so great as to be tantamount to a loan of the frank.

The Committee has also ruled in Interpretative Ruling No. 196, however that it would be permissible for labels to be affixed by an outside organization to unstuffed and unsealed franked envelopes so long as the labeling process is carried out under the supervision of a member of his staff and in such a manner as to avoid any misuse which could constitute an improper loan of the frank. The franked envelopes should then be returned to the Senate under the supervision of a Senate staff member for stuffing and mailing.

The Committee also points out that in preparing any mail matter to be sent out under the frank, care must be taken to avoid giving the impression that the outside organization is in any way sponsoring the mailing, since to do so would constitute an improper loan of the frank.

INTERPRETATIVE RULING No. 242

Date issued: March 29, 1979.

Applicable area: Advisory Opinion on Use of Letterhead.

*Interpretative Ruling No. 196, dated October 26, 1978.

Question considered: May a Senate employee use his official Senate title on the letterhead of a mailing which solicits funds for a college, where the college will defray the costs involved in the solicitation? The first page of the letter contains a statement that the letter is not printed at government expense.

Ruling: This ruling may not be relied upon as precedent.

The Committee found that the inclusion of the employee's Senate title on the solicitation letterhead would not, as proposed, violate the Code of Official Conduct.

INTERPRETATIVE RULING NO. 119A

(Note: This ruling was inadvertently omitted in the previous publication of Rulings). (Added September, 1979).

Date issued: April 20, 1978.

Applicable area: Franking.

Question considered: A Senator inquired about the frankability of a proposed newsletter to constituents.

Ruling: The Committee determined that the content of the newsletter, if revised to eliminate all personal references in excess of five per page, was in conformity with the franking statute and regulations. In this connection, the Committee pointed out that the removal of a personal pronoun which results in an ungrammatical sentence, the use of other pronouns which in the context refer to the Member, or the use of an implied subject which is the Member, does not eliminate the personal reference from the sentence.

The Committee also cautioned that the mailing of many such newsletters which recounted experiences of a Member might be perceived as being either personal or political. Such a pattern might be found unfrankable under 39 U.S.C. 3210(a)(4), a(5)(A) and (a)(5)(B)(ii).●

WALL STREET SURVIVES COMPETITION

● Mr. KENNEDY. Mr. President, over 4 years ago, the Securities and Exchange Commission administratively "deregulated" the commissions charged by stockbrokers. Previously, brokerage fees had been set by the exchanges, and brokers were thus able to "fix" their fees at a uniformly high rate.

At the time the Antitrust and Monopoly Subcommittee began its investigation of ratemaking practices in the regulated trucking industry, in late 1977, trucking industry spokesman cited the alleged "chaos" in the securities industry which resulted from deregulation. That situation, they said, would occur in their own industry if trucking firms were similarly forbidden to fix prices. Upon closer examination, however, the "chaos" they saw turns out to be nothing more than normal price competition in a free marketplace. Unlike the situation that existed when commissions were fixed, brokerage fees now more fairly reflect the actual services provided by brokers.

The salutary effects of deregulation have been amply documented. Between 1975 and 1978, commission rates plummeted by an average of 16 percent for individual purchasers and 48 percent for institutions. "Discount brokers" entered the market and now charge rates as much as 50 percent below the old fixed rates, providing low-cost service for customers who desire fewer services. Customers, for the first time, can select an appropriate rate and level of service from a variety offered by different brokerage houses.

The end of regulated commission rates also caused changes in the membership of the New York Stock Exchange, as well as a drive for increased efficiency within firms in the market. By 1978, 93 firms had exited the exchange, 24 of which remained members of the National Association of Securities Dealers, and 62 new firms joined the exchange.

A recent article in the Washington Post by the senior vice president of Batterymarch Financial Management Corporation of Boston, Mr. James Gibson, graphically illustrates what deregulation has meant for the securities industry. I think that the view of a securities specialist like Mr. Gipson will be of considerable interest to Members of the Senate, and I ask that the article be printed in the RECORD. I would also ask that a subsequent letter Mr. Gipson wrote to me, in which he specifies the implications of securities deregulation for the trucking industry, be printed as well.

The material follows:

[From the Washington Post, June 3, 1979]

WALL STREET SURVIVES COMPETITION

(By James Gipson)

Wall Street remembers May 1, 1975, with the same feelings the U.S. Navy reserves for Dec. 7, 1941. After generations of preaching the rigorous virtures of competitive capitalism while practicing the pleasurable vices of monopoly and price fixing, Wall Street met its Pearl Harbor in the form of price competition within its own ranks. The capable brokers and the efficient firms have survived the shakeout that began that May Day, but Wall Street, unlike the Navy, has little chance to achieve redemption or to inflict revenge for the calamity that has overtaken it.

To understand the present upheaval, one must understand the old order that preceded it. The club that was to become the New York Stock Exchange was formed nearly two centuries ago under a buttonwood tree in lower Manhattan. The club was based on three principles that remained intact through booms, busts, wars and the growth of the country from a few former colonies huddled on the Atlantic Coast to the most powerful nation in the world. The three principles were: a club monopoly of trading, limited club membership and a fixed 1 percent commission.

Shortly after the club was formed, Colonel Bronk rode in from the area that now bears his name (belonging to the Bronks family, corrupted to the Bronx) and tried to go around the club in selling some securities. He failed, and no one seriously challenged the club again until the late 1960s. The club proved to be one of the most durable institutions in the country, and many people thought it would last forever.

Of course, nothing lasts forever. The third market undercut the club's monopoly of trading by conducting transactions in listed stocks away from the New York Stock Exchange. The most serious challenge to the club came on the critical issue of commissions, however.

The fixed-commission schedule of roughly 1 percent yielded a bonanza to brokers in the 1960s as both stock prices and stock volume rose to set records. Many brokers made six-figure incomes while still in their 20s. The spectacle of this largesse led to pressures to cut commission rates, particularly by large institutional investors such as bank trust departments and pension funds whose own employes did not share in the bonanza.

Under prodding from the Securities and Exchange Commission, broker commission rates were made negotiable on large trades of more than $500,000. Much to the dismay of brokers, competition quickly forced large discounts. As a result, there was considerable apprehension at the approach of May Day 1975 when the SEC ordered that all rates be made negotiable. A few major institutional brokers announced they would limit discounts to 8 percent off the old fixed rates and then sat back to see what would happen.

Nothing happened, and that was the problem. Brokers who offered small commission discounts to institutions found their phones stopped ringing. Other brokers offered more generous discounts in an admirable display of competition in action. In a matter of days, even the major brokerage firms cut their prices drastically, too. Instead of an 8 percent discount off the old rates, discounts of 50 percent became common, and ones of 80 percent to 90 percent were not unusual.

Any industry which slashes its prices that sharply is in for a shakeout of the less efficient firms. Many brokerages were managed as badly as old law firms, with an abundance of prima donnas and an absence of cost controls and efficient procedures. The weak and inefficient firms that survived under the umbrella of fixed prices simply dissolved under the downpour of price competition.

At first, the benefits of negotiated commissions went to large institutional investors, but slowly they became available to individual investors as well.

Today even a small investor who needs only trading services and who can dispense with a broker's advice can save 50 percent or more by going to a discount broker. As with the deregulation of airlines, the resulting price competition generated lower prices for the public.

Unlike the case with airlines, however, competition came as a result of more government regulation, not less.

The results of price competition lived up to the hopes of its advocates and to the fears of its opponents. The advocates thought Wall Street was overcharging the public and hoped rates would fall but few dared hope that rates would fall as far as they did.

The opponents of price competition feared that the inefficient firms would go out of business and, in fact, some did. Wall Street has not collapsed, however, but has become leaner and much more efficient than before. It does a better job of executing trades and does it with fewer employes. Many brokers still feel a fond nostalgia for the bygone era of fixed prices and large profits but, for the investing public that benefits from lower rates through price competition, these are the good old days.

BATTERYMARCH FINANCIAL MANAGEMENT CORPORATION,
Boston, Mass., June 21, 1979.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: Thank you for your letter on my piece in the Washington Post concerning Wall Street's experience with the deregulation of commissions. What follows are some additional observations on Wall Street's experience that may be relevant to your efforts to deregulate the trucking industry.

Wall Street's resistance to competition confirmed the adage that the last progressive thing the New York Stock Exchange did of its own free will was to move its operations indoors to get out of the rain. Brokers predicted that terrible things would happen if their fellow brokers were free to set their own prices. Some otherwise intelligent men even maintained that rates would rise if the floor on rates were removed. Similar pre-

dictions of disaster probably emanate from the trucking industry.

Brokers argued against free competition on a variety of principles, but the vigor of their case sprang from an acute realization that their financial principal would be impaired. The sharp decline in brokerage rates that followed Mayday, 1975 definitely reduced the profitability of the brokerage business, particularly the segment that deals with institutional investors such as banks and investment advisors. My own firm has cut commissions roughly 90% in the past five years since our objective is to enrich our clients, not our brokers. The price of a seat on the New York Stock Exchange has fallen from $500,000 a decade ago to about $120,000 today.

I imagine that the route rights of truckers would suffer a similar decline in value under most forms of trucking deregulation. In essence a route right is a license to join the oligopoly on a particular route, and that license has considerable value under the current rules of the game.

A change in the rules of the game was feared by brokers, probably as much as they feared the loss of income and asset values. For generations they operated under a fixed set of rules and they naturally feared the emergence of a new order whose nature and ground rules they did not understand. A similar attitude prevailed among airline executives who amazingly fought the deregulation that would give them more power, apparently because they feared the dragon of free competition they did not know more than they feared the dragon of CAB bureaucracy that they knew very well. Even the most efficient truckers who might benefit from deregulation probably fear a game played by new rules with uncertain outcomes.

Part of the predictions of disaster on Wall Street came true. A number of less efficient firms went out of business or merged into stronger ones. Some of the brokers who made six-figure incomes in the late 1960's found themselves driving taxis in the mid 1970's, but in many cases that was a net gain for society. Competition is not merely a profit system, but a profit and loss system. The advent of competition probably will be as painful to the inefficient trucker as it was to the inefficient broker. As in any shakeout, those people with ability, brains, and energy will find ways to survive and even thrive, while those with more modest talents will have to go elsewhere.

As you probably gather by now, I hope your efforts to deregulate trucking are successful. The abundance of competitors and the presence of inefficiencies such as the back haul problem make this industry nearly ideal for the introduction of more competition to lower rates, raise productivity and possibly to improve services.

Sincerely,

JAMES GIPSON,
Senior Vice President.

CONCLUSION OF MORNING BUSINESS

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

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS, 1980

The Senate continued with the consideration of the bill (H.R. 4393).

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. LEVIN be permitted to lay down an amendment tonight and that it be followed on tomorrow by the amendment by Mr. HELMS.

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

UP AMENDMENT NO. 523

(SUBSEQUENTLY AMENDMENT NO. 399)

(Purpose: To prohibit requiring an intermediate school district to pay postage on mail delivered between its local school districts)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN) proposes an unprinted amendment numbered 523.

Mr. LEVIN. I ask that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 45 between lines 8 and 9, insert the following:

Sec. 616. None of the funds available under this Act or any other Act may be used by the United States Postal Service or any other agency to require an intermediate school district to, or to bring a civil or criminal action against an intermediate school district for failure to, pay postage for the carrying of mail between local school districts which comprise such intermediate school district if—

(1) the carrying of such mail is performed without compensation, and

(2) the mail carried consists of matters relating to the conduct of the business of the intermediate and local school districts.

Mr. LEVIN. The President, the purpose of this amendment is to allow intermediate school districts to distribute mail to local school districts within their intermediate area without civil and criminal penalty by the Postal Service. I am hopeful that the committee will accept this amendment in the morning and that it might be acceptable to the minority as well.

TIME LIMITATION AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, without any time being charged against the amendment tonight, there be a time limitation on the amendment by Mr. LEVIN of 10 minutes, it being my understanding that the committee is going to accept it.

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

Mr. ROBERT C. BYRD. Mr. President, I thank Mr. HELMS for his willingness to let the Levin amendment go ahead of his amendment.

Mr. LEVIN. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. LEVIN. I thank the majority leader for working this out for me and Senator HELMS as well for cooperating with me.

Mr. ROBERT C. BYRD. The Senator is most welcome.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow morning, then, will be that, upon the disposition of the amendment by Mr. LEVIN, Mr. HELMS will be recognized to call up his amendment. There will be, I believe, 1 hour on the amendment, equally divided. Upon the disposition of that amendment, there will be no more amendments unless Mr. METZENBAUM desires to call up an amendment. In that case, under the order, he will be permitted to call up an amendment. In either event, the Senate will then proceed to consideration, to third reading, and then to passage.

Mr. President, under the agreement already entered, upon the disposition of the Treasury-Postal Service appropriations bill, the Senate will take up Calendar Order No. 160, S. 1142, a bill authorizing appropriations for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts.

Upon the disposition of that measure, the Senate will then take up, either tomorrow or Friday, whatever the case may be, Calendar Order No. 271, S. 643, a bill to amend the Immigration and Nationality Act to revise the procedures for the admission of refugees.

So there will be rollcall votes tomorrow and Friday.

ORDER FOR RECOGNITION OF SENATORS HARRY F. BYRD, JR., AND JAVITS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders are recognized under the standing order, there be two Senators recognized, each for not to exceed 15 minutes, they being Mr. HARRY F. BYRD, Jr., and Mr. JAVITS.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW AND CONSIDERATION OF TREASURY-POSTAL SERVICE APPROPRIATIONS MEASURE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, upon the conclusion of the orders for the recognition of the Senators tomorrow, there be a brief period for the transaction of routine morning business of not to exceed 15 minutes, that Senators may speak therein up to 5 minutes each, and that, at the conclusion of the period for routine morning business, the Senate resume the consideration of the Treasury and Postal Service appropriations bill.

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

RECESS

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 9:30 a.m. tomorrow morning.

The motion was agreed to; and, at 7:19 p.m., the Senate recessed until tomorrow, Thursday, September 6, 1979, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate August 10, 1979, under authority of the order of the Senate of August 3, 1979:

THE JUDICIARY

Samuel D. Johnson, Jr., of Texas, to be U.S. circuit judge for the fifth circuit, vice a new position created by Public Law 95–486, approved October 20, 1978.

Edward B. Davis, of Florida, to be U.S. district judge for the southern district of Florida, vice a new position created by Public Law 95–486, approved October 20, 1978.

FARM CREDIT ADMINISTRATION

The following-named persons to be Members of the Federal Farm Credit Board, Farm Credit Administration, for the terms expiring March 31, 1985:

Jewell Haaland, of Minnesota, vice Alfred Underdahl, term expired.

Dwight L. Tripp, Jr., of Maine (reappointment).

IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be lieutenant general

Maj. Gen. Richard Edwin Merkling, 557–20–9153, U.S. Air Force.

Executive nominations received by the Secretary of the Senate August 16, 1979, under authority of the order of the Senate of August 3, 1979:

INTERNATIONAL MONETARY FUND; INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT; INTER-AMERICAN DEVELOPMENT BANK; ASIAN DEVELOPMENT BANK; AFRICAN DEVELOPMENT FUND

G. William Miller, of California, to be U.S. Governor of the International Monetary Fund for a term of 5 years and U.S. Governor of the International Bank for Reconstruction and Development for a term of 5 years; a Governor of the Inter-American Development Bank for a term of 5 years; and U.S. Governor of the Asian Development Bank and U.S. Governor of the African Development Fund.

DEPARTMENT OF STATE

Francois M. Dickman, of Wyoming, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the State of Kuwait.

John R. Clingerman, of Michigan, a Foreign Service officer of class 3, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

IN THE AIR FORCE

The following-named officers for promotion in the U.S. Air Force, under the appropriate provisions of chapter 839, title 10, United States Code, as amended.

MEDICAL CORPS

Lieutenant colonel to colonel

Abramson, Bernard, xxx-xx-xxxx
Acevedo, Julio, E., xxx-xx-xxxx
Alandydy, Manuel S., Jr., xxx-xx-xxxx
Anderson, Harris R., xxx-xx-xxxx
Anderson, John A., xxx-xx-xxxx
Andrada, Manuel T., xxx-xx-xxxx
Astorga, Alex M., xxx-xx-xxxx
Bailey, Edward J., xxx-xx-xxxx
Bailey, George O., xxx-xx-xxxx
Baker, Mason R., xxx-xx-xxxx
Beddingfield, George W., xxx-xx-xxxx
Beirne, Clinton G., xxx-xx-xxxx
Bisgard, Jay C., xxx-xx-xxxx
Bobbitt, Roy L., xxx-xx-xxxx
Bowden, Wayne M., xxx-xx-xxxx
Calcagni, John A., xxx-xx-xxxx
Candy, Jon W., xxx-xx-xxxx
Carroll, Herman G., Jr., xxx-xx-xxxx
Carver, Richard F., xxx-xx-xxxx
Castaneda, Tristan A., xxx-xx-xxxx
Church, McGregor L., xxx-xx-xxxx
Conrad, Larry L., xxx-xx-xxxx
Corbett, James E., xxx-xx-xxxx
Crane, Edward B., xxx-xx-xxxx
Crow, Joe W., xxx-xx-xxxx
Davis, John B., xxx-xx-xxxx
Davis, Merritt G., Jr., xxx-xx-xxxx
Dawson, Alan D., xxx-xx-xxxx
Dean, Nowlan K., xxx-xx-xxxx
Deatrick, Richard W., xxx-xx-xxxx
Dehnel, Luther L., xxx-xx-xxxx
Delcampo, Enrique J., xxx-xx-xxxx
Delpriore, Joseph A., xxx-xx-xxxx
Donahue, James M., xxx-xx-xxxx
Dorey, Lee R., xxx-xx-xxxx
Dryden, Richie S., xxx-xx-xxxx
Fragala, Mario R., xxx-xx-xxxx
Fredd, Sumner G., xxx-xx-xxxx
Fry, Delos H., xxx-xx-xxxx
Henges, David F., xxx-xx-xxxx
Hess, George W., Jr., xxx-xx-xxxx
Hickman, James R., Jr., xxx-xx-xxxx
Himelberger, Corydon G., xxx-xx-xxxx
Holbrook, James M., xxx-xx-xxxx
Howarth, Joseph C., xxx-xx-xxxx
Hughes, Thomas J., xxx-xx-xxxx
Humphries, Ivan C., xxx-xx-xxxx
Joder, Donald K., xxx-xx-xxxx
Jones, Henry A., xxx-xx-xxxx
Kantack, Paul W., xxx-xx-xxxx
Kercher, Raymond L., xxx-xx-xxxx
Kerwood, Robert I., xxx-xx-xxxx
Kimmich, Haydee J., xxx-xx-xxxx
Koenigsberg, Edward J., xxx-xx-xxxx
Koop, Lamonte P., xxx-xx-xxxx
Lavarreda, Carlos A., xxx-xx-xxxx
Lawrence, Mills E., III, xxx-xx-xxxx
Liest, Edward J., xxx-xx-xxxx
Lina, Manuel S., xxx-xx-xxxx
Lyons, James T., xxx-xx-xxxx
Mabeus, Duane F., xxx-xx-xxxx
Maier, Robert C., xxx-xx-xxxx
Malin, Sarah A., xxx-xx-xxxx
Mamawal, Mauro B., xxx-xx-xxxx
Mapes, Donald L., xxx-xx-xxxx
Marshall, Angus, xxx-xx-xxxx
Mathews, Theodore S., xxx-xx-xxxx
Mays, Joseph L., xxx-xx-xxxx
McConnell, Whitman E., xxx-xx-xxxx
McDonald, Harold T., xxx-xx-xxxx
McGovern, Edward L., xxx-xx-xxxx
Mendoza, Edward, xxx-xx-xx...
Meyer, George W., xxx-xx-xxxx
Miller, Gilbert, xxx-xx-xxxx
Mintek, Victor J., xxx-xx-xxxx
Moll, Jacob T., xxx-xx-xxxx
Montgomery, Robert N., xxx-xx-xxxx
Moore, Allen H., Jr., xxx-xx-xxxx
Morse, Harry R., xxx-xx-xxxx
Moss, Stanley R., xxx-xx-xxxx
Mullins, James D., xxx-xx-xxxx
Murray, Arthur J., xxx-xx-xxxx
Nemes, Ervin L., xxx-xx-xxxx
Nitzberg, Benjamin W., xxx-xx-xxxx
Ogg, Billy D., xxx-xx-xxxx
Ortiz, Jesus, xxx-xx-xxxx
Owens, Wyeth E., xxx-xx-xxxx
Pendell, Paul W., xxx-xx-xxxx
Pratofiorito, Frank N., xxx-xx-xxxx
Ragsdale, Vernice D., xxx-xx-xxxx
Rayos, Blas O., Jr., xxx-xx-xxxx
Rose, Donald E., xxx-xx-xxxx
Rosen, Paul R., xxx-xx-xxxx
Rudin, Norman, xxx-xx-xxxx
Rundell, William K., Jr., xxx-xx-xxxx
Sapio, Fred J., xxx-xx-xxxx
Schaap, George A., xxx-xx-xxxx
Sears, Robert F., xxx-xx-xxxx
Semler, Leonard, xxx-xx-xxxx
Shillinglaw, Richard G., xxx-xx-xxxx
Smith, Melvin D., xxx-xx-xxxx
Stewart, Andrew M., xxx-xx-xxxx
Tchou, Howard P., xxx-xx-xxxx
Thompson, Barry H., xxx-xx-xxxx
Tindall, John P., xxx-xx-xxxx
Tomasovic, Jerry J., xxx-xx-xxxx
Torma, Michael J., xxx-xx-xxxx
Troxler, Raymond G., xxx-xx-xxxx
Turner, John C., xxx-xx-xxxx
Wagner, Grant H., xxx-xx-xxxx
Wagner, James D., II, xxx-xx-xxxx
Walker, Ronald E., xxx-xx-xxxx
Wells, James R., xxx-xx-xxxx
West, Gary W., xxx-xx-xxxx
Wild, James H., xxx-xx-xxxx
Williams, Ariel L., Jr., xxx-xx-xxxx
Winer, Bernard A., xxx-xx-xxxx
Wisehart, Willard J., xxx-xx-xxxx
Wright, George D., xxx-xx-xxxx
Yrizarryyunque, Jose M., xxx-xx-xxxx
Zaayer, Dolph W., xxx-xx-xxxx
Zeiner, George B., xxx-xx-xxxx
Ziesmer, Carl B., xxx-xx-xxxx

MEDICAL CORPS

Major to lieutenant colonel

Walters, Charles L., xxx-xx-xxxx

The following officers for appointment in the Regular Air Force, in the grade indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force.

To be major

Meyer, George W., xxx-xx-xxxx
Mullins, James D., xxx-xx-xxxx

The following officers for appointment in the Regular Air Force, in grades indicated, under the provisions of section 8284, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

To be captain

Abels, James A., xxx-xx-xxxx
Ammirati, Louis J., xxx-xx-xxxx
Baginsky, Vincent J., xxx-xx-xxxx
Baldassari, Ronald J., xxx-xx-xxxx
Barrera, Arturo R., Jr., xxx-xx-xxxx
Bass, Marvin G., xxx-xx-xxxx
Beam, Danny A., xxx-xx-xxxx
Beard, Michael W., xxx-xx-xxxx
Bergquist, Ronald E., xxx-xx-xxxx
Berry, Edward M., III, xxx-xx-xxxx
Beverly, Gerald M., xxx-xx-xxxx
Borum, John P., xxx-xx-xxxx
Boyce, Earl J., xxx-xx-xxxx
Brearey, Jonathan L., xxx-xx-xxxx
Buffin, John K., xxx-xx-xxxx
Burleson, Thomas H., Jr., xxx-xx-xxxx
Cabe, Robert D., xxx-xx-xxxx
Cardona, Angel A., xxx-xx-xxxx
Carlson, Dennis A., xxx-xx-xxxx
Choate, Charles M., Jr., xxx-xx-xxxx
Cobb, William T., xxx-xx-xxxx
Cochard, Douglas D., xxx-xx-xxxx
Coco, Malcolm P., Jr., xxx-xx-xxxx
Coleman, Joseph W., xxx-xx-xxxx
Corlett, Clair R., xxx-xx-xxxx
Daugherty, Gerry R., xxx-xx-xxxx
Davidson, Sally L., xxx-xx-xxxx
Davis, Jerome N., Jr., xxx-xx-xxxx
Delorey, Edward A., xxx-xx-xxxx
Downs, David B., xxx-xx-xxxx
Drewitt, Robert A., xxx-xx-xxxx
Durham, John M., xxx-xx-xxxx
Emmons, Gary W., xxx-xx-xxxx
Fedoroff, Igor V., xxx-xx-xxxx
Ficklin, John B., Jr., xxx-xx-xxxx
Figueroa, Robert C., xxx-xx-xxxx
Franco, John A., Jr., xxx-xx-xxxx
Friesen, Dee W., xxx-xx-xxxx
Fuchs, Ronald P., xxx-xx-xxxx

Gordon, Mitchell K., xxx-xx-xxxx
Gorman, Dennis M., xxx-xx-xxxx
Griffin, Sidney W., xxx-xx-xxxx
Gutierrez, Marie J., xxx-xx-xxxx
Haile, Gary W., xxx-xx-xxxx
Hall, William F., xxx-xx-xxxx
Hamilton, Ronald H., xxx-xx-xxxx
Hamilton, Wilbur R., xxx-xx-xxxx
Hancock, Lance E., xxx-xx-xxxx
Helms, Ralph C., Jr., xxx-xx-xxxx
Heskew, Wayne R., xxx-xx-xxxx
Hickman, Paul G., xxx-xx-xxxx
Holliker, Robert F., Jr., xxx-xx-xxxx
Hutchinson, James N., Jr., xxx-xx-xxxx
Johnson, Clark C., xxx-xx-xxxx
Jones, Richard H., xxx-xx-xxxx
Jorgenson, Gary A., xxx-xx-xxxx
Kim, John S. S., xxx-xx-xxxx
Koehrsen, Bernal F., Jr., xxx-xx-xxxx
Lacaria, Thomas A., II, xxx-xx-xxxx
Lambert, James D., xxx-xx-xxxx
Lauther, Thomas G., xxx-xx-xxxx
Lea, James H., Jr., xxx-xx-xxxx
Leitch, Walter T., xxx-xx-xxxx
Lippincott, Robert L., Jr., xxx-xx-xxxx
Livingston, Meredith S., xxx-xx-xxxx
Loken, Peter R., xxx-xx-xxxx
Mace, Gilbert W., xxx-xx-xxxx
Manion, Kenneth J., Jr., xxx-xx-xxxx
Mankin, Michael W., xxx-xx-xxxx
Mayfield, Gary D., xxx-xx-xxxx
McAfee, Regis S., xxx-xx-xxxx
Meybaum, Klaus D., xxx-xx-xxxx
Miller, Thomas W., xxx-xx-xxxx
Moseley, Paula S. L., xxx-xx-xxxx
Mundle, Robert W., xxx-xx-xxxx
Nath, Charles J., III, xxx-xx-xxxx
Neu, David L., xxx-xx-xxxx
Olson, Leon C., xxx-xx-xxxx
Parks, Noel R., xxx-xx-xxxx
Perez, Alberto, xxx-xx-xxxx
Pettijohn, Charles M., xxx-xx-xxxx
Phillips, James C., xxx-xx-xxxx
Plakorus, George M., xxx-xx-xxxx
Player, George C., III, xxx-xx-xxxx
Powers, Marcella V., xxx-xx-xxxx
Ratley, Griffin L., xxx-xx-xxxx
Raymore, Peter K., xxx-xx-xxxx
Reeves, Edward H., Jr., xxx-xx-xx...
Riordan, Jeremiah C., xxx-xx-xxxx
Rogers, Wallace H., Jr., xxx-xx-xxxx
Rondeau, Jacques A., xxx-xx-xxxx
Roscoe, Harry E., Jr., xxx-xx-xxxx
Santens, Jerry S., xxx-xx-xxxx
Schneider, John IV, xxx-xx-xxxx
Schwenk, Daniel G., xxx-xx-xxxx
Shaver, Samuel P., xxx-xx-xxxx
Skaggs, Dennie M., xxx-xx-xxxx
Skopal, Paul A., xxx-xx-xxxx
Smith, James H., xxx-xx-xxxx
Snyder, Larry A., xxx-xx-xxxx
Spaulding, George L., xxx-xx-xxxx
Stamm, Michael R., xxx-xx-xxxx
Stammler, Richard, xxx-xx-xx...
Steadman, Bryan L., xxx-xx-xxxx
Stinson, Michael D., xxx-xx-xxxx
Suckman, Barry S., xxx-xx-xxxx
Sullivan, Claude T., xxx-xx-xxxx
Takehara, William, xxx-xx-xxxx
Tanner, Sidney W., xxx-xx-xxxx
Taylor, David S., xxx-xx-xxxx
Thornton, Terry W., xxx-xx-xx...
Torbensen, Jerry L., xxx-xx-x...
Trask, Tommy J., xxx-xx-xxxx
Voorhees, Ronald R., xxx-xx-xxxx
Walker, John M., xxx-xx-xxxx
Walsh, Michael, xxx-xx-xxxx
Walther, John G., Jr., xxx-xx-xxxx
Warner, James B., xxx-xx-xxxx
Welch, Michael J., xxx-xx-xxxx
Whitener, Ralph S., xxx-xx-xxxx
Wilson, Thomas F., xxx-xx-xxxx
Wurster, Clifford L., xxx-xx-xxxx
Younge, Wilson A., Jr., xxx-xx-xxxx
Zeiber, Alan R., xxx-xx-xxxx
Zeimmer, Ronald M., xxx-xx-xxxx
Zimmerman, Robert J., xxx-xx-xxxx

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

CHAPLAIN CORPS

To be captain

Bena, David J., xxx-xx-xxxx.

JUDGE ADVOCATE CORPS

To be captain

Albright, William A., xxx-xx-xxxx
Dixon, David C., xxx-xx-xxxx
Farrow, Michael R., xxx-xx-xxxx
Lee, Ralph J., xxx-xx-xxxx
Michael, Steven P., xxx-xx-xxxx
Nowak, Robert C., xxx-xx-xxxx
Parr, Edgar G., xxx-xx-xxxx
Sternal, Guy J., xxx-xx-xxxx
Stubbs, Jerald D., xxx-xx-xxxx

NURSE CORPS

To be captain

Booker, Carol M., xxx-xx-xxxx
Mansmith, Fred T., xxx-xx-xxxx
McMurray, Joan A., xxx-xx-xxxx
Stiegelmeyer, Marjorie J., xxx-xx-xxxx
Zhea, Charles R., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be captain

Melchiorre, Joseph E., Jr., xxx-xx-xxxx
Nicholson, Henry B., Jr., xxx-xx-xxxx
Williams, Carroll C., xxx-xx-xxxx

VETERINARY CORPS

To be major

Nichols, James B., xxx-xx-xxxx

BIOMEDICAL SCIENCE CORPS

To be captain

Barnes, Edward S., xxx-xx-xxxx
Farinacci, Nicholas A., xxx-xx-xxxx
Sawyer, Bobby J., xxx-xx-xxxx
Smogur, Thomas G., xxx-xx-xxxx
Sweigart, Marlin L., xxx-xx-xxxx

IN THE ARMY

The following-named scholarship students for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 2107, 3284, 3286, 3287, 3288, and 3290:

Cain, Bruce L., xxx-xx-xxxx
Choyce, Charlie, xxx-xx-xxxx
Flanagan, Michael S., xxx-xx-xxxx
Harrell, Jeff P., xxx-xx-xxxx
Hunsucker, Philip C., xxx-xx-xxxx
Merrell, Philip R., xxx-xx-xxxx
Miller, Joseph B., xxx-xx-xxxx
Oliva, Jeri L., xxx-xx-xxxx
Pifer, Timothy J., xxx-xx-xxxx
Roser, Lance R., xxx-xx-xxxx
Utz, Dennis M., xxx-xx-xxxx

The following-named distinguished military students for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 2106, 3284, 3286, 3287, 3288, and 3290:

Allen, Winston, xxx-xx-xxxx
Atkinson, Ricky N., xxx-xx-xxxx
Barton, Lawrence E., xxx-xx-xxxx
Blanchard, Hugh V., xxx-xx-xxxx
Dell, John W., xxx-xx-xxxx
Harpham, Karen A., xxx-xx-xxxx
Hutchinson, Elbert, xxx-xx-xxxx
Kulifay, Bernard E., xxx-xx-xxxx
Long, Gary B., xxx-xx-xxxx
Mabry, Sharon K., xxx-xx-xxxx
Manto, Samuel E., xxx-xx-xxxx
Marich, Lou L., xxx-xx-xxxx
Martin, Theresa L., xxx-xx-xxxx
Masters, Gary L., xxx-xx-xxxx
McKinney, Pamela L., xxx-xx-xxxx
Negron, Edgardo L., xxx-xx-xxxx
Nelson, James L., xxx-xx-xxxx
Ormson, Mitchell D., xxx-xx-xxxx
Patisaul, Charles E., xxx-xx-xxxx
Rupp, Robert C., xxx-xx-xxxx
Shifflett, Guy A., xxx-xx-xxxx
Thompson, James J., xxx-xx-xxxx
Torrance, Steven M., xxx-xx-xxxx
Wiant, Terry L., xxx-xx-xxxx

The following-named officers for appointment in the Regular Army, by transfer in the grade specified, under the applicable provisions of chapter 335, title 10, United States Code:

To be captain

Beckman, Herbert D., xxx-xx-xxxx

To be first lieutenant

Edwards, Kip C., xxx-xx-xxxx
Johnson, Lawrence M., xxx-xx-xxxx
Remmert, Stephen M., xxx-xx-xxxx
Riggs, Gary H., xxx-xx-xxxx
Tocci, Denis P., xxx-xx-xxxx

The following-named officers for appointment in the Regular Army of the United States, in the grade specified, under the provisions of title 10, United States Code, sections 3284 through 3294:

To be lieutenant colonel

Delacerna, Melchor F., xxx-xx-xxxx
Griffith, Donne G., xxx-xx-xxxx

To be major

Boening, Suzanne S., xxx-xx-xxxx
Burnham, Arlie E., Jr., xxx-xx-xxxx
Fox, Alexander J., xxx-xx-xxxx
Simpson, Albert F., Jr., xxx-xx-xxxx

To be captain

Bach, Durwood E., xxx-xx-xxxx
Barrett, Thomas N., xxx-xx-xxxx
Bettes, Stephen F., xxx-xx-xxxx
Beuttenmuller, Erhard A., xxx-xx-xxxx
Boody, Curtis J., xxx-xx-xxxx
Bowers, James E., xxx-xx-xxxx
Brinsfield, John W., Jr., xxx-xx-xxxx
Caldwell, Joe R., Jr., xxx-xx-xxxx
Campbell, Jerry C., xxx-xx-xxxx
Deboer, James, xxx-xx-xxxx
Diamond, Richard, xxx-xx-xxxx
Donnelly, Jerome C., xxx-xx-xxxx
Fowler, Kenneth E., xxx-xx-xxxx
Gottlieb, Samuel, xxx-xx-xxxx
Gsegner, Ford F., xxx-xx-xxxx
Johnson, John A., xxx-xx-xxxx
Johnston, Paul L., xxx-xx-xxxx
Maastricht, Richard S., xxx-xx-xxxx
Mariscal, Rouque, xxx-xx-xxxx
Martin, Gerald E., xxx-xx-xxxx
Mogridge, James D., xxx-xx-xxxx
Murphy, James J., xxx-xx-xxxx
Newberry, Robert D., xxx-xx-xxxx
Partridge, William F., xxx-xx-xxxx
Poux, Robert J., Jr., xxx-xx-xxxx
Putnam, Michael B., xxx-xx-xxxx
Regennitter, Frederick J., xxx-xx-xxxx
Rehyansky, Joseph A., xxx-xx-xxxx
Richards, Harry E., III, xxx-xx-xxxx
Russell, James E., Jr., xxx-xx-xxxx
Shaman, Paul R., xxx-xx-xxxx
Smith, Ottis W., xxx-xx-xxxx
Strong, Scott L., xxx-xx-xxxx
Thompson, Randall A., xxx-xx-xxxx
Wong, Marston Kin Sun, xxx-xx-xxxx
Ziegler, Edward R., xxx-xx-xxxx

To be first lieutenant

Bass, Richard A., xxx-xx-xxxx
Cleland, Bruce P., xxx-xx-xxxx
Cloyd, David G., xxx-xx-xxxx
Erhardt, James B., xxx-xx-xxxx
Hubner, Roger D., xxx-xx-xxxx
Reppart, Ralph C., xxx-xx-xxxx
Richards, John W., Jr., xxx-xx-xxxx
Roundtree, William E., xxx-xx-xxxx
Selph, Barney E., xxx-xx-xxxx
Stanley, Wayne G., xxx-xx-xxxx
Valentine, James D., Jr., xxx-xx-xxxx
Walker, James, xxx-xx-xxxx.

Yakes, Wayne F., xxx-xx-xxxx
Yee, Philip M., xxx-xx-xxxx

The following-named officers for promotion in the Regular Army of the United States under the provisions of title 10, United States Code, section 3305:

ARMY PROMOTION LIST

To be colonel

Hilty, Paul R., Jr., xxx-xx-xxxx
O'Brien, Emmett, J., xxx-xx-xxxx
Rodgers, William E., xxx-xx-xxxx

The following-named officers for promotion in the Regular Army, under the provisions of title 10, United States Code, sections 3284 and 3299:

ARMY PROMOTION LIST

To be lieutenant colonel

Alston, Pontha D., xxx-xx-xxxx

DENTAL CORPS

To be lieutenant colonel

Pickett, Alan B., xxx-xx-xxxx

DENTAL CORPS

To be major

Doyle, Frank M., xxx-xx-xxxx
Pawsat, David S., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be major

Burrell, Charles F., xxx-xx-xxxx
Workman, Dale H., xxx-xx-xxxx

VETERINARY CORPS

To be major

Mitchell, Kenny D., xxx-xx-xxxx

ARMY PROMOTION LIST

To be captain

Allen, James M., xxx-xx-xxxx
Enck, Rebecca S., xxx-xx-xxxx
Greer, William, xxx-xx-xxxx
Harrold, Glenn J., xxx-xx-xxxx
MaGee, Allan H., xxx-xx-xxxx
Morrison, John D., xxx-xx-xxxx
Mortenson, Robert H., xxx-xx-xxxx
Nyese, John E., xxx-xx-xxxx
Richmann, James N., xxx-xx-xxxx
Snell, Landon P., III, xxx-xx-xxxx
Stone, Frank J., xxx-xx-xxxx
Wilson, Richard W., xxx-xx-xxxx

DENTAL CORPS

To be captain

Berman, Michael B., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be captain

Yasalonis, John W., xxx-xx-xxxx

ARMY NURSE CORPS

To be captain

Roberston, Kathryn E., xxx-xx-xxxx
Stowe, Harvey O., xxx-xx-xxxx

The following-named officers for promotion in the Army of the United States, under provisions of title 10, United States Code, sections 3442 and 3447:

MEDICAL CORPS

To be colonel

Alden, Errol R., xxx-xx-xxxx
Allison, Howard H., xxx-xx-xxxx
Allison, Stanley C., xxx-xx-xxxx
Alvarez, Johnny D., xxx-xx-xxxx
Anderson, Daniel H., xxx-xx-xxxx
Anglin, Walter M., xxx-xx-xxxx
Angritt, Peter, xxx-xx-xxxx
Armitage, David T., xxx-xx-xxxx
Babcock, William S., xxx-xx-xxxx
Barja, Roberto H., xxx-xx-xxxx
Barlow, Matthew J., xxx-xx-xxxx
Bart, Gerald N., xxx-xx-xxxx
Berger, Winfried M., xxx-xx-xxxx
Berliner, Daniel S., xxx-xx-xxxx
Berman, Irwin, xxx-xx-xxxx
Blount, Richard B., xxx-xx-xxxx
Branch, Leslie B., xxx-xx-xxxx
Bridenbaugh, Robert, xxx-xx-xxxx
Brown, Stanton R., xxx-xx-xxxx
Bugay, Glenn L., xxx-xx-xxxx
Burger, Leslie M., xxx-xx-xxxx
Cadol, Roger V., xxx-xx-xxxx
Camp, Richard A., xxx-xx-xxxx
Chamberlain, Terry, xxx-xx-xxxx
Clark, Gary B., xxx-xx-xxxx
Claypool, Robert G., xxx-xx-xxxx
Cohen, Howard B., xxx-xx-xxxx
Collins, George J., xxx-xx-xxxx
Cook, Edgar L., xxx-xx-xxxx
Coville, Frederick, xxx-xx-xxxx
Cowan, George S., xxx-xx-xxxx
Davis, Juan C., xxx-xx-xxxx
Dean, Arthur J., Jr., xxx-xx-xxxx
Dibella, Nicholas J., xxx-xx-xxxx
Dresner, Martin L., xxx-xx-xxxx
Dunnington, Glenn W., xxx-xx-xxxx
Eielson, John A., xxx-xx-xxxx
Ergas, Ralph E., xxx-xx-xxxx
Favila, Marcial Q., xxx-xx-xxxx
Flanagan, Clyde H., xxx-xx-xxxx
Fleming, Arthur W., xxx-xx-xxxx
Flores, George H., xxx-xx-xxxx
Gardner, Horace B., xxx-xx-xxxx
Gerstenberger, Duane F., xxx-xx-xxxx
Gilman, Priscilla A., xxx-xx-xxxx
Giustolisi, Vincent, xxx-xx-xxxx
Glancy, Gerard L., xxx-xx-xxxx
Gober, Lowman E., xxx-xx-xxxx
Goldberg, Bertram, xxx-xx-xxxx
Gonzalez, William E., xxx-xx-xxxx
Graven, Richard M., xxx-xx-xxxx
Gunther, John S., xxx-xx-xxxx
Gushwa, Richard L., xxx-xx-xxxx
Hall, Donald L., xxx-xx-xxxx
Hardin, Virgil M., xxx-xx-xxxx
Harrell, Jerry D., xxx-xx-xxxx
Hastings, Constance, xxx-xx-xxxx
Hedlund, Kenneth W., xxx-xx-xxxx
Hegstrom, George R., xxx-xx-xxxx
Hennessy, William J., xxx-xx-xxxx
Henry, James M., xxx-xx-xxxx
Hofeldt, Fred D., xxx-xx-xxxx
Jirka, Anton J., xxx-xx-xxxx
Johnson, Edward M., xxx-xx-xxxx
Karney, David H., xxx-xx-xxxx
Katz, Norman N., xxx-xx-xxxx
Kimball, Daniel B., xxx-xx-xxxx
Kissack, Micheline, xxx-xx-xxxx
Kolmer, John W., xxx-xx-xxxx
Kreutzman, Robert, xxx-xx-xxxx
Kull, Donald H., xxx-xx-xxxx
Kyser, Kay A., xxx-xx-xxxx
Landes, Richard D., xxx-xx-xxxx
Leman, Milton H., xxx-xx-xxxx
Leppla, Bruce W., xxx-xx-xxxx
Lowell, George G., xxx-xx-xxxx
Luehrs, James G., xxx-xx-xxxx
Lull, Robert J., xxx-xx-xxxx
MacDonald, Richard, xxx-xx-xxxx
Maybee, David A., xxx-xx-xxxx
McCracken, Joseph D., xxx-xx-xxxx
McLeod, David G., xxx-xx-xxxx
McMarlin, Stacy L., xxx-xx-xxxx
McMeekin, Robert R., xxx-xx-xxxx
McNamara, Norbert J., xxx-xx-xxxx
Merenstein, Gerald, xxx-xx-xxxx
Metz, Leon B., xxx-xx-xxxx
Miller, Richard N., xxx-xx-xxxx
Miyazawa, Kunio, xxx-xx-xxxx
Moore, William L., xxx-xx-xxxx
Morton, Arthur R., xxx-xx-xxxx
Murgo, Joseph P., xxx-xx-xxxx
Ninos, Nichols P., xxx-xx-xxxx
Ossorio-Olivencia, Jose R., xxx-xx-xxxx
Parker, John E., xxx-xx-xxxx
Parry, William H., xxx-xx-xxxx
Pawlak, Wallace W., xxx-xx-xxxx
Peck, Charles A., xxx-xx-xxxx
Pezua, Carlos D., xxx-xx-xxxx
Pierce, H. Irving, xxx-xx-xxxx
Pierozynski, George, xxx-xx-xxxx
Prall, Robert H., xxx-xx-xxxx
Protzman, Robert R., xxx-xx-xxxx
Rosenberg, Donald M., xxx-xx-xxxx
Saglio, Jack W., xxx-xx-xxxx
Saintromain, Ray A., xxx-xx-xxxx
Sasada, Allan M., xxx-xx-xxxx
Sawyer, Robert, xxx-xx-xxxx
Sayers, Ronny J., xxx-xx-xxxx
Siraa, Andreas F., xxx-xx-xxxx
Sobol, Samuel M., xxx-xx-xxxx
Soderdahl, Douglas, xxx-xx-xxxx
Stafford, Chester T., xxx-xx-xxxx
Stafford, Harry, xxx-xx-xxxx
Starke, William R., xxx-xx-xxxx
Stuen, Marcus R., xxx-xx-xxxx
Thiessen, Jacob W., xxx-xx-xxxx
Thomason, Albert M., xxx-xx-xxxx
Tippens, Jack K., xxx-xx-xxxx
Tipton, William R., xxx-xx-xxxx
Todd, Warren A., xxx-xx-xxxx
Tremaine, Myron D., xxx-xx-xxxx
Turnbull, Gottlieb, xxx-xx-xxxx
Warren, Daniel C., xxx-xx-xxxx
Whitmore, Paul V., xxx-xx-xxxx
Wong, William, xxx-xx-xxxx
Yamaoka, Ronald M., xxx-xx-xxxx
Youngs, Brian L., xxx-xx-xxxx
Zajtchuk, Joan E., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be colonel

Carollo, Donald J., xxx-xx-xxxx
Potin, James B., xxx-xx-xxxx
Snell, John T., xxx-xx-xxxx

ARMY PROMOTION LIST

To be lieutenant colonel

Siekman, Raymond D., xxx-xx-xxxx

The following-named officers for promotion in the Regular Army, under provisions of title 10, United States Code, sections 3284 and 3298:

ARMY PROMOTION LIST

To be first lieutenant

Greer, William, xxx-xx-xxxx
Henry, John, xxx-xx-xxxx
Renaut, Robert R., xxx-xx-xxxx

IN THE MARINE CORPS

The following-named officers of the Marine Corps for permanent appointment to the grade of lieutenant colonel under the provisions of title 10, United States Code, section 5780:

Ronald E. Ablowich
James S. Adams
Robert A. Adams
William S. Ainsley, III
Alfred J. Allega
John C. Arick
Lowell E. Austin, Jr.
John C. Baggette
Thomas V. Barrett
William C. Bartels
Thomas Y. Barton, Jr.
Delbert M. Bassett
Dennis C. Beyma
Roy D. Black
Harold W. Blot
Ronald R. Borowicz
Gary R. Braun
George D. Brennan, II
William T. Bridgham, Jr.
Gene A. Brown
John R. Burns, Jr.
John M. Butler, Jr.
Ronald F. Calta
Thomas E. Campbell
William R. Campbell, Jr.
John W. Cargile
Kenneth C. Carlon
John D. Carr
John J. Carroll
Gene E. Castagnetti
James H. Champion
George R. Christmas
Donald E. Christy
Michael L. Cluff
Roland W. Coleman
Anthony C. Conlon
Terence P. Connell
Richard W. Crain
Dennis W. Craney
Richard L. Cody
Herbert L. Currie
Dennis E. Damon
Charles E. Daniel
Charles E. Davis
Andrew D. Debona
Richard A. Delaney
Raymond E. Dennison
Billy H. Dobbs
Francis H. Douglas
Noel E. Douglas
Thomas V. Draude
Raymond R. Dunlevy
Clifford R. Dunning
Bob E. Edwards
Roy T. Edwards
Norman E. Ehlert
Gene B. Erwin
Richard A. Flaherty
James J. Foley, Jr.
James F. Foster
Robert J. Gadwill
Willard F. Galbraith, Jr.
Dennis O. Gallagher
Ronald C. Garten
Edmond D. Gaucher, Jr.
Jon R. Gibson
Brendan M. Greeley, Jr.
Robert R. Green
James W. Gresham
Sidney B. Grimes
Nicholas H. Grosz, Jr.

Jean A. Gruhler, Jr.
Francis X. Hamilton, Jr.
Glen L. Hampton
David Hancock
Frederick F. Harshbarger
James A. Hart
William R. Hart
Leonard C. Hayes
Richard D. Hearney
Frederick H. Hemphill, Jr.
James C. Henderson
John B. Hendricks
William A. Hesser
Solomon P. Hill
Jefferson D. Howell, Jr.
Ray E. Huebner
Abram J. Hunter, Jr.
Douglas B. James
Jack C. James
Robert G. Jessee
Harry N. Johnson
Ken H. Johnson
Kenneth W. Johnson
Poindexter M. Johnson
Kenneth D. Jordan
August J. Kalimanos
Gerald J. Keller
James L. Kerney
George A. Kiesel
Roger E. Kilb
Blaine D. King
Francis J. Kirchner
Joseph F. Kline
Thomas L. Kosciw
James Lau
Robert P. Learnard
John Lecornu
Gregory W. Lee
Edward O. Leroy
Frederick E. Lewis
Bertram L. Linkonis
James E. Livingston
Calvin A. Lloyd II
Mark E. Loveless
Darrel M. Lowe
Albert F. Lucas, Jr.
Howard L. Luttrell
James P. Mangan
Anthony E. Manning
Paul S. Marcani
William E. Marcantel
Richard E. Maresco
Elliott R. Markell, Jr.
David E. Marks
Norman Marshall
Robert J. Mastrion
Gregory A. McAdams
Charles E. McDanal
Lawrence J. McDonald
Dayle O. McGaha
Michael J. McGowan
Thomas K. McKeown
John J. McNamara
Richard G. McPherson
Thomas H. Metzger
John L. Mikkelson
David F. Miller
Donald G. Miller
Jerry L. Miller
Neil F. Mitchell
Robert W. Mitchell, Jr.
Joe D. Moody
Alfred H. Moore
Allen R. Moore
Jerry L. Morgan
John J. Mullen, Jr.
James M. Myatt
Jimmie C. Nelson
James L. Neyman
Gerald J. Oberndorfer
Fred E. Ogline
Paul F. O'Keefe
Francis D. Pacello
Fred J. Palumbo
Robert L. Pappas
Gary W. Parker
Harold J. Phelan
John C. Pilley
Stanley G. Pratt
Donald L. Price
Robert A. Queen
William M. Rakow, Jr.
John P. Ray
Lawrence E. Reed
Michael E. Rich
Albert R. Rideout III
Charles S. Rigby III
Edward F. Riley
Michael B. Riley
Maurice A. Roesch III
Joseph G. Roman
Joseph M. Romero
Richard B. Rothwell
Peter J. Rowe
Dale C. Ross
Henry J. Sage
William Sahno
Michael F. Scanlon
Denver D. Scott
Robert E. Setser
Carl A. Shaver
John J. Sheehan
Robert J. Sheehan
James A. Shepherd
Jerry C. Shirley
Donald K. Shockey, Jr.
Roy W. Sims
Walter H. Skierkowski
Albert C. Slater, Jr.
Charles R. Smith, Jr.
William R. Smith
James A. Spaith
James D. Sparks
Burton P. Sperry III
John W. Spivey
Victor M. Szalankiewicz
Kenneth T. Taylor
Robert A. Tiebout
Philip H. Torrey, III
Samuel D. Turner, Jr.
Joseph E. Underwood
Charles W. VanHorne
Hugh M. Vann, III
Jay R. Vargas
Amilcar Vazquez
Clyde L. Vermilyea
Bill D. Waddell
William L. Waters
Lewis C. Watt
Dwight D. Weber
Malcolm W. Wehrung
Julian A. Weingarten
William H. White
George A. Whitfield
John A. Williams
John A. Williams
Thomas Williams, Jr.
Robert J. Wilson
Donald T. Winter
Charles J. Wolk, Jr.
Regan R. Wright
Peter B. Wyrick
Harvey L. Zimmerle
Ralph A. Zimmerman

The following-named officers of the Marine Corps Reserve for permanent appointment to the grade of lieutenant colonel under the provisions of title 10, United States Code, section 5911:

Merrel F. Adams, Jr.
Richard G. Adams
Tommy L. Adair
James L. Anderst
Daniel T. Armstrong
Joseph F. Ashe
Enos A. Axtell, Jr.
George W. Ayers
Lester D. Bacon
Samuel Badiner
Clarence L. Baer
Claude, Baldwin III
Robert L. Ballantyne
Gilbert A. Bartlett
Stanley K. Bazant
Leonard C. Bieberbach
Dean S. Billik
Darwin E. Bremer
Roger L. Brooks
Frank A. Buethe
Harold J. Campbell, Jr.
Terry W. Cannon
John G. Carlton, Jr.
Marshall N. Carter
William E. Chase
James W. Clark
Eldred W. Cline, Jr.
Bobby L. Coleman
William H. Cook, Jr.
Thomas M. Cooper
Daniel B. Corts
Kenneth R. Couch
John T. Coyne
Edward P. Craft
James A. Daugherty
Ronnie O. Davis
John H. Deaver, Jr.
Douglas S. Dexter
Eldon R. Dilworth
Robert L. Doyon
Michael F. Eddy
Richard M. Eklund
Frederick D. Ellis
Robert J. Everett
Crockett Farnell
Alan D. Fiers, Jr.
Michael Fiorillo, Jr.
Joseph T. Fisher
John F. Follett
Michael D. Fowler
Jackie W. Fraim
Frank W. Gill, Jr.
Perry C. Gillette, Jr.
Robert A. Godwin, Jr.
George W. Goertz
Paul A. Gorgos
Melvin T. Graves
John A. Harris
Mark T. Hehnen
Richard L. Hemenez
Hamilton E. Hicks, Jr.
John E. Hixon
Lemuel W. Houston, Jr.
Harris D. Husted
Jack J. James
Philip L. Johnson
Robert C. Keeler
Kenneth J. Kelly
Stuart O. Kendall
Frank J. Kennedy
Frederick E. Kienel
David J. Kindt
Richard S. Kulczycki
Stephen A. Leroux
John J. Lowrey
James L. McGee
John J. McNamara
John G. McPheeters
William B. Mooney
Harvey B. Moore
Stanley M. Mori
Normand L. Noel
Richard A. Partee
Thomas L. Pristavec
Robert H. Rathert
John C. Reale
Larry E. Renfro
William R. Rice
Robert C. Richards
John C. Riley
Frank D. Rimer, III
Larry M. Roberts
Frank J. Robinson
John L. Roe
Lewis F. Rogers
Anthony J. Roszak
Walter L. Sanders
Robert P. Scheinblum
Steven J. Sewell
Jack T. Seymour
Lundie L. Sherretz
Gordon M. Shoemaker, Harry S. Shoemaker
Tenney R. Spofford
James H. Stewart, Jr.
Harold R. Sullivan
David C. Terry, Jr.
Dudley E. Thomas, Jr.
James L. Trudeau
Robert J. Walker
Larry G. Willoughby
William L. Wilson
John R. Wingert
Ehrhard K. Winkelbrar
George S. Woodall, Jr.
Wayne P. Zetzman

The following-named officers of the Marine Corps for permanent appointment to the grade of major under the provisions of title 10, United States Code, section 5780:

John F. Adinolfi
Richard M. Ahlers
James A. Amendolia
William G. Andersen
Robert C. Anderson, Jr
William D. Armstrong,
Bradley R. Baird
Jerry K. Baird
James R. Ballard
Bradley E. Barriteau
Frank M. Batha, Jr.
Walter C. Belcher
Maurice F. J. Bernier
Robert A. G. Berns
Lee H. Bettis, Jr.
John A. Bicknas
Jerry C. Black
Earl T. Bowers, Jr.
Robert J. Bradley
Ross A. Brown
Randolph D. Brunell
Clarence C. Bryant
Allan S. Buescher
Kenneth R. Burns
Jose R. Campos
Hugh T. Carter
Justice M. Chamgers, Jr.
John C. Church
William C. Cleveland, Jr.
Clovis C. Coffman, Jr.
Dillard W. Copeland
Kermit C. Corcoran
Robert A. Courtney
William V. Cowan III
David E. Crais
Edward E. Crews
Richard A. Crowe
Erry M. Curtis
Robert J. Dalton
Walden L. Daniel
Michael A. Davis
Thomas E. Davis
Waler E. Deese
Richard J. Deichl
John H. Eager
Robert I. Edwards
Edwin E. Eloe
George J. Eschenfelder
David P. Evans
John T. Fanning
Dennis L. Faust
Andrew R. Finlayson
Augustus Fitch III
Norman R. Ford
Wesley L. Fox
Robert L. Frantz
Richard H. Freeman
Gary A. Fry
Carlton W. Fulford, Jr.
Larry Garrett
Howard L. Gerlach
Perry H. Gesell
Graydon F. Geske
Henry P. Gledzinski
Robert W. Gillespie II
John P. Glasgow
Joaquin C. Gracida
Samuel T. Gray
Garrat W. Greene
Bruce E. Griesmer
James C. Hajduk
Jerry E. Hankins
Dennis M. Harke
Kenneth L. Harmon
William F. Harvey
William M. Hatch
Gale E. Heaivilin
Ronald A. Hellbusch
Donald H. Henze
Peter M. Hesser
Robert G. Hill
Anthony S. Hilliard
Miles M. Hodges
Richard W. Hodory
Franklin D. Holder
Allen W. Hoof
Nathaniel R. Hoskot, Jr.
James L. Hurlburt
Douglas K. Isaly
Frank M. Izenour, Jr.
Jack D. Jewell
James Johnson
William F. Johnson
Walter F. Jones
Harry K. Jowers, Jr.
Luis A. Juarez
Larence G. Karch
William E. Keller, Jr.
Michael S. Kelly
Anthony L. Keyfel
Wayne W. King
David E. Knop
George W. Kralovec III
John J. Krauer
Coleman D. Kuhn, Jr.
Timothy L. Laplaunt
Joseph A. Lavigne
Francis X. Lawler, Jr.
Edmond H. Lawrence
William S. Lawrence
Newton A. Lieurance, Jr.
Jasper C. Lilly, Jr.
Ronald A. Longtin, Jr.
Claude L. Lott
James W. Lucey
Freddie M. Luckie
Michael G. Malone
Gerald R. Martin
William R. Masciangelo
Dean H. Matzko
Herman L. May
William G. McBride, Jr.
Jimmy W. Clung
James B. McKenney
Warren R. McPherson
John H. Mentzer, II
Rex B. Moody
Kenneth W. Moore
Paul Moore, Jr.
Alfred H. Mossler
Richard J. Muller
William A. Murphy
Frederick Y. Nakatani
Russell L. Nelson
Mark D. O'Connor
John P. Oppenhuizen
Jullian W. Parrish
Charles W. Paschen
Francis A. Pepe
Guy A. Pete, Jr.
William C. Peters
Wayne E. Peterson
Daniel R. Phipps
John P. Pindel, Jr.
Paul J. Prinster
Larry D. Rannals
James M. Rapp
Lawrence C. Reifsnider
Wayne H. Rice
Clarence E. Richards, Jr.
Robert J. Riordan
Jack W. Rippy
Clifford R. Robinson
Hugh A. Ronalds
James W. Sanders
Kenneth R. Sandstrom
Robert T. Sarles
Bernard D. Schmidt
Milburn F. Schuler
Rudy T. Schwanda
William O. Schwarz
Michael N. Shahan
William G. Sheldon, III
William B. Shively
Kenneth C. Shumate
William J. Simpson
Hurman R. Sims
Alexander G. Smith, III
Edward A. Smyth
Robert L. Spooner
Larry J. Springer
Richard E. Squires
Frederick M. Stitcher
James E. Stoll
Thomas D. Stouffer
John M. Suhy
John J. Sullivan
Patrick J. Sullivan
Williams G. Swarens
Bronson W. Sweeney
William P. Symolon
James R. Taylor
William K. Terrell
William F. Thompson
Thomas A. Toth
Gordon E. Tubesing
Ellsworth J. Turse, Jr.
John H. Updyke
William P. Vacca
Jay H. Vandyne
Richard L. Vogel
Thomas U. Wall
Theodore B. Warren, Jr.
Terrence M. Weber
Alfred M. West
Carlton P. White
Eddie D. Whitehead
Michael C. Wholley
Frank G. Wickersham, III
Mark D. Williams
James R. Williams
Lester H. Williams, Jr.
Roger L. Williams
Richard G. Wilmes
William D. Wischmeyer
Dana J. Wood
Larry L. Woodruff
Richard J. Yeoman
Jon L. Zellers
Lester M. Zwick

The following-named officers of the Marine Corps for permanent appointment to the

grade of captain under the provisions of title 10, United States Code, section 5780:

Michael J. Aguilar
Paul R. Ahrens
Robert A. Aikman
Gerald W. Allen
James V. Allen
Donald P. Amiotte
Gary W. Anderson
Richard G. Anderson
Ralph H. Anzelmc
Gary D. Appenfelder
Craig M. Arnold
James P. Axelrod
Rayfel M. Bachiller
Thomas A. Bailey
Christopher L. Baker,
John M. Ballard
William E. Barker
Barney K. Barnett
Donald C. Barnett
Stephen J. Bartram
James R. Battaglini
Terry E. Beane
Scott R. Beaty
Mark T. Beck
Roger P. Beebe
Curtis M. Beede
Ivan M. Behel
Charles D. Bennett
Chris Bennett
George H. Benskin III
Richard P. Bess, Jr.
Stephen G. Biddulph
David W. Birch
Paul W. Bishop
Thomas E. Bjerke
Patrick A. Black
Carl N. Blair
Scott A. Blair
David R. Bloomer
Robert Blose, Jr.
James S. Bloxom
Richard A. Boeckman
Wiley N. Boland, Jr.
James L. Booker, Sr.
Robert B. Boone
Bruce H. Borum
John F. Bouldry
William G. Bowdon III
William L. Bowling
Denham W. Bowman
Michael H. Boyce
David R. Boyer
Robert E. Braithwaite
Thomas O. Brannon
Frank X. Braun IV
David L. Breed
Charles B. Brewer
Clyde S. Brinkley, Jr.
Arthur E. Brooks
Phillip A. Brooks
Mark L. Brophy
Dennis L. Brown
Shepard R. Brown
Stephen R. Brown
Donald F. Bruey
Craig L. Bryson
William E. Bubsey
Melvin R. Buhls II
Michael M. Bullen
Richard E. Buller
Paul A. Burrows
Richard E. Burton
Kenneth O. Bush
Michael S. Bush
Ronald D. Bussey
Gary A. Butler
Patrick C. Butler
Robert D. Cabana
Charles T. Carroll
John L. Carson
Dee H. Caudill
Thomas A. Caughlan
Richard C. Cavallaro
David L. Chadwick
Ronald W. Chambless
Stephen A. Cheney
James P. Chessum
John S. Cipparone
Charles J. Clarke
Alfred F. Clarkson, Jr.
Gary W. Claunch
Wayne A. Clemmer
Daniel B. Cliffe
John M. Cocke
Robert S. Cohen
John R. Cohn
Larry P. Cole
James M. Collins II
William B. Collins
George W. Colvin
Joseph Composto
Michael R. Compton
Larkin E. Conatser
Vincent P. Conroy
Kevin A. Conry
Larry G. Cook
John F. Corcoran
Max A. Corley
Alfred A. Cortez
Christopher Cortez
Randolph P. Cotten
Norris G. Cotton
James P. Courtney
Glenn B. Cowen
Jimmy R. Cox
Jack C. Cuddy
Lawrence D. Cummings
Robert C. Cummins
Richard B. Daley
Thomas R. Dalton
Alan H. Dank
William C. Darner
Dacre G. Davis, Jr.
Donald L. Davis
Donnie B. Davis
Hartley R. Davis II
John A. Davis
David G. Decker
Ronald V. Deloney
William Z. Dement
Henry M. Denton
Frederick M. Deutsch
Henry V. Dickens
Geoffry M. Doermann
Charles W. Dorman
Peter R. Dorn
Peter A. Dotto
Stephen L. Dubinsky
Gerald J. Duda
Troy L. Duncan
Thomas E. Dunkelberger
James M. Durham
Rhoades E. Dutton
Mark S. Dyl
Darel B. Ealum
Michael E. Edwards
James M. Eicher II
Dallas A. Elliott
Russell H. Erickson
Teddy J. Etsell
Herschel G. Ezell
Timothy N. Farlow
Jackie L. Farmer
James R. Felt, Jr.
Thomas D. Ferran
Wilburn C. Finch, Jr.
Bruce V. Finley, Jr.
Robert M. Flanagan
George W. Flinn
Patrick J. Flynn
Thomas R. Fox
Robert J. Friend, Jr.
David R. Fry
Dwain L. Fuller
Richard J. Gallagher
Francis O. Galloway, Jr.
Anthony S. Ganz
Lawrence E. Garcia
Mark S. Gardner
Joseph C. Gegan III
Jerome L. Geil
Theodore R. Gendron
Raymond F. Geoffroy, Jr.
Peter J. Giacobbe
James A. Giansiracusa
Thomas W. Gilleylen
William M. Given III
Terry V. Gleason
William B. Godwin
Arthur Gomez
Ryan P. Goodell
George H. Goodman
Joseph P. Gordon, Jr.
Vincent J. Goulding, Jr.
Stephen E. Grayner
Christopher J. Gregor
Michael J. L. Greene, Jr.
Barry P. Griffin
Terry A. Gusic
Robert E. Haber
Michael R. Hafen
Emory J. Hagan III
Randall B. Haglund
John R. Hales
Geoffrey T. Hall
Charles F. Hamilton
William L. Hammerle
Charles W. Hammond, Jr.
Timothy J. Hannigan
Thomas G. Harleman
Thomas E. Harris
Eugene G. Harrison, Jr.
Robert E. Hartley
Walter P. Havenstein
Mark K. Hayden
Robert L. Hedden
Lambert C. Heikes
Jeffrey F. Hemler
Thomas R. Henry
Glen E. Hensley
Carl M. Herdering
Donald E. Hesse
Steven C. Hibbens
Michael F. Hickey
Jerry N. Higdon
John E. Hill
William H. Hill I.I
John M. Himes
Timothy J. Himes
Clyde J. Hindes
Phillip L. Hindsley
Keith M. Hirvonen
Richard P. Hobbs, Jr.
Keith T. Holcomb
Ward A. Holcomb
Travis D. Holland
Tony L. Holm
George E. Holmes
Stephen G. Hornberger
Patrick R. Hourigan
Russell J. Howald
Jackson R. Howard
Richard A. Huck
Patrick J. Hughes, Jr.
Jeffrey L. Hull
Michael D. Hume
Douglas E. Humston
Billy D. Hunt
Richard F. Hutchinson
Harold L. Inabinet
Thomas B. Isaac
Robert B. Jacobs
Travis L. Jardon
Reid A. Jecmen
Joseph R. Jelinski, Jr.
Stephen C. Jennings
Eugene Johnson
Gerald H. Johnson
Graig L. Johnson
Gregory J. Johnson
Leslie B. Johnson
William J. Joslyn
Richard A. Joyce
Bruce Judge
Larry R. Kapp
Robert W. Kearney
Danny L. Keating
David G. Keck
James D. Keith
Richard L. Kelly
Steven J. King
Thomas R. King
William L. King
Thomas W. Kinsell
David A. Knott
Norbert S. Koziol
Stephen J. Labadie, Jr.
Charles A. Lackey
Roy A. Lammon, Jr.
Tony C. Landry
Lee F. Lange II
Jon R. Larsen
James A. Lasswell
Earl L. Lavan
Joseph F. Lawler
Jerry F. Lawlor
James H. Lee III
Harry C. Leeper, Jr.
Joseph E. Leinenbach, Jr.
James D. Lenard
Floyd C. Lewis
Bruce P. Lohman
George F. Lord
Jeffery L. Lott
Lawrence A. Machabee
John D. Mackenzie
Harold J. Maher
Roger E. Mahoney
Richard A. Maloney
David G. Mann
Leo T. Marier
Richard B. Martin
John J. Martinoli, Jr.
Martin J. Martinson
Judson P. Mason, Jr.
Michael J. Maxie
Stephen A. Maxwell
Peter S. Mayberry
John S. Mays
Dennis C. McBride
Patrick L. McCarthy
John K. McClure
Ronald L. McClure
George M. McCombs
Danny L. McConnell
Joseph X. McCormack III
Daniel J. McGraw
Kevin J. McHale
William E. McHenry
Hugh M. McIlroy, Jr.
Scott W. McKenzie
James M. McLaughlin
Gene S. Mead
John B. Meagher
James S. Mendelson
Ronald L. Meng
Donald J. Mikkelsen
Ottavio J. Milano
Charles M. Miller
Gregory F. Miller
Stephen W. Miller
Herman W. Mullenhauer, Jr.
Henry D. Morris
James R. Morris
Charles L. Mot, Jr.
Michael I. Moit
Stephen F. Mugg
Robert S. Muir
John J. Mullarkey
Martin L. Musella
Joseph A. Najjar
Michael R. Nance
Henry Napoleon, Jr.
Michael J. Neder
Craig A. Nesbitt
Steven T. Nichols
Thomas J. Nicholson
Vincent W. Norako, Jr.
Robert H. Norman
John R. North
Dennis K. Oberhelman
Thomas P. O'Brien, Jr.
James S. O'Connell
David D. Odell
Hugh K. O'Donnell, Jr.
James P. O'Donnell
Donal A. Olsen, Jr.
Michael L. Olson
Glen A. Osmond, Jr.
Dennis M. O'Connor
James R. Ottaway
Larry D. Outlaw
Richard L. Owen
Richard L. Owen, Jr.
Stanley C. Owen
Cruz Pardo
Frederic A. Parker
William H. Parrish
Richard L. Patterson
Philip J. Paul III
Ned G. Paulson
William C. Pedrick, Jr.
Brian A. Peiranc
Terry S. Pendleton
William A. Pepper
Mitchell M. Perkins
Alfred L. Perry
Peter G. Peters
Dale A. Peterson
Ronald W. Peterson
John F. Pettine
Gerald W. Pickett
Harold W. Pierpoint II
John P. Poole
Lewis C. Pope, Jr.
Michael B. Potter
Michael C. Powers
Robert A. Price
Paul F. Pugh
John A. Quinn IV
Bruce A. Randall
Curtis J. Rastetter
John W. Rerucha
Larry R. Rice
Joseph J. Riggio
Charles R. Rivenbark
Raymond M. Roberston
John R. Robinson
John J. Roddy III
Robert W. Roesch, Jr.
Ronald D. Rogers
Joseph J. Rogish, Jr.
Gerald H. Rohloff
Mark C. Ronning
Ralph C. Rosacker II
Bowen F. Rose
James K. Ross
Joseph L. Ruthenberg
Charles A. Ryan
Thomas P. Ryan
Victor W. Ryan, Jr.
Arthur J. Rybicki
James L. Sachtleben
John W. Sams
McDewain Sandlin, Jr.
John F. Sattler
Karl T. Schwelm
Gerald M. Scienski
Joe E. Scott
Robert Shearer, Jr.
Charles N. Sherman
James S. Shi
Robert G. Shillito
Richard Y. Shintani
Larry L. Shreve
Roy N. Sifers
Gary B. Simpson
Laurence E. Simpson
Larry J. Sims
Danny R. Smith
Michael H. Smith
Paul R. Smith
William R. Spain
Grant M. Sparks
Martin J. Speer
Ronald E. Spratt
John W. Springstead
Christopher B. Stoops
David K. Storey
Kenneth F. Stang
James A. Storey III
Darrell L. Stewart
George G. Stuart
Lynn A. Stuart
Robert C. Stuart
Jonathan W. Stull
Patrick H. Sullivan
Thomas P. Sullivan
Frank W. Sultenfuss III
Mario J. Summa
Michael P. Summers
Gary D. Sweeney
Michael J. Swords
Anthony T. Tavella III
Thelbert F. Taylor
Timothy M. Taylor
Jon D. Terry
Bruce J. Thomas, Jr.
David M. Thomas
Michael K. Thweatt
James R. Tippett
Jerome P. Todd
Terry L. Tonkin
Richard F. Travis
Benjamin L. Treadway
Thomas E. Treurniet
Gene A. Tromly, Jr.
David J. Turner
Robert C. Twigger
Joseph S. Uberman
Jack Vandebruinhorst
Gerald J. Varela
Danny P. Venable
Michael J. Verbarendse
James E. Vesely
James S. Vintar
Robert C. Vogel
Michael Vontungeln
Gregory J. Vonwald
Paul H. Voss
John H. Wagner
Richard W. Walker
Richard P. Walton
Bruce M. Ward
Donald G. Warfield
Glenn I. Warrick
Dale M. Watson
David B. Weber
Elbert L. Weist, Jr.
Gary C. Wells
John W. Westmoreland, Jr.
William A. Whitlow
Jimmy L. Whitson
Hugh N. Wiggins
Paul A. Wilbur
John D. Winchester
Tony L. Winstead
Ronald F. Wnek
Ronald M. Woodward
John C. Worlie
Robert P. Wray
Larry W. Wright
James M. Younkins
Joseph K. Zowasky
Eric D. Zobel

The following-named officers of the Marine Corps for permanent appointment to the grade of first lieutenant under the provisions of title 10, United States Code, section 5788:

Raymond Adamiec
James E. Adams
David R. Aday
Daniel Aguilar
Mark E. Alfers
Donald B. Allegro
John R. Allen
David W. Andersen
Wayne C. Anderson
James C. Andrus

Steven J. Antosh
Scott E. Apgar
Michael F. Applegate
Linda C. Arms
Roy A. Arnold
Lawrence W. Astyk
Richard A. Atkisson
Leroy Auston
Brian J. Bach
Frank A. Baleskie
Anthony Banaszewski
Terry L. Barger
Steven F. Barilich
Albert Barnes
Dennis J. Barr
John A. Bass
Ralph G. Bass
John R. Bates
Robert H. Bauman
Dan O. Bausch
Ronald D. Bean
Maynard P. Bearce
Jeffery W. Bearor
James C. Beck
Donald P. Becker
James E. Beckle
Patrick J. Behnke
Bennie H. Bell III
Wayne C. Bell
Paul L. Benedict
Richard D. Benjamin
Francis X. Bergmeister
John W. Berkley
Bruce Besemer
Raymond L. Betros
Brent J. Beverly
Eddie Bickham
Mark W. Bircher
Barbara A. Black
Leonard A. Blasiol
Michael R. Blehm
Jerri L. Bliss
Gwendolyn E. Blizzard
Raymond H. Blumel, Jr.
Gerald A. Boeke
Patrick S. Bole
Kent R. Bolin
David F. Bonwit
Steven C. Bott
Lorraine C. Bowser
Charles E. Boyd
Charlie C. Boyd, Jr.
Calvin C. Boykin III
Bruce F. Brady
Richard C. Branch
Thomas I. Branch
Edward A. Brandt
Allan C. Breller
Dennis J. Brennan
Daniel R. Bretheim
Kevin B. Brewer
George S. Brock
Germain B. Broeckert, Jr.
Russell A. Brooks
Donald D. Brown, Jr.
Larry K. Brown, Jr.
Terrence D. Brown
William D. Brown
Roy D. Bryant
Philip E. Buchinger
Jeffrey L. Budimier
Geoffrey J. Bulliung
Joseph F. Buranosky
Robert A. Burkes
Paul A. Burkholder
Baxter D. Burton
Steven Busch
James M. Bushee
Roy R. Byrd
Mark A. Cagiano
John L. Camp
Robert I. Campbell
William O. Campbell II
Mario V. Carmo
Andrew J. Carrabus
Jack P. Carter, Jr.
David W. Case
Mark E. Casey
Michael W. Caslin
Thomas A. Castriota
Michial M. Celvi
Aron K. Champion
Frankie D. Chappell
Robert S. Chester
Theodore C. Childers, Jr.
Timothy J. Christenson
Larry G. Christie
Sameul H. Christopher
Daniel F. Chwalisz
Louis J. Cipriani, Jr.
Barry H. Clark
Bradley S. Clark
Steven E. Clark
Scott W. Clarke
William D. Claytor
Janice P. Closson
Robert A. Coates
Henry J. Coble
Harry L. Cole, Jr.
Thomas V. Colella
John C. Coleman
Gary C. Conary
William R. Conaway
Christopher J. Conlan
David G. Conley
James E. Connick
William J. Corcoran
William L. Core
Timothy J. Cornell
Jeffrey A. Cory
Rodney M. Cotten
Richard D. Coulter
Leonard A. Courson
James H. Court
Robert L. Crabb
Constant P. Craig
Ralph D. Craig
Robert J. Craig
James M. Crites
Donald G. Croom
William M. Cryan
Gary R. Cullop
Frederick H. Curlin, Jr.
Stuart D. Currier III
John P. Curry
Robert F. Curtis
Roger T. Cuva
Michael N. Daily
Michael L. Dammer
Richard A. DaPrato, Jr.
Rodell C. Darling
Robert G. David, Jr.
Thomas A. Davidson
James C. Davis
James M. Davis
Lester B. Davis
Sidney F. Davis
Thomas M. Davis
Michael T. Daw
David R. Dean
Richard A. DeChaineau
Robert L. Deen
Joseph J. DeFranco
Andrew C. Delgado
Alvis W. Denning
James I. Dennis III
Gordon B. Denny
Vincent G. Depierre
Bruce D. Devers
Joe W. Dickerson, Jr.
Dennis J. Dilucente
Frank P. DiMarco
Dale S. Dimitroff
Charles L. DiRienzo, Jr.
Charles E. Dolejs
Robert E. Donelan, Jr.
James H. Donnan
Martin A. Donovan
Stephen C. Dorsett
Paul A. Doscher
Doyle G. Douglas
William B. Drennan
Michael L. Drennan
David G. Driegert
Richard H. Dunnivan
John P. Dwyer
Dale A. Dykhuizen
Gregory J. Eddy
Randy L. Edwards
Richard J. Eisloeffel
Alfred W. Ellis III
Ronald L. Ellis
Ralph H. Emerson III
Russell A. Eve
Stephen D. Ewers
Philip J. Exner
Phillip A. Faigley
Roberta L. Feldhans
Kerry K. Feldman
Kevin P. Fennell
Timothy K. Ferral
Barry R. Fetzer
Donald M. Finney
Douglas A. Fisher
Leonard J. Fitzgibbons
Patrick J. Fitzsimmons
Wayne T. Fleming
Larry G. Flores
Susan J. Flores
Gerold J. Flotte
Stephen P. Folan
John W. Foley
David S. Foster
Preston H. Foster
Harold H. Fox II
William F. Fredericks
Elizabeth K. Freund
Lee W. Freund
Andrew P. Frick
Steve A. Friis
David J. Fry
Edwin G. Fulkerson
Daniel S. Fullerton
Janet E. Furtick T.
Barbara R. Furze
Richard M. Galvez, Jr.
Alfred A. Gambone, Jr.
Leslie C. Garrison
Timothy M. Gaskins
Michael J. Gearin
Dennis D. German
Rose A. Getty
Mark J. Gibson
Michael Gibson
David L. Gilbreath
Bruce A. Giron
Michael J. Glagola
Donald E. Goddard, Jr.
Michael J. Goin
Timothy R. Golike
James Goodloe, Jr.
Kenneth B. Goodrow
Arthur V. Gorman, Jr.
Robert W. Gose
Richard A. Graham
Alfred Green, Jr.
Douglas L. Green
Eric J. Green
Max P. Greene
Edwin W. Groff
Leon D. Guenzler
Ramon L. Guerrero
Charles M. Gurganus
Debra Haas
Mark W. Haas
Gary L. Hall
Michael D. Halloran
Larry K. Hamilton
Richard F. Hamme
Gerald M. Hammes
Michael J. Hanaway
Robert S. Hansel
Jack R. Harkins, Jr.
Edward A. Harper
Karen L. Harper
William L. Harraman
Charles R. Harris
Timothy B. Harris
Willie J. Harris
Donald S. Hartman, Jr.
Michael S. Haskell
Stephen C. Hastings
Samuel J. Head
Charles W. Hearn, Jr.
Roy W. Heidicker
Raymond B. Held
Timothy W. Helms
John F. Hemleben
Mark L. Hendricks
John T. Hennessey
James A. Henry
Timothy J. Hesketh
Michael S. Hicklin
Ernest E. Hickson
James M. Higgins
Peter E. Higgins
Paul R. Hill
Clayton F. Hill
Terry L. Hill
Alden E. Hingle, Jr.
Jonathan J. Hirtle
Mitchell S. Hoffman
Otis L. Hollar II
Susan M. Holmgren
Robert J. Holt
Jay W. Hommer
Jerry W. Honea
James F. Honeycutt, Jr.
Donald C. House, Jr.
Craig S. Huddleston
Jack M. Hughes
James G. Hughes
Michael J. Hughes
Richard D. Hughes
Robert J. Hugin
Vince L. Huston
Phillip R. Hutcherson
Maurice B. Hutchinson
Richard M. Hutchinson
John A. Hutchison
Dennis J. Jackson, Jr.
Otis J. Jackson, Jr.
Everett L. Jacobson
John M. Jagielski
David L. Jankowski
Kevin P. Janowsky
Luther B. Jenkins
Robert L. Jenkins, Jr.
Harold L. Jennings, Jr.
Edward A. Jeter
Bobby R. Johnson
Gary Johnson
Roy H. Johnson
Terrie B. Johnson
William L. Johnson III
Jere J. Johnston
Dwight W. Jones
Ritchie K. Jones
Susie K. Jones
William M. Jones
Dennis Judge
Arlow A. Julian
David J. Kaessner
Thomas M. Kait
Steven A. Kapitan
Stephen R. Kappes
Peter J. Karonis III
Thor L. Kaumeyer
Brendan P. Kearney
Donald M. Keithly
Ricki A. Kelish
Bruce R. Kelly
Charles E. Kelly
John F. Kelly
Michael T. Kelly
Daniel J. Kernen
David T. Kerrick
John J. Kirk, Jr.
Joseph R. Kirkman
Frederick J. Klauser
Scott E. Klippert
Robert J. Knapp
David G. Knittig
Philip E. Knobel
David L. Kooker
Gary R. Kozlusky
John E. Kramer
Kathleen G. Kramer
Mark L. Krigbaum
Mary A. Krusa
John E. Kruse, Jr.
Michael J. Krynak
Leellen Kubow
Robert F. Kuhlow
Philip B. Kumpis
Joseph P. Kusior, Jr.
John C. Ladd
Roger D. Lamb
John M. Landfair
Edward L. Lane
William R. Langford
Joseph S. Lape
Kenneth M. Lapean
Randall W. Larsen
Ivan W. Lassiter
Rufus B. Laws
Marc D. Lederman
Kevin H. Leeman
Scott M. Lehman
John D. Lehockey
Marcus L. Lenderman
Frank J. Lengel
James E. Lindsey
Jerome C. Liscomb
Gary A. Littlejohn
Duane B. Logan
John L. Lott, Jr.
Joseph N. Lott
Michael T. Lovejoy
James M. Lowe
Steven M. Lowery
Edward J. Lubbers
Robert E. Lund
Kevin B. Lydon
Edward W. Lynch
Robert F. Lynn
James R. MacDonald
Bron N. Madrigan
David W. Maffett
Alyce M. Mahlock
Michael A. Malachowsky
John D. Mann
Jeffery L. Martin
Michael A. Marriott
Joanna M. Martin
Paul J. Matthews
David W. Mauldin
Kenneth T. McCabe
Bernard V. McCarthy, Jr.
Robert T. McCarty
Charles B. McClain
Michael P. McCloskey
Gary L. McClure
Gary M. McConnell
A. V. McCoy, Jr.
Harry F. McDole, Jr.
Chester H. McFarland
Joseph V. McIlhenny, Jr.
Keith D. McKain
William T. McKenzie
Michael D. McMillan
James S. McTighe
Joseph V. Medina
William L. Meeks
Charles J. Mehalic
Kim Mehalko
Rickie A. Mellenkamp
David C. Mickelson
John R. Miles
David A. Miles IV
Blaise P. Miller
David B. Miller
Jeffrey W. Miller
Mark C. Miller
Pierce R. Miller
William W. Miller
Richard P. Mills
Michael B. Minnehan
John M. Misiewicz
Charles R. Mize, Jr.
Joseph E. Moeder
Chester C. Moeller II
Kenneth C. Mogray, Jr.
Leonard M. Mokan
John S. Moore
Richard S. Moore
Richard D. Morgan
Michael T. Moriarty
Phillip A. Morris
Mark G. Mossman
Way P. Moy
George E. Mueller, Jr.
Charles V. Mugno
Warren F. Muldrow
Curtis A. Munson
Robert J. Murawski, Jr.
Robert B. Murray
John D. Myers
Arthur L. Nalls, Jr.
Clayton F. Nans
Crystal M. Nans
Roderic S. Navarre
Kenneth E. Neu, Jr.
Jeffrey A. Neufeld
James L. Newbold
Phillip L. Newman
Rosco A. Newson
Kelley J. Nielsen
Berva B. Noone
Joseph C. Noone, Jr.
David B. Norris
Robert A. Nuzum
James Oates III
David M. Oberholtzer
John P. O'Connor
Lawrence J. O'Donnell, Jr.
Allen E. Oliver
Michael C. O'Neal
Gordon C. O'Neill
Craig E. Opel
Richard J. Packard
Harry A. Page
Roy F. Page
Robert H. Paine
Lawrence F. Palazzolo
Menelaos P. Palles
Frank A. Panter, Jr.
Robert D. Papak
Mark W. Papineau
Robert S. Paris
Raymond D. Parker
Robert R. Parker, Jr.
Randall D. Parman
Craig T. Patranc
Charles S. Patton
Osland Paulding
Martin D. Peatross
Reynolds B. Peele
Frank D. Pelli
Edward J. Perkins III
Michael F. Perry
Ronald C. Perry
Andrew J. Peters, Jr.
David L. Peterson
Michael R. Peterson
Bruce K. Petit
Nicholas C. Petronzio
Walter E. Pfandl
Gary V. Phillips
John R. Philp
Lawrence J. Piano
Bruce G. Pike
Greg P. Postochini
Christopher D. Platt
Harold E. Poole
Roger R. Poole
Richard J. Poppe
Tony L. Porter
Dennis C. Pratt
William J. Preston
Randall R. Pritchett
Harold T. Pruessner, Jr.
Mario T. Rabusin
John G. Rader
William A. Radtke III
David E. Reagan
Lawrence J. Reccoppa
George E. Rector, Jr.
Dennis W. Reilly
John E. Reiss
Louis F. Repucci, Jr.
James M. Reuter
Steven A. Reynolds

Harley J. Rhoten
Jeffrey C. Richter
Paul J. Riding
Thomas A. Roberts
Jeffrey A. Robertson
Mastin M. Robeson
David J. Robinson
Wayne D. Robinson
Terry G. Roblin
Barbara J. Rollins
Lewis W. Rollins
Glenn C. Roundy
Philip C. Rudder
Brendan P. Ryan
James T. Ryan
Peter L. Rybacki
Eugene R. Rybak
Jonathan T. Ryberg
Dan R. Sadberry
David A. Salzman
Kevin G. Sandri
Michael W. Sarnes
John M. Scepurek
Thomas O. Schaefer
Thomas H. Schalch
Duane R. Schattle
Frederick A. Schenk
Nancy J. Schenk
Richard J. Schmitt
Paul A. Schneider
Robert B. Schnepp
Michael H. Schoelwer
Mark A. Schon
Daniel C. Schultz
Benjamin L. Scofield
James E. Scroggs
William T. Sears
Thomas M. Seifert
Thomas R. Serrin
James J. Seward
Sylvan J. Sewell
Curtis J. Shaffer
Carl H. Sharperson, Jr.
Raymond S. Shelton
Joseph L. Sheppard, Jr.
Karim Shihata
Patrick K. Shy
Thomas A. Sieg
Richard L. Simmons, Jr.
Walter W. Simmons
Dan Simons
Jeffrey R. Simons
Thomas L. Simpson
Neil E. Sizemore
Frank P. Slavich, Jr.
Marvin E. Sleppy
Timothy A. Sloan
Gregory L. Smith
Jordan B. Smith, Jr.
Michael L. Smith
Sheri A. Smith
Thomas M. Smith
Vincent L. Smith
Craig C. Snee
William T. Snider, Jr.
Robert E. Snyder
Nicholas A. Sottler
Paul F. Souza
Jack K. Sparks
Jake L. Sparks II
John E. Sparks, Jr.
James L. Spears
Melvin G. Spiese
Harrell D. Spoons, Jr.
Louis P. Sposato, Jr.
Paul T. Stanley
Conley W. Starling
Randall L. Stegner
Allen R. Steward
Glenn D. Stoker
George E. Stratmann, Jr.
John J. Stuart
Richard K. Stutler
James A. Summers, Jr.
John R. Suter
Stephen D. Swazee
William S. Sweeney
Palmer D. Swift
Bradford L. Tammaro
George J. Taylor
Jonathan M. Taylor
Robert C. Tekampe
David E. Ternes
Kenneth W. Terry
Victor J. Thombs
Dennis C. Thompson
Jerry L. Thompson
Theodore R. Timmerman
Hubert E. Tobey
Peter B. Todsen II
Ann F. Toggenburger
Randolph E. Tom, Sr.
Jeffrey J. Tomlin
Douglas M. Tonn
Charles E. Tower, Jr.
Randall L. Trammell
John W. Tranberg
Lynn E. Trenda
Dennis F. Tretter
Gerald L. Troupe
Danny K. Trout
Robert P. Troy, Jr.
Scot W. Tschirgi
Frederick L. Tuggle
Alan A. Turk
Bradley E. Turner
Wilma L. Turner
Robert L. Urban
Janice M. Vancamp
Jackson M. Vanderburg
James L. Vanfossan
James I. Vanzummeren
Jeffrey D. Vick
Austin K. Vincent
William F. Vokoun
Blair R. Vorgang
Thomas D. Waldhauser
Lawrence G. Walker
Joseph A. Wallace
Craig A. Wallwork
Belton R. Ward, Jr.
William A. Warner
Raymond F. Waters III
Roxanne L. Waters
Paul W. Watson
Dennis E. Watts
Dolph N. Watts
Robert M. Weidert
Richard E. Weiss
Karl D. Wells
Michael D. Weltsch
James G. Westberg
George M. Wheeler
John D. Whitaker
Jonathan C. White
Steven B. White
Steve E. White
Timothy R. White
Stephen P. Whitlock
Michael W. Whitted
George K. Wilcutt
Jan J. Williams
Jeffrey B. Williams
Michael E. Williams
Dennis A. Winberry
Kevin H. Winters
Russell C. Woody
Benjamin G. Wyatt
Francis J. Wysocki
Thomas M. Yackley
Gary W. Yagiello
Stephen A. Yates
James M. Yeager
Stanley J. Yelito
Wade Yoffee
Randolph F. Young
Raymond H. Young
Anthony Zezzo II

The following-named officers of the Marine Corps for temporary appointment to the grade of first lieutenant under the provisions of title 10, United States Code, section 7854:

Charlie H. Adams, Jr.
Paul D. Adams
William T. Alexander
Randolph D. Alles
Daniel N. Allmayer
Thomas E. Archer II
Gerard B. Baigis
Peter L. Bann
Bruce L. Barnes
Mark P. Barthel
Ralph S. Battles, Jr.
Donald P. Beck
Bruce P. Bendele
Robert L. Biely
Harry J. Blair III
Arthur L. Blodgett
Stephen P. Bohlmann
Harold E. Bonham, Jr.
Steven K. Booth
Gordon C. Bourgeois
Terry R. Bower
Miles S. Bozarth
Gary W. Bradley
John M. Brereton
Wayne E. Briggs
Alan A. Bromka
David N. Brown
Stephen A. Butera
Pamela F. Capatosto
Karl F. Carlson
Steven J. Cash
Ralph D. Catoe
Roger C. Cecil
George P. Celvi
Gerald R. Chapman
Donald J. Chattin, Jr.
Gregory G. Clark
Michael E. Clark
James W. Cluck, Jr.
Terry M. Collins
Richard A. Comfort, Jr.
Thomas M. Corbett
Donald E. Creighton
John M. Croley
Billy H. Davis
Ralph D. Dawson
David G. Desmond, Jr.
Jeffrey L. Deweese
Ronald G. Dodson, Jr.
Stanley M. Donham II
Leo M. Donnelly
Rick O. Donovan
Michael S. Dossett
Michael J. Doughty
David B. Dunmore
Christian J. Eck III
Oregon, Emerson III
Kenneth R. England
Mark C. Evans
Raymond J. Fagot, Jr.
David E. Fails
John R. Farris, Jr.
Brian T. Fenlon
Patrick J. Ferral
Edwin E. Field R.
Kenneth D. Finlon
John S. Flanagan II
Roy W. Flentge
Kevin F. Foley
Michael R. Fonteno
Michael F. Forrester
Frank E. Foster
Robert E. Foulk
Joseph H. G. Franz
Kent R. Freeland
Mark L. Friedman
Sarah E. Fry
Thomas M. Fuller
Rodney J. Gerdes
Kevin M. Gilpin
Gregory G. Golden
Charles D. Gooby
Joseph W. Graff
Kenneth A. Granger
Robert W. Griffin
John D. Gumbel
David L. Hackemeyer
Elizabeth A. Hallin
Jon T. Hardwick
Craig T. Hartigan
Carson E. Haury
John A. Hautala
Robert W. Hawkins
John E. Hennelly
Joseph B. Herlihy, Jr.
James B. Hill
Arthur E. Hockmar II
Eddie L. Holcomb
James F. Holland, Jr.
Steven T. Holste
Paul M. Hornback
Harvey E. Howard, Jr.
Gordon A. Howe
Alan P. Howell
Karen E. Hughes
Robert D. Hunter
Harry L. Hutch, Jr.
Ernest D. Ibarra
Joseph P. Innerst
Phillip M. Jackson
John W. James
James F. Janecek
Richard E. Jannell
Donald L. Johnston, Jr.
Erik L. Jorde
David A. Jorgensen
Joseph E. Joutras
Steven P. Junkersfeld
Bernard F. Kallelis
Peter J. Keenan
Larry M. Keim
Christopher C. Kelley
Davide A. Kelley
George M. Kelley
William G. Kellogg
David L. Kennedy
Kit M. Kerkesner
Thomas H. Kitto
Gordon Klau
Donald R. Knauss
Rosa K. Knight
Calvin A. Knox
Robert M. Knutzen
David J. Koleos
Joseph W. Kosewicz
Carl F. Kusch
Robert R. Lane
Robert L. Langrill
Robert J. Lemyre
Danny U. Lewis
Robert E. Lindsey, Jr.
Richard M. Linton
Tracy K. Loftis
Michael A. Loose
Kevin M. Lucas
Eric W. Lund
Michael J. Lyden
Gregg L. Lynes
Douglas C. Lynn
Gary J. Magnuson
David F. Maier
Curtis E. Mamzic
Joel R. Mariani
Kevin B. Marsh
Anthony D. Martelli
Robert D. Mastroianni
Daniel P. Mathern
Gregory D. Mathis
James D. Matthews
Colin F. Mayo
Michael L. McCabe
James F. McCaffrey
Tommy B. McClelland, Jr.
Howell G. McCleskey
Terrence B. McGuire
William L. McKenna
William M. Meade
Linda S. Mehalko
John M. Melink
Michael A. Merrill
Jim B. Mickler
Dean A. Millard
David L. Miller
David M. Mitchell
Robert B. Moore
Robert J. Munisteri
Brian A. Murray
Bryan K. Murray
Alan J. Neff
Martin R. Nolan
Margaret M. Nordin
Eric N. Nyberg
David B. Pabst
Dennis C. Pederson
Michael L. Pellegrini
Michael L. Philips
Merrill L. Pierce
Eugenio G. Pino
James M. Plumer
John S. Prather
Curtis G. Raetz
Stephen W. Randall
Franklin V. Reagan
William T. Reagan
James M. Redman
David E. Reeves
Michael R. Regner
Charles W. Reif
Robin R. Renken
Bruce A. Requa
Rodney C. Richardson
Thomas C. Richardson
Bruce A. Richter
David B. Richter
David J. Salter
William A. Sanderson
Fredorick M. Sanford
Dennis R. Schroeck
Arnold P. Segovia
James B. Sell
Jeffrey M. Seng
Marcia M. Shaffer
Howard S. Shaub
David J. Shaw, Jr.
Judith C. Shaw
Michael T. Shaw
Stanley G. Shumway
Clifford M. Simmons
Reginald S. Simmons
Randolph P. Sinnott
Glen E. Sisson
Douglas L. Smythe
John J. Spang
Edward J. Spooner
Mikal P. Stampke
Michael L. Steele
Michael C. Stephens
Patrick F. Stickel
Anthony Z. Stobiecki
Michael R. Suttle
Theodore M. Swendra, Jr.
Christopher K. Taylor
Michael E. Taylor
James M. Thomas
Harry J. Todd, Jr.
Michael E. Tucker
Tommy L. Tyrrell, Jr.
Paul W. Underwood
Anthony W. Valentino
James B. Vile
Michael L. Voniderstine
Derrell E. Wad
Susan G. Walker
Gregory T. Wallick
Kevin L. Warkentin
Bradford G. Washabaugh
William G. Washington, Jr.
James H. Watson
Earl S. Wed Brook
Stanley W. Wende
James M. Wenk
Raymond W. Wersel
Scott Westervelt
Arthur E. White
Paul L. Whitehouse
Terrence W. Wilcutt
Robert J. Wilkinson, Jr.
Kenneth L. Williams
Charles L. Wilson
Russell E. Wilson
William R. Wilson IV
David M. Winn
David W. Wood
Michael A. Woodcock
Donna A. Woods
Warren H. Wright
Robert W. Young, Jr.

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W–4 under the provisions of title 10, United States Code, section 563:

Willie A. Armstead
Lorenza T. Baker
Bonnie H. Bass
Richard J. Beatty
Robert L. Bowen
Reganold A. Bowser
Dennis A. Braund
Albert K. Britton
Charles J. Bruce
Ben W. Caesar
Robert L. Caldwell
James E. Carter
Donnie E. Cavinder
Jackie E. Certain
Gregory Connor
Rex L. Curtis
Eldon L. Dodson
Arthur J. Douglas
Terrell L. Dulaney
James M. Edgerton
Robert R. Epps
Donald T. Eskam
Charles A. Fitzgerald
Sandra L. Furber
Earl G. Gale III
Craig D. Gibbons
William M. Grant
Richard L. Gregg
William L. Grinnell
Hubert A. Grummer
Henry D. Halloway
Frank R. Hart
Albert L. Hayes
Harold S. Heinbaugh
William J. Hisle III
Raymond L. Hug
Guy L. Hunter, Jr.
Robert R. Irvine
William R. Johnson
Allen F. Kent
Joe Killebrew
Leslie C. King
Chester C. Kinsey
Charles E. Lambert
Albert R. Lary
Philip D. Leslie
John W. Loynes
Raymond J. Main
John P. Marlowe
Barry E. Marsh
Benjamin A. Marsh
Charles J. McCormick
Howard McDonald
William L. McGinn
Larry G. Merrifield
Allen R. Morris
James T. Morris
Lawrence T. Mullin
Walter D. Perry
Jimmie F. Peters
Charles T. Pettigrew, Sr.
Robert P. Phillips
Alfred M. Pitcher
Wilfred Puumala
Richard A. Rossi
Michael J. Schulke
John D. Scroggins
Albert W. Sheldon
Dan W. Showalter, Jr.
David E. Shumpert
Wilbert O. Sisson
Robert M. Skidmore
Charles G. Skinner
Minter C. Skipper, Jr.
Isaac A. Snipes
Jeffrey J. Snyder
Elias J. Soliz

Ronald J. Stopka
Joseph J. Stours
George B. Strickroth
Michael E. Thomas
Joseph Thorpe
Paul R. Tippy
Louis G. Troutman
William T. White
Charles E. Young
Arthur Yow, Jr.
Bennie R. Walker
Arthur P. Williams
Jerome K. Williams
Richard K. Wolfe

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W–3 under the provisions of title 10, United States Code, section 563:

Joseph E. Ashton
Lauren D. Ayers, Jr.
David B. Bartz
Jon C. Benrud
Ronald M. Brahmer
Ronald G. Brodgon
Charles L. Brown
William L. Burke
Robert C. Burlingame
Douglas M. Catlett
Joseph C. Chiles
Richard W. Christiansen
John C. Clark
Ronald E. Clemons
Gerald L. Colby
Larry A. Cowart
William T. Cumbie
Cecil R. Delarosa
Robert N. Diab
Ronald T. Dudley
Kelly R. Edwards
Sergio E. Estrada
Carmelo A. Finocchiaro
Harold A. Gawerecki
Sylvester Graves
Thomas M. Grenier
Gary R. Grothe
William R. Hayes
Gerald T. Janda
Marcus W. Johns
Joe V. Johnson
Charles J. Kathrein
Frederick J. Keegan
John J. Kenney
Ronald A. Koren
Curtis A. Leslie
Larry D. Logsdon
Tommy L. Lopez
Patrick T. Mahoney
Darrell F. Martin
Joseph A. McDonald
Paul A. McInerney
Raymond E. McNeal
Richard L. Meeker
Marlen B. Meierdierks
Leslie A. Meyer
Vernon J. Meyer
Frederick M. Morrone
Leonard A. Mueller
Lance E. Parker
Teddy H. Perrodin
Daniel B. Pickens
Loren D. Primmer, Jr.
Jerry R. Prince
Edward Richey, Jr.
Carl Romero
Larry F. Rudolf
Ronald G. Ruppelt
Daniel W. Sable
Winston J. Scott
John R. Seay
John D. Self
Cathy J. Sieber
Charles C. Simpson
Ryan E. Stafford
Richard M. Speidel
Robert T. Stockman
Robert D. Stride
Ralph Sturgeon, Jr.
Peter W. Tallman
Teodoro R. Tenorio
Lyndon F. Vrooman
Dean A. Waller
Richard J. Walter
James C. Wheeler, Jr.
Anthony W. Williams
Robert F. Zurface

The following-named officers of the Marine Corps for appointment to the grade of chief warrant officer, W-2 under the provisions of title 10, United States Code, section 563:

Anthony E. Agrue
Michael R. Allen
Myron E. Allen
Lester L. Anderson
Lawrence J. Anderson
David V. Antkowiak
Steve W. Archer
Max E. Austin
William J. Balderama
James R. Barnes
Kevin J. Barth
John R. Beall
Robert O. Bennett, Jr.
Clement J. Berendt
David V. Bertoldo
Raymond A. Bethke
George K. Blackwell
David J. Bland
Scott D. Boyer
John C. Brady
Thomas L. Breese
James F. Bremer
Larry C. Brown
Russell K. Burnett
Joseph P. Bynum Jr.
Clifton D. Caldwell
Kenneth R. Calvert
Billy J. Carico
Gary R. Carlson
Patricia A. Carter
Robert W. Cavanaugh, Jr.
William J. Cavanaugh
Larry D. Chambliss
Richard E. Chandler
Tommy L. Chandler
William D. Chapman
William H. Charlton, Jr.
Marvin E. Christians
Gerald M. Clark, Sr.
George R. Collard
Charles E. Colvard
Kenneth R. Cooper
Ronald B. Corbett
Denny L. Cox
William C. Cox
Daniel A. Crall
Grove S. Crank
Ernest L. Crawford
James Currie
Richard W. Dailey
Wayne A. Davey
Ronald H. Deford
Joseph S. Delossantos
Richard L. Denoyer
Michael P. Derose
Ralph J. Diaz
David A. Dipman
Donald R. Dockrey
Larrie A. Dombos
Robert P. Downs
Stephen M. Dreher
Roger F. Drown
Donald L. Dytmire
Michael D. Edwards
Steven O. Elggren
Thomas C. Ellenberg
Sally J. Exworthy
Daniel L. Farster
James L. Fields
Jerrold R. Fisher
Roylance J. Frank, Jr.
Jeffrey S. Frye
Pete Flores
Juan Galvan, Jr.
Paul A. Gelinas
Charles N. Gibson
John M. Graf
Michael W. Green
George T. Grow, Jr.
Calvin F. Guntherberg
Gary F. Halford
Lee F. Haverson
Alan A. Hammer
Henry C. Harris
Peter L. Harris
Howard A. Hartman
Michael B. Hayes
Edward H. Heffernan
Dennis E. Henson
Frank R. Hernandez
Steven Hickey
Morris B. Hichman, Jr.
William D. Hightower
John V. Hinds, Jr.
Russell R. Hobbs, Jr.
James R. Hoogendorn
Johnny L. Howard
Winfield D. Howard, Jr.
Donnel Humbert
Robert H. Irvine
David L. Jennings
Andrew L. Johnson
James F. Johnson
Paul E. Johnson
John W. Johnston
Lester R. Jones
Charles G. Katsekes
Garry R. Kerr
John O. Keyes
James R. Kikta
Robin C. Kilpatrick
Mark J. Klicker
John A. Klossner
James M. Knope
Darryl J. Kokos
Michael Kozakewich, Jr.
Paul J. Kufhta, Jr.
Eugene W. Landrum
Alfred P. Laporte, Jr.
James Largue III
Victor A. Larkin
Kenneth P. Lasnier
Bryan N. Lavender
Douglas A. Law
Gary W. Lawyer
Patrick B. Leach
Edward C. Ledlow III
Cornelius F. Leer
Galo I. Leguillou
Donald Lewis
Eugene W. Lindley
Roosevelt Lindsey, Jr.
Wilburn E. Littrell
Stanley W. Longworth
William E. Lovelady
Luis R. Lozada
Albert A. Luckey
Harry Manchester, Jr.
John M. Mansch
James J. Massie
Larry W. McBeth
Jack R. McClelland
Andrew McClendon
Paul E. McEvoy
Todd A. McIntyre
Michael L. McKinney
John H. McTier
William L. Mees
Curtis D. Mertz
Larry T. Messner
George H. Mikesell
Harry R. Monds
Anthony R. Montoya
Howard R. Moon
Bobby L. Moore, Jr.
Gerald H. Moors
Keith A. Morgan
Roy L. Morris
Roger T. Mullins
Lloyd A. Myer
Lloyd R. Narramore, Jr.
Frederick L. Navarre
John R. Nebeker
Daniel A. Nelson
Herbert L. Nichols, Jr.
James D. Nicholson
George D. Nilson
John L. Nusbaum
Daniel E. O'Donnell
Robert E. Older
J. B. Oliver, Jr.
Charles A. Padgette
Jimmy C. Patrick
Darrell L. Paul
Gerald L. Peaake
Nyles W. Peterson
George J. Phillips
Charles B. Plowman
Frank B. Plumlee
Tony E. Poole
James Poon, Jr.
Charles W. Pritchard
William F. Ramberg
Antonio E. Ranero
Steven D. Rapp
Donald E. Rich
George C. Rife
Errol W. Roberts
Harry W. Roberts, Jr.
Robert W. Rodenski
Burkeen W. Salyer
Leo Sanders, Jr.
Frank J. Scarpinato, Jr.
Joseph H. Schepisi
Paul V. Schichtel
Patricia J. Schmoller
Stephen E. Schwab
Edgar L. Scilex II
Nicholas A. Shrum
Paul G. Silvis
Arrnold E. Simmons
David L. Simon
Barry J. Singer
Frank P. Skinner
Donald R. Smith
James F. Smith
Lonnie D. Smith
Robert W. Smith
Stephen K. Smith
William C. Smith
Joseph Spelman
Michael E. Spencer
Rufus E. Spigner
Robert Steinheimer
Marc M. Stevens
Ronald A. Stewart
Thomas R. Still
Dempsey Stowers
David P. Strong
John D. Sutton
Roland C. Swensen
Cecil E. Swift
Larry L. Swope
Jesse H. Terpstra, Jr.
Haney Thomas, Jr.
Dennis M. Thorpe
Berndt H. Tietjen
Edward R. Tokarz
Jesse Torres
Gary E. Toupin
Glenn H. Trexler
Bruce A. Vandenberg
John F. Velarde
Noe, Vera
Glenn L. Wadford
Roy V. Wallis
Kimberly A. Walt
Raymond E. Ward
Ronald R. Washburn
William M. Watson
Howard A. Watt
Ray A. Welch
Jerry D. Wellner
John M. Williams
Marvin G. Williams
Wilbur L. Williams
Varnziel Winfield
Gary L. Winslow
John F. Winstead
Jack L. Wood
Jerry A. Youmans
William H. Young, Jr.
Thomas M. Zarner

Executive nominations received by the Secretary of the Senate August 20, 1979, under authority of the order of the Senate of August 3, 1979:

INTERNATIONAL MONETARY FUND

Paul A. Volcker, of New Jersey, to be U.S. Alternate Governor of the International Monetary Fund for a term of 5 years, vice G. William Miller.

DEPARTMENT OF STATE

Stephen Low, of Ohio, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Nigeria.

Executive nominations received by the Secretary of the Senate August 27, 1979, under authority of the order of the Senate of August 3, 1979:

FEDERAL HOME LOAN BANK BOARD

Jay Janis, of Florida, to be a member of the Federal Home Loan Bank Board for the remainder of the term expiring June 30, 1981, vice Robert H. McKinney, resigned.

IN THE AIR FORCE

The following officer for appointment in the Regular Air Force, in the grade indicated, under the provisions of section 8284, title 10, United States Code, with date of rank to be determined by the Secretary of the Air Force.

To be captain

Toenjes, Donald M., [redacted]

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force.

MEDICAL CORPS

To be major

Yerger, David H., [redacted]

To be captain

Baugh, Eric R., [redacted]

DENTAL CORPS

To be first lieutenant

Rabbio, Maria A., [redacted]
Rogerson, John N., [redacted]

VETERINARY CORPS

To be major

Milligan, Joseph E., [redacted]

The following persons for appointment as Reserve of the Air Force, in grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Abel, William G., [redacted]
Ansari, Parvis M., [redacted]
Bartlett, Richard A., [redacted]
Bennett, Lansing H., [redacted]
Bianchini, Valentino J., [redacted]
Brenner, Harris (NMI), [redacted]
Clemenz, Frederick W., [redacted]
Gallo, Albert E., [redacted]
Hauschild, Werner A., [redacted]
Haverlah, Gene V., [redacted]
Herrera, Gaston C., [redacted]
Hilian, Donald D., [redacted]
Jones, Edward H., [redacted]

Kingsbury, Robert C., xxx-xx-xxxx
Loizeaux, Paul H., xxx-xx-xxxx
McCumber, Myron L., xxx-xx-xxxx
Nestler, William H., Jr., xxx-xx-xxxx
Pablos, Gliceria T., xxx-xx-xxxx
Pica, John (NMI), xxx-xx-xxxx
Sanderson, John M., xxx-xx-xxxx
Scott, Jack (NMI), xxx-xx-xxxx
Sellors, William H., xxx-xx-xxxx
Teodor, Peter (NMI), xxx-xx-xxxx
Tripp, Cecil D., xxx-xx-xxxx
Weaver, Fred III, xxx-xx-xxxx x...
Yamauchi, Hiroshi (NMI), xxx-xx-xxxx
Yates, James E., xxx-xx-xxxx

The following persons for appointment as Reserve of the Air Force (ANGUS) in the grade indicated, under the provisions of sections 593 and 8351, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Dalessandro, Angelo A., xxx-xx-xxxx
Mogerman, Donald M., xxx-xx-xxxx

The following officers for promotion in the Air Force Reserve, under the provisions of sections 593 and 8376, title 10, United States Code.

MEDICAL CORPS

Lieutenant colonel to colonel

Bamel, Solomon, xxx-xx-xxxx
Cruzjimenez, Pedro R., xxx-xx-xxxx
Wakefield, Charles T., xxx-xx-xxxx
Wiese, Lowell M., xxx-xx-xxxx

LINE OF THE AIR FORCE

Major to lieutenant colonel

Bettner, Donald J., xxx-xx-xxxx
Brand, Roderick P., xxx-xx-xxxx
Brenzel, Robert C., xxx-xx-xxxx
Christoffersen, Neil, xxx-xx-xxxx
Crump, Ronald H., xxx-xx-xxxx
Clutter, James W., xxx-xx-xxxx
Dorris, John W., xxx-xx-xxxx
Dunlap, Richard M., xxx-xx-xxxx
Elliott, George G., xxx-xx-xxxx
Fiegel, David A., xxx-xx-xxxx
Flook, Gerald L., xxx-xx-xxxx
Green, Thomas A., xxx-xx-xxxx
Hengel, Raymond J., xxx-xx-xxxx
Holen, John A., xxx-xx-xxxx
Hubbard, Charles R., xxx-xx-xxxx
Loucks, Justin E., xxx-xx-xxxx
Noack, Leonard A., xxx-xx-xxxx
Parkinson, Thomas H., xxx-xx-xxxx
Porter, Harl M., xxx-xx-xxxx
Radko, Anatole, xxx-xx-xxxx
Schmitt, Arthur E., xxx-xx-xxxx
Smith, Donald, xxx-xx-xxxx
Stegenga, Peter, Jr., xxx-xx-xxxx

CHAPLAIN CORPS

Major to lieutenant colonel

Pearson, John R., xxx-xx-xxxx

NURSE CORPS

Major to lieutenant colonel

Colley, Helen L., xxx-xx-xxxx

MEDICAL CORPS

Major to lieutenant colonel

Andre, Donald A., xxx-xx-xxxx
Cabatbat, Inocencio, xxx-xx-xxxx
Davey, Joseph J., xxx-xx-xxxx
Donahue, James M., xxx-xx-xxxx
Gauvin, Lloyd D., xxx-xx-xxxx
Hoag, Harriet A., xxx-xx-xxxx
Kendle, Ellis M., xxx-xx-xxxx
Kharod, Upendrakuma, xxx-xx-xxxx
Payen, Hermilando P., xxx-xx-xxxx
Satir, Ahmet S., xxx-xx-xxxx
Schwartz, Gary P., xxx-xx-xxxx
Sisson, William R., xxx-xx-xxxx
Tremblay, Normand F., xxx-xx-xxxx
Turlington, James T., xxx-xx-xxxx
Vandersarl, Jules V., xxx-xx-xxxx

The following-named Air Force officer for reappointment to the active list of the Regular Air Force, in the grade of colonel, Regular Air Force, under the provisions of sections 1210 and 1211, title 10, United States Code, with active duty grade of temporary colonel, in accordance with sections 8442 and 8447, title 10, United States Code.

LINE OF THE AIR FORCE

Nash, Merle W., xxx-xx-xxxx

IN THE NAVY

The following-named commanders of the United States Navy for temporary promotion to the grade of captain in the staff corps as indicated, pursuant to Title 10, United States Code, Sections 5773 and 5791, subject to qualification therefor as provided by law:

MEDICAL CORPS

Abbott, Mark O.
Addison, Robert G.
Angelo, Don S.
Baker, James C.
Bellanca, Joseph J.
Bouvier, John J.
Browning, Robert W.
Clayton, William E.
Cloutier, Charles T.
Cook, Taylor I.
Donnell, Robert L.
Drake, Anthony M.
Dunne, Michael J.
Dwinnell, Frank L.
Evertson, Larry R.
Fink, Lawrence H.
Foreman, David R.
Gabel, Ronald E.
Garvin, David F.
Gross, Theodore D.
Harrison, William O.
Harvey, Claude A.
Hauser, James L.
Heffner, Dennis K.
Henrichs, Walter D.
Higgins, Robert W.
Hodges, Leon C., Jr.
Hoskins, William J.
Howard, Noel S.
Johannes, James D.
Kaminsky, Howard H.
Kellogg, Gordon F.
Korbelak, Robert M.
Lench, Joel B.
Lyons, James F.
Maginnis, Michael A.
Majewski, Paul L.
Mannarino, Francis G.
McAllister, Clyde H.
McCarthy, Michael P.
McClurkan, James M.
Milroy, William C.
Negron, George L.
Noel, Ewell C., Jr.
Osborne, John E.
Peloquin, William H.
Peterson, Douglas W.
Pickett, Charles D.
Rasmussen, Bruce D.
Reed, Charles N. II
Ricketson, George M. III
Roberts, James D.
Sandri, Piero F.
Santiago, Lombardo M.
Schwabe, Mario R.
Senechal, John H.
Smyth, Joseph P.
Symonds, Ronald D.
Velat, Gary F.
Vogt, Philip J. W.
Weaver, Joseph W.
Welham, Richard T.
Williams, Loys E.
Williams, Theodore G.

SUPPLY CORPS

Austin, Walter I.
Bell, Ronald M.
Bian, John W.
Biver, David A.
Boese, Fred M.
Brown, James W.
Crane, Lee D.
DeMayo, Peter
Dempsey, Edward J.
Drake, Claude H.
Eckelberger, James E.
Evans, Steven H.
Felt, John D.
Filipiak, Francis L.
Gray, Lloyd C.
Hatchett, John W.
Hauenstein, William H.
Hoopes, Ronald G.
Huffman, Haldon J.
Iverson, Ronald I.
Jaap, Joseph D.
Jaecques, Raymond C.
Jarrett, William A.
Johnson, Omer L.
Kelly, James A.
Knight, James W., Jr.
Kuhns, Howard E.
Lavely, Lawrence W.
Lingenbrink, Robert A.
Lord, Charles W.
Lynam, Edward J.
Maginniss, Christopher M., Jr.
McAdams, William M.
Montgomery, Samuel S.
Muenster, William S.
Nichols, Gerald M.
Nix, Harvey W., Jr.
Olson, Engwall A., III
Overman, Douglas R.
Patterson, Jerry G.
Powell, Hal B.
Rader, Lynden L.
Randall, Harold N., Jr.
Risinger, Robert E.
Rogers, William J., Jr.
Sherwood, William C.
Spillane, James J.
Vanni, Ralph J.
Walther, Harrison N.
Wardrup, Leo C., Jr.
Weatherson, Harvey D.
Wheeler, J. C., Jr.
Willis, Gerald W.
Wood, Allen

CHAPLAIN CORPS

Ahrnsbrak, Leonard L.
Baez, Samuel
Beach, Stanley J.
Brennan, Joseph F.
Davis, Lex L.
Dempsey, Richard J.
Doffin, James E., Jr.
Dolaghan, John
Ecker, Robert J.
Ferguson, Edmond B.
Finn, Daniel E.
Goetz, Herbert M., Jr.
Hamilton, Edward A.
Hathaway, Dudley C.
Hawley, Quinn L.
Hiskett, Walter A.
Holwager, Philip J.
Hunsicker, David S.
Landry, Gene D.
Lewis, Herbert T.
MacCullagh, Richard E.
Mack, Wilfred B.
McCue, Richard T.
McDonnell, Francis W.
McNamara, John R.
Moran, Eddy B.
Pfannenstiel, James D.
Plishker, Richard A.
Rushing, Leslie W.
Smith, William A.
Stewart, Wayne A.
Weaver, John F.
Witting, Martin J.

CIVIL ENGINEER CORPS

Alexander, Robert E.
Bodamer, James E.
Bottorff, David E.
Caughman, James B., Jr.
Cook, Jan W.
Dallam, Michael M.
Davis, Gene
Dettbarn, John L.
Donovan, Lawrence K.
Gilmore, Gordon R.
Harrell, Haywood H.
Holmes, Henry A.
Ives, Jon R.
Jacobsen, John R.
Kau, Julian M. F.
Leonard, Daniel B., Jr.
McCorvey, Donald L., Jr.
McLaughlin, Edwin W.
Miller, Robert K.
Montoya, Benjamin F.
O'Donnell, William J.
Peltier, Eugene J., Jr.
Steadley, Alfred M., Jr.
Walter, John A.

JUDGE ADVOCATE GENERAL'S CORPS

Anderson, John W.
Campbell, Hugh D.
Debobes, Richard D.
Donato, Dan, Jr.
Drapeau, John W.
Drew, Kenneth W.
Googe, James P., Jr.
Hoffman, James L., Jr.
Kercheval, John W., II
Medlin, William R.
Nerseth, Marvin P.
Stumbaugh, Everette D.
Vanslate, Jean E.
Woods, Theodore K., Jr.

DENTAL CORPS

Ahl, Dennis R.
Allen, John M.
Andrzejewski, David A.
Antrim, Donald D.
Back, Jim P.
Barton, Terry L.
Bickenbach, Alan P.
Billy, Edward J.
Bollinger, Thomas E.
Branham, Gerald B.
Branon, Anthony W.
Buchholtz, William J.
Calder, David R.
Canal, John W.
Clark, George E.
Copeland, Richard A.
Crooks, Walter G.
Delaossa, Arthur D.
Demeyer, John H.
Emery, Clare A., Jr.
Fady, James A., Jr.
Fields, Marion S.
Flinton, Robert J.
Fortman, Kenneth V.
Foster, George S.
Frazier, James L.
Glazer, Sanford A.
Grisham, John P.
Groff, Gordon B.
Hancock, Everett B.
Heibel, John L.
Hicks, Morris L.
Hillenbrand, Ronald E.
Hillenbrand, Dennis G.
Hinman, Robert W.
Hirschfeld, William E.
Ho, Patrick
Holtan, James R.
Horton, Charles B.
Howe, David J.
Hunter, Thomas A.
Hirschfeld, William E.
Isaacs, Jerome E.
Julienne, Charles H.
Kehoe, Joseph C.
Kennard, John T.
Kepley, Benjamin F
King, Ronald C.
Kjome, Robert L.
Knehans, William E.
Kobes, Peter
Koenigs, Joseph F.
Lawton, Robert A.
Lehman, Paul C.
Leonard, Edward P.
Lineberger, Luther T.
Lohr, John R.
Lufkin, John C.
Luhtala, Jay L.
Maastraight, William H.
Martin, Richard L.
Matson, John E.
McDavid, Paul T., Jr.
Mitchell, Donald L.
Mohr, Richard W.
Morris, Don R.
Mowad, Massoud G.
Mullins, Harry C.
Nelson, Ronald T.
Nieusma, Gerald E.
Oatis, George W., Jr.
Oldfield, Ronald E.
Orthmeyer, Harold J.
Ostrowski, John S.
Paulk, Glenn L., Jr.
Perry, Frank U.
Petri, William H., II
Porter, John W.
Regan, Paul F.
Ross, George R.
Sadler, John F.
Schaberg, Siegfried J.
Sconyers, Jimmy R.
Scoralle, Donald L.
Seck, Dale W.
Shafer, Robert T.
Shanley, James J.
Sharrow, Barry E.
Shoemaker, Philip W.
Skyberg, Russell L.
Smith, Cameron M.
Smith, Gary L.
Snell, William H., Jr.
Splitgerber, Thomas C
Stanton, Herbert J.
Stob, John A.
Streicher, Carl W.
Thetford, Oris H.
Vazzana, Lorenzo S.
Webster. Roger A.

Whitlock, Richard P.
Whittaker, James F.
Wible, James H.
Wight, Thomas A.
Wisser, Robert C.
Wittgow, Walter C., Jr.
Young, Raymond F.
Zendt, Robert R.

MEDICAL SERVICE CORPS

Baldauf, George W.
Hodges, Richard C.
Law, Malcolm K.
Wentworth, Richard L.

NURSE CORPS

Barnes, Julia O.
Brase, Beverly J.
Clunan, Claudette C.
Emal, Janice A.
Holbrook, Helen A.
Jean Elizabeth A.
Jennett, Jo Ann
Kendall, Kathleen M.
Ledgerwood, Mary C.
Liakos, Angeline G.
Lisec, Helen A.
Lyons, Barbara A.
Meehan, Mary K.
Nelson, Marijean V.
Peters, Edna L.
Ross, Stella A.
Swetonic Marjorie A.
Weidt, Bew P., II
Young, Mary L.

Comdr. Andrew S. Markovits,* Medical Corps, of the Reserve of the U.S. Navy, for temporary promotion to the grade of commander, in the Medical Corps of the U.S. Navy as a Reserve officer, pursuant to title 10, United States Code, sections 5505 and 5793, subject to qualification therefor as provided by law.

The following-named ensign of the line, of the U.S. Navy for appointment in the Civil Engineer Corps, as permanent ensign, pursuant to title 10, United States Code, sections 5582(b) and 5791, subject to qualification therefor as provided by law:

Duke, Lawrence K.

Executive nominations received by the Secretary of the Senate August 28, 1979, under authority of the order of the Senate of August 3, 1979:

DEPARTMENT OF STATE

Thomas M. Tracy, of Florida, a Foreign Service officer of class 1, to be an Assistant Secretary of State, vice John M. Thomas, resigned.

John P. Condon, of Oklahoma, a Foreign Service officer of class 1, now Ambassador Extraordinary and Plenipotentiary of the United States of America to the Dominion of Fiji, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Tonga and as Ambassador Extraordinary and Plenipotentiary of the United States of America to Tuvalu.

THE JUDICIARY

Thomas A. Clark, of Florida, to be U.S. circuit judge for the fifth circuit, vice a new position created by Public Law 95–486, approved October 20, 1978.

Nathaniel R. Jones, of Ohio, to be U.S. circuit judge for the sixth circuit, vice John W. Peck, retired.

Arthur L. Alarcon, of California, to be U.S. circuit judge for the ninth circuit, vice a new position created by Public Law 95–486, approved October 20, 1978.

Harry Pregerson, of California, to be U.S. circuit judge for the ninth circuit, vice a new position created by Public Law 95–486, approved October 20, 1978.

Stephanie K. Seymour, of Oklahoma, to be U.S. circuit judge for the tenth circuit, vice a new position created by Public Law 95–486, approved October 20, 1978.

Alcee L. Hastings, of Florida, to be U.S. district judge for the southern district of Florida, vice a new position created by Public Law 95–486, approved October 20, 1978.

Scott E. Reed, of Kentucky, to be U.S. district judge for the eastern district of Kentucky, vice a new position created by Public Law 95–486, approved October 20, 1978.

*Ad Interim

Executive nominations received by the Senate September 5, 1979:

COUNCIL ON WAGE AND PRICE STABILITY

R. Robert Russell, of California, to be Director of the Council on Wage and Price Stability, vice Barry P. Bosworth, resigned.

IN THE AIR FORCE

The following-named officers for promotion in the Regular Air Force, under the appropriate provisions of chapter 835, title 10, United States Code, as amended. All officers are subject to physical examination required by law:

LINE OF THE AIR FORCE

Captain to major

Aarons, Ronald D., xxx-xx-xxxx
Abbott, Sherwood S., xxx-xx-xxxx
Abel, Raymond E., Jr., xxx-xx-xxxx
Abel, Thomas R., xxx-xx-xxxx
Abels, J. A., xxx-xx-xxxx
Abendschein, Frederick E., xxx-xx-xxxx
Abernathy, Charles R., xxx-xx-xxxx
Abney, Billy W., xxx-xx-xxxx
Acke, Edward H., xxx-xx-xxxx
Adams, Gerald R., xxx-xx-xxxx
Adams, Harold B., xxx-xx-xxxx
Adams, Harold C., II, xxx-xx-xxxx
Adams, Henry A., III, xxx-xx-xxxx
Adams, James D., xxx-xx-xxxx
Adams, Stephen D., xxx-xx-xxxx
Adkins, Joel E., xxx-xx-xxxx
Agnew, John T., xxx-xx-xxxx
Aikman, Lynn A., xxx-xx-xxxx
Aitken, James G., xxx-xx-xxxx
Akers, Gibson C., xxx-xx-xxxx
Albertson, Fred W., Jr., xxx-xx-xxxx
Alexander, Jon R., xxx-xx-xxxx
Alexander, Joseph D., xxx-xx-xxxx
Alexander, Thomas L., xxx-xx-xxxx
Alford, Benjam F., III, xxx-xx-xxxx
Alfred, Robert E. L., Jr., xxx-xx-xxxx
Alldredge, Charles H. S., xxx-xx-xxxx
Allen, George W., xxx-xx-xxxx
Allen, Jerrold P., xxx-xx-xxxx
Allen, John J., xxx-xx-xxxx
Allen, Richard L., xxx-xx-xxxx
Alley, Charles E., xxx-xx-xxxx
Allgaier, William A., III, xxx-xx-xxxx
Allgood, John R., xxx-xx-xxxx
Allick, Samuel O., xxx-xx-xxxx
Almand, Larry M., xxx-xx-xxxx
Almond, Russell H., Jr., xxx-xx-xxxx
Alpert, Harold S., xxx-xx-xxxx
Alverson, Kintner W., xxx-xx-xxxx
Amann, John J., xxx-xx-xxxx
Ambrose, John W., III, xxx-xx-xxxx
Amels, Bernard J., xxx-xx-xxxx
Ames, Laurence W., xxx-xx-xxxx
Amundson, Robert C., xxx-xx-xxxx
Anders, Wayne R., xxx-xx-xxxx
Andersen, Roland E., xxx-xx-xxxx
Anderson, Arnold R., Jr., xxx-xx-xxxx
Anderson, Darwin C., xxx-xx-xxxx
Anderson, Frank W., Jr., xxx-xx-xxxx
Anderson, Harlan L., xxx-xx-xxxx
Anderson, James R., xxx-xx-xx...
Anderson, John F., xxx-xx-xxxx
Anderson, John M., xxx-xx-xxxx
Anderson, John M., Jr., xxx-xx-xxxx
Anderson, John R., xxx-xx-xxxx
Anderson, Martin G., xxx-xx-xxxx
Anderson, Michael E., xxx-xx-xxxx
Anderson, Ralph J., xxx-xx-xxxx
Andrade, Martin G., xxx-xx-xxxx
Andreus, Frank C., II, xxx-xx-xxxx
Andrews, Franklin J., xxx-xx-xxxx
Andrews, Robert G., xxx-xx-xxxx
Andrews, Robert P., xxx-xx-xxxx
Andrews, Victor C., xxx-xx-xxxx
Anthony, Ron A., xxx-xx-xxxx
Antol, Wayne M., xxx-xx-xxxx
Apple, Robert C., xxx-xx-xxxx
Applegate, William P., xxx-xx-xxxx
Arent, Lauren E., xxx-xx-xxxx
Armentrout, Alden H., xxx-xx-xxxx
Armstrong, James C., Jr., xxx-xx-xxxx
Arnold, Alfred F., xxx-xx-xxxx
Arnold, John M., xxx-xx-xxxx
Arnold, William D., xxx-xx-xxxx
Arzola, Nelson, xxx-xx-xxxx
Ashby, Randolph W., xxx-xx-xxxx
Ashman, David, xxx-xx-xxxx
Ashton, Gerald L., xxx-xx-xxxx
Atchley, Gordon H., xxx-xx-xxxx
Aten, Ronald B., xxx-xx-xxxx
Atkins, Walter J., Jr., xxx-xx-xxxx
Atkinson, David E., xxx-xx-xxxx
Austin, Charles E., xxx-xx-xxxx
Austin, David J., xxx-xx-xxxx
Austin, Thomas W., xxx-xx-xxxx
Austin, William H., xxx-xx-xxxx
Avant, James R., Jr., xxx-xx-xxxx
Azuma, Robert T., xxx-xx-xxxx
Baars, Thomas E., xxx-xx-xxxx
Backers, Glen E., xxx-xx-xxxx
Bacon, William G., xxx-xx-xxxx
Badger, Robert C., xxx-xx-xxxx
Bafundo, George R., xxx-xx-xxxx
Bagley, Larry C., xxx-xx-xx...
Bailey, Edward P., Jr., xxx-xx-xxxx
Bailey, Frank L., xxx-xx-xxxx
Bailey, Richard W., xxx-xx-xxxx
Bain, Gary H., xxx-xx-xxxx
Bair, Charles A., Jr., xxx-xx-xxxx
Baity, Mickey W., xxx-xx-xxxx
Baker, Bob E., xxx-xx-xxxx
Baker, Carl L., xxx-xx-xxxx
Baker, George L., xxx-xx-xxxx
Baker, Herbert G., xxx-xx-xxxx
Baker, James H., III, xxx-xx-xxxx
Bakonyi, Laszlo J., xxx-xx-xxxx
Baldwin, Richard F., xxx-xx-xxxx
Ball, Willis H., III, xxx-xx-xxxx
Balmanno, William F., xxx-xx-xxxx
Banachowski, Chester A., xxx-xx-xxxx
Bangeman, Mark P., xxx-xx-xxxx
Baratelli, Philip J., xxx-xx-xxxx
Barber, Thomas J., xxx-xx-xxxx
Barbezat, Eugene L., xxx-xx-xxxx
Barclay, Lewis P., xxx-xx-xxxx
Barclay, Victor W., xxx-xx-xxxx
Barnes, David B., xxx-xx-xx...
Barnes, Jere R., xxx-xx-xxxx
Barnes, Michael P., xxx-xx-xxxx
Barnhardt, James W., Jr., xxx-xx-xxxx
Barnhart, Eugene L., xxx-xx-xxxx
Barrett, Donald R., xxx-xx-xxxx
Barrett, Gerald F., Jr., xxx-xx-xxxx
Barrett, John R., xxx-xx-xxxx
Barrilleaux, James L., xxx-xx-xxxx
Barry, Maurice H., xxx-xx-xxxx
Bartness, Patrick M., xxx-xx-xxxx
Barton, Melvin W., xxx-xx-xxxx
Barton, Richard W., xxx-xx-xxxx
Bartos, Henry S., xxx-xx-xx...
Base, John R., xxx-xx-...
Bashant, Ronald W., xxx-xx-xxxx
Basinski, Gary J., xxx-xx-xxxx
Bass, Charles A., xxx-xx-xxxx
Bass, Paul J., xxx-xx-xxxx
Batsel, Michael L., xxx-xx-xxxx
Batten, Arthur D., xxx-xx-xxxx
Bauer, James F., xxx-xx-xxxx
Bauer, John E., xxx-xx-xxxx
Bauman, Robert B., xxx-xx-xxxx
Baxter, Ronald L., xxx-xx-xxxx
Beal, John F., xxx-xx-xxxx
Beam, Jack E., III, xxx-xx-xxxx
Bean, David J., xxx-xx-xxxx
Beard, Faye L., xxx-xx-xxxx
Beasley, Jay N., xxx-xx-x...
Beaty, Joseph K., xxx-xx-xxxx
Bebber, Gary D., xxx-xx-xxxx
Beck, Dennis G., xxx-xx-xxxx
Beck, Frank P., xxx-xx-xxxx
Beck, Michael O., xxx-xx-xxxx
Beck, Robert J., xxx-xx-xxxx
Becker, Gerald E., xxx-xx-xxxx
Beckner, William E., xxx-xx-xxxx
Beierschmitt, Gerald A. Jr., xxx-xx-xxxx
Belisle, Robert J. Jr., xxx-xx-xxxx
Bell, Frederick M., xxx-xx-xxxx
Bell, Robert B., xxx-xx-xxxx
Belsito, David B., xxx-xx-xxxx
Bencks, Edward G., xxx-xx-xxxx
Benedict, Andrew H., xxx-xx-xx...
Benedict, Stephen L., xxx-xx-xxxx
Benner, Joseph G., xxx-xx-xxxx

Bennes, James M., xxx-xx-xxxx
Bennett, Bryan L., xxx-xx-xxxx
Bennett, David S., xxx-xx-xxxx
Bennett, Hugh J., xxx-xx-xxxx
Bennett, Jerry W., xxx-xx-xxxx
Bennett, Martin P., xxx-xx-xxxx
Bennett, Stephen L., xxx-xx-xxxx
Bentley, Edward F., xxx-xx-xxxx
Bergez, David J., xxx-xx-xxxx
Berls, George O., xxx-xx-xxxx
Bernhardt, James H., xxx-xx-xxxx
Berry, William G. Jr., xxx-xx-xxxx
Berube, Howard A., xxx-xx-...
Best, Stoddard L., xxx-xx-xxxx
Bethurem, Richard C., xxx-xx-xxxx
Betourne, Gary P., xxx-xx-xxxx
Betzing, Martin H., xxx-xx-...
Bewley, Carroll E., xxx-xx-xxxx
Bey, Victor L., xxx-xx-xxxx
Bialek, Stanley H. Jr., xxx-xx-xxxx
Biezad, Daniel J., xxx-xx-xx...
Bigelow, Richard E., xxx-xx-xxxx
Bigelow, Winfield S. Jr., xxx-xx-xxxx
Biggs, John C., xxx-xx-xxxx
Bingham, Price T., xxx-xx-xxxx
Birch, Craig A., xxx-xx-xxxx
Bird, Robert J., xxx-xx-xxxx
Bish, John A., xxx-xx-xxxx
Bishop, William R., xxx-xx-xxxx
Black, Ralph P. Jr., xxx-xx-xxxx
Blackburn, Alan D., xxx-xx-xxxx
Blackburn, Ronald L., xxx-xx-xxxx
Blackwell, Joe E., xxx-xx-xxxx
Blaess, Edward M., xxx-xx-xxxx
Blair, Henry R., xxx-xx-xxxx
Blair, Michael I., xxx-xx-xxxx
Blake, Earl G., Jr., xxx-xx-xxxx
Blake, Ronald L., xxx-xx-xxxx
Bland, John R., Jr., xxx-xx-xxxx
Blankenbeker, Cleon J., xxx-xx-xxxx
Blau, Lionel H., xxx-xx-xxxx
Blevins, Gordon C., Jr. xxx-xx-...
Blewett, Raymond G., xxx-xx-xxxx
Blewitt, James R., xxx-xx-xxxx
Blis, Vernon L., xxx-xx-xxxx
Blitt, William J., xxx-xx-xxxx
Blocher, Bruce K., xxx-xx-xxxx
Bloom, Lawrence G., xxx-xx-xxxx
Blue, Donald W., xxx-xx-xxxx
Boatright, Ronald L., xxx-xx-xxxx
Bodenheim, Bodie R., xxx-xx-xxxx
Boehringer, Kenneth F., xxx-xx-xxxx
Boese, Lawrence E., xxx-xx-xxxx
Bois, John W., xxx-xx-xxxx
Bojack, Richard J., xxx-xx-xxxx
Boley, Roger A., xxx-xx-xxxx
Bolton, Robert L., xxx-xx-xxxx
Bonacasa, Salvatore A., xxx-xx-xxxx
Bond, Daniel C., xxx-xx-xxxx
Bond, James F., xxx-xx-xxxx
Boney, James S., xxx-xx-xxxx
Bonjorni, Jesse C., xxx-xx-xxxx
Bonner, Lawrence M., xxx-xx-xxxx
Boone, William L., xxx-xx-xxxx
Borders, Gerald D., xxx-xx-xxxx
Boretsky, Stephen L., xxx-xx-xxxx
Borkowski, Robert, xxx-xx-xxxx
Borowski, Harry R., xxx-xx-xxxx
Borowski, Richard A., xxx-xx-xxxx
Borzych, Conrad A., xxx-xx-xxxx
Bost, Thomas D., xxx-xx-xxxx
Boswell, Ralph H., xxx-xx-xxxx
Bothwell, Robert L., Jr., xxx-xx-xxxx
Botts, Mason S., xxx-xx-xxxx
Boucher, Doglas W., xxx-xx-xxxx
Boudreaux, Ray M., xxx-xx-xxxx
Bowden, Samuel J., xxx-xx-xxxx
Bowers, Robert J., xxx-xx-xxxx
Bowman, John G., Jr., xxx-xx-xxxx
Boyce, Alan M., xxx-xx-xxxx
Boyd, James A., Jr., xxx-xx-xxxx
Boyd, Kenneth R., II, xxx-xx-xxxx
Boyd, Michael L., xxx-xx-xxxx
Boyd, Stanley E., xxx-xx-xxxx
Boyd, Sterling W., xxx-xx-xxxx
Boyer, Terry L., xxx-xx-xxxx
Boyette, Paul A., xxx-xx-xxxx
Boykin, Kenneth S., xxx-xx-xxxx
Boykin, Samuel V., Jr., xxx-xx-xxxx
Brackelsberg, Harley O., xxx-xx-xxxx
Brackenhoff, Don M., xxx-xx-xxxx
Bradburn, Terry L., xxx-xx-xxxx
Bradbury, Byron G., xxx-xx-xxxx
Bradley, Larry A., xxx-xx-xxxx
Bradley, Stuart C., xxx-xx-xxxx
Brady, Robert J., xxx-xx-xxxx
Brady, Thomas F., Jr., xxx-xx-xxxx
Braeutigam, Robert E., xxx-xx-xxxx
Brandon, Thomas S., xxx-xx-xxxx
Brandt, Conrad R., xxx-xx-xxxx
Brannum, Edward S., xxx-xx-xxxx
Branson, Grant E., xxx-xx-xxxx
Bravakos, George, xxx-xx-xxxx
Bray, Donald M., Jr., xxx-xx-xxxx
Breault, Gordon K., xxx-xx-xxxx
Bremer, Donald H., xxx-xx-xxxx
Brennan, Robert E., xxx-xx-xxxx
Brewer, Charles W., xxx-xx-xxxx
Brewer, Darlene K., xxx-xx-xxxx
Brewer, Jerry D., xxx-xx-xxxx
Brice, Ernest, xxx-xx-xxxx
Brickman, Larry E., xxx-xx-xxxx
Bridge, William M., xxx-xx-xxxx
Bridges, Mark E., xxx-xx-xxxx
Briggs, Arthur F., III, xxx-xx-xxxx
Briggs, Thomas W., xxx-xx-xxxx
Bright, Donald W., xxx-xx-xxxx
Brinker, Stanley R., xxx-xx-xxxx
Britton, Jack W., xxx-xx-xxxx
Brocavich, Ronald G., xxx-xx-xxxx
Brock, James D., xxx-xx-xxxx
Brock, James M., xxx-xx-xxxx
Brockmeier, Jerry D., xxx-xx-xxxx
Brodock, Harry L., xxx-xx-xxxx
Brogdon, Loren J., xxx-xx-xxxx
Brom, Theodore E., Jr., xxx-xx-xxxx
Brooks, George B., Jr., xxx-xx-xxxx
Brooks, Ronald S., xxx-xx-xxxx
Brothers, Douglas A., xxx-xx-xxxx
Broughton, Rollin C., Jr., xxx-xx-xxxx
Brown, Benjamin J., xxx-xx-xxxx
Brown, Charles B., xxx-xx-xxxx
Brown, Dennis C., xxx-xx-xxxx
Brown, Dennis R., xxx-xx-xxxx
Brown, Donald E., xxx-xx-xxxx
Brown, Douglas P., xxx-xx-xxxx
Brown, Edward C., xxx-xx-xxxx
Brown, James R., xxx-xx-xxxx
Brown, Joseph R., Jr., xxx-xx-xxxx
Brown, Louis C., Jr., xxx-xx-xxxx
Brown, Samuel H., VII, xxx-xx-xxxx
Brown, Scott B., xxx-xx-xxxx
Brown, Timothy D., xxx-xx-xxxx
Browning, Charles W., Jr., xxx-xx-xxxx
Bruce, Philip W., xxx-xx-xxxx
Bruce, Ronald L., xxx-xx-xxxx
Bruer, Charles R., xxx-xx-xxxx
Brunstetter, David A., xxx-xx-xxxx
Brunz, Wayne W., xxx-xx-xxxx
Brus, Robert A., xxx-xx-xxxx
Bryan, Robert E., xxx-xx-xxxx
Bryan, Robert E., xxx-xx-xxxx
Bryant, Louis E., Jr., xxx-xx-xxxx
Bryant, Ronald, xxx-xx-xxxx
Bryson, Jon H., xxx-xx-xxxx
Buchanan, Norman H., xxx-xx-xxxx
Buchanan, Timothy G., xxx-xx-xxxx
Bucher, Wallace T., xxx-xx-xxxx
Buck, Erik S., xxx-xx-xxxx
Buckholtz, David W., xxx-xx-xxxx
Buckley, Robert L., xxx-xx-xxxx
Buettell, Roger B., III, xxx-xx-xxxx
Buickerood, Richard W., xxx-xx-xxxx
Bulkeley, Michael C., xxx-xx-xxxx
Bull, William W., xxx-xx-xxxx
Bullard, Edward M., xxx-xx-xxxx
Bullock, Gerald E., xxx-xx-xxxx
Bullock, Joseph T., xxx-xx-xxxx
Bunnell, Robert J., xxx-xx-xxxx
Bunts, Jeffrey M., xxx-xx-xxxx
Bunzendahl, Sidney P., Jr., xxx-xx-xxxx
Burdick, Bingley L., Jr., xxx-xx-xxxx
Burgeson, John C., xxx-xx-xxxx
Burgess, James D., xxx-xx-xxxx
Burgess, Ray W., Jr., xxx-xx-xxxx
Burkett, Edgar E., Jr., xxx-xx-xxxx
Burkhart, Frederich M., xxx-xx-xxxx
Burleson, John L., xxx-xx-xxxx
Burnet, Robert C., xxx-xx-xxxx
Burton, Gary H., xxx-xx-xxxx
Butcher, Frank S., xxx-xx-xxxx
Butler, Billy G., xxx-xx-xxxx
Butler, Frederick W., xxx-xx-xxxx
Butler, Robert L., xxx-xx-xxxx
Buxton, Leroy W., xxx-xx-xxxx
Byrd, Johnnie L., xxx-xx-xxxx
Byrd, Willie, Jr., xxx-xx-xxxx
Cabral, Charles A., Jr., xxx-xx-xxxx
Cafazzo, Robert F., xxx-xx-xxxx
Cain, John H., xxx-xx-xxxx
Calder, William T., xxx-xx-xxxx
Callahan, Jerry B., xxx-xx-xxxx
Callahan, John C., xxx-xx-xxxx
Callanan, Thomas J., xxx-xx-xxxx
Calver, Theodore R., xxx-xx-xxxx
Camacho, Francisco P., xxx-xx-xxxx x...
Cameron, Charles D., xxx-xx-xxxx
Campbell, Blaine B., Jr., xxx-xx-...
Campbell, Charles H., xxx-xx-xxxx
Campbell, Donald D., xxx-xx-xxxx
Canipe, Yates J. xxx-xx-xxxx
Cannon, George E., Jr., xxx-xx-xxxx
Cannon, Roger S., xxx-xx-xxxx
Canter, Carl W., xxx-xx-xxxx
Capicik, Paul J., xxx-xx-xxxx
Caplinger, Harold B., xxx-xx-xxxx
Capone, John T., xxx-xx-xxxx
Capriotti, Donald L., xxx-xx-xxxx
Cargill, James D., xxx-xx-xxxx
Carington, Thomas C., xxx-xx-xxxx
Carlson, Kent R., xxx-xx-xxxx
Carlson, Randal D., xxx-xx-xxxx
Carmichael, Robert W., Jr., xxx-xx-xxxx
Carnes, Robert M., xxx-xx-xxxx
Carney, James M., xxx-xx-xxxx
Carpeaux, Walter B., xxx-xx-xxxx
Carpenter, Billie R., xxx-xx-xxxx
Carpenter, Charles L., xxx-xx-xxxx
Carpenter, Dennis D., xxx-xx-xxxx
Carr, Ronald L., xxx-xx-xxxx
Carroll, George T., xxx-xx-xxxx
Carroll, Joel A., III, xxx-xx-xxxx
Carson, Leonard R., III, xxx-xx-xxxx
Carter, David E., xxx-xx-xxxx
Carter, Edward B., xxx-xx-xxxx
Carter, Harold W., xxx-xx-xxxx
Carter, Larry G., xxx-xx-xxxx
Carter, Robert L., xxx-xx-xxxx
Carter, Robert W., xxx-xx-xxxx
Carter, Steven S., xxx-xx-xxxx
Cartmill, James P., xxx-xx-xxxx
Case, Richard B., xxx-xx-xxxx
Case, Robert E., xxx-xx-xxxx
Casper, John H., xxx-xx-xxxx
Cass, Stein L xxx-xx-xxxx
Cassidy, Michael S., xxx-xx-xxxx
Cassulo, Frank A., xxx-xx-xxxx
Castle, Richard S., xxx-xx-xxxx
Castonguay, Joseph L., xxx-xx-xxxx
Cathers, George R., xxx-xx-xxxx
Catoe, Charles D., xxx-xx-xxxx
Causey, Robert J., xxx-xx-xxxx
Cavanagh, Thomas T., III, xxx-xx-xxxx
Cecil, Daniel B. xxx-xx-xxxx
Centioli, Ralph, xxx-xx-xxxx
Chalfont, Alan C., xxx-xx-xxxx
Chamberlain, Peter S., xxx-xx-xxxx
Chambers, Charles E., xxx-xx-xxxx
Chambers, Michael D. xxx-xx-xxxx
Chan, Joseph W., xxx-xx-xxxx
Chandler, Wayne R., xxx-xx-xxxx
Chaney, Clifford D., xxx-xx-xxxx
Chapman, Harold P. xxx-xx-xxxx
Chapman, Robert E., xxx-xx-xxxx
Chappell, Marvin L., xxx-xx-xxxx
Charlton, John T., xxx-xx-xxxx
Chase, Gerald H., xxx-xx-xxxx
Chase, Paul A., xxx-xx-xxxx
Chastain, David K., xxx-xx-xxxx
Chastain, Walter E., xxx-xx-xxxx
Check, William D., xxx-xx-xxxx
Cheek, Charles T., xxx-xx-xxxx
Chew, James P., xxx-xx-xxxx
Childress, James S., xxx-xx-xxxx
Childs, Charles I., xxx-xx-xxxx
Chittick, James E., xxx-xx-xxxx
Choate, John S. xxx-xx-xxxx
Christensen, Gary C., xxx-xx-xxxx
Christensen, Jens E., xxx-xx-xxxx
Christenson, Gerald A., xxx-xx-xxxx
Christian, Don O., xxx-xx-xxxx
Christy, Curtis L. xxx-xx-xxxx

Church, James W., xxx-xx-xxxx
Cirillo, Francis A., Jr., xxx-xx-xxxx
Ciz, George C., Jr., xxx-xx-xxxx
Clapper, John R., xxx-xx-xxxx
Clark, Gary W., xxx-xx-xxxx
Clark, Raymond E., xxx-xx-xxxx
Clark, Richard J., xxx-xx-xxxx
Clarke, Bradlee, F., Jr., xxx-xx-xxxx
Clary, Ronald E., xxx-xx-xxxx
Claspell, Ogal B., xxx-xx-xxxx
Clay, Earl L., xxx-xx-xxxx
Clay, Michael T., xxx-xx-xxxx
Clay, Robert E., xxx-xx-xxxx
Clayton, Lloyd K., xxx-xx-xxxx
Cleckler, Jimmy J., xxx-xx-xxxx
Clemens, John E., xxx-xx-xxxx
Clements, Frederick D., xxx-xx-xxxx
Clements, John R., xxx-xx-xxxx
Clendenin, Gary L., xxx-xx-xxxx
Clevenger, James D., xxx-xx-xxxx
Clingaman, Ronald L., xxx-xx-xxxx
Clough, James A., Jr., xxx-xx-xxxx
Clow, Douglas J., xxx-xx-xxxx
Cobb, Harvey G., xxx-xx-xxxx
Cocheo, Dennis, xxx-xx-xxxx
Cocks, Joel P., xxx-xx-xxxx
Coffman, Joseph M., Jr., xxx-xx-xxxx
Colacicco, Vincent A., xxx-xx-xxxx
Cole, Peter A., xxx-xx-xxxx
Cole, Robert A., xxx-xx-xxxx
Cole, Theodore M., III, xxx-xx-xxxx
Cole, William, III, xxx-xx-xxxx
Coleman, Robert G., II, xxx-xx-xxxx
Collins, Gerald E., xxx-xx-xxxx
Collins, Thomas G., xxx-xx-xxxx
Comstock, George F., Jr., xxx-xx-xxxx
Concannon, Michael R., xxx-xx-xxxx
Congleton, Duane E., xxx-xx-xxxx
Conkright, Terry L., xxx-xx-xxxx
Conmy, John M., xxx-xx-xxxx
Connor, Earl W., xxx-xx-xxxx
Connor, Frank A., xxx-xx-xxxx
Connors, Michael J., xxx-xx-xxxx
Connors, Paul C., xxx-xx-xxxx
Conolly, Richard N., Jr., xxx-xx-xxxx
Cook, Ivy D., Jr., xxx-xx-xxxx
Cook, Lee W., xxx-xx-xxxx
Cook, Walter R., xxx-xx-xxxx
Cooke, Ian N., xxx-xx-xxxx
Coon, Richard K., xxx-xx-xxxx
Coonan, Daniel J., III, xxx-xx-xxxx
Cooper, Robert M., xxx-xx-xxxx
Cooper, Roger S., xxx-xx-xxxx
Copher, Ernest A., xxx-xx-xxxx
Copler, Thomas H., xxx-xx-xxxx
Copson, David W., xxx-xx-xxxx
Corder, Charles T., xxx-xx-xxxx
Core, Charles M., Jr., xxx-xx-xxxx
Cornish, Richard K., xxx-xx-xxxx
Corzine, Jack W., xxx-xx-xxxx
Coslett, Ronald K., xxx-xx-xxxx
Cotton, Jerry L., xxx-xx-xxxx
Coughlin, Raymond J., xxx-xx-xxxx
Coulter, Robert A., xxx-xx-xxxx
Couser, Walter J., III, xxx-xx-xxxx
Covi, John H., xxx-xx-xxxx
Cowan, Roger G., xxx-xx-xxxx
Cowles, Carroll W., II, xxx-xx-xxxx
Cox, Kenneth E., xxx-xx-xxxx
Cox, Ronald Q., xxx-xx-xxxx
Coyne, James, xxx-xx-xx...
Cozza, James A., xxx-xx-xxxx
Craig, Patrick R., xxx-xx-xxxx
Craig, Samuel, xxx-xx-xxxx
Craigie, Donald F., xxx-xx-xxxx
Crane, Stephen G., xxx-xx-xx...
Crank, Paul W. III, xxx-xx-xxxx
Cranston, Stewart E., xxx-xx-xxxx
Crawford, Harvey J., xxx-xx-xxxx
Crawford, Leo E., xxx-xx-xxxx
Crawford, Robert H., Jr., xxx-xx-xxxx
Creedon, Michael J., xxx-xx-xxxx
Creller, Bruce O., xxx-xx-xxxx
Crinks, Francis L., xxx-xx-xxxx
Crocker, Larry D., xxx-xx-xxxx
Cronholm, John J., xxx-xx-xxxx
Cronk, James T., xxx-xx-xxxx
Crook, James L. xxx-xx-xxxx
Crosby, Anthony J., xxx-xx-xxxx
Cross, James V., xxx-xx-xxxx

Crossett, David C., xxx-xx-xxxx
Crowder, Donald E., xxx-xx-xxxx
Crowell, Glenn D., xxx-xx-xxxx
Crownover, John H., III, xxx-xx-xxxx
Crowther, Wayne R., xxx-xx-xxxx
Crumbliss, James J. Jr., xxx-xx-xxxx
Crump, Manning L., xxx-xx-xxxx
Crumrine, Larry R., xxx-xx-xxxx
Culbertson, Henry G., III, xxx-xx-xxxx
Culver, John D., xxx-xx-xxxx
Cunningham, Jimmie D., xxx-xx-xxxx
Cunningham, John D., xxx-xx-xxxx
Curran, Charles R., xxx-xx-xxxx
Curran, James E., Jr., xxx-xx-xxxx
Curtis, Johnson O., xxx-xx-xxxx
Curtis, Larry L., xxx-xx-xxxx
Cushion, Kenneth E., Jr., xxx-xx-xxxx
Cushman, James H., III, xxx-xx-xxxx
Czaja, Dennis W., xxx-xx-xxxx
Czerner, Frederick H., Jr., xxx-xx-xxxx
Daack, Martin T., xxx-xx-xxxx
Dale, Kenneth R., xxx-xx-xxxx
Daly, Patrick F., xxx-xx-xxxx
Dampier, Ronald L., xxx-xx-xxxx
Dandar, Michael J., Jr., xxx-xx-xxxx
Dangerfield, Joseph W., xxx-xx-xxxx
Daniel, Terry A., xxx-xx-xxxx
Daniels, Henry S., xxx-xx-xxxx
Dannheiser, Charles C., xxx-xx-xxxx
Dant, Robert E., xxx-xx-xxxx
Darrell, Wesley K., xxx-xx-xxxx
Darveaux, Joseph E., xxx-xx-xxxx
Daskevich, Joseph R., xxx-xx-xxxx
Dassler, William H., xxx-xx-xxxx
Date, Hiroche J., xxx-xx-xxxx
Daugherty, Ronald H., xxx-xx-xxxx
Daugherty, William S., xxx-xx-xxxx
Davidson, Frank R., xxx-xx-xxxx
Davidson, Wayne T., xxx-xx-xxxx
Davies, John W., xxx-xx-xxxx
Davis, Edward R., xxx-xx-xxxx
Davis, Gene R., xxx-xx-xxxx
Davis, Guy A., Jr., xxx-xx-xxxx
Davis, Harry C., xxx-xx-xxxx
Davis, James H., xxx-xx-xxxx
Davis, John A., xxx-xx-xxxx
Davis, John R., xxx-xx-xxxx
Davis, Joseph R., xxx-xx-xxxx
Davis, Noel C., xxx-xx-xxxx
Davis, Perry P., Jr., xxx-xx-xxxx
Davis, Randolph R., xxx-xx-xxxx
Davis, Richard S., Jr. xxx-xx-xxxx
Davis, Robert I, xxx-xx-xxxx
Davitte, William B., xxx-xx-xxxx
Deakin, Gerald W., xxx-xx-xxxx
Deal, Douglas E., xxx-xx-xxxx
Dean, Kenneth E., xxx-xx-xxxx
Deanhofer, Ronald L., xxx-xx-xxxx
Dearmond, Christopher W., xxx-xx-xxxx
Deaver, William H., III, xxx-xx-xxxx
Decker, Daniel E., xxx-xx-xxxx
Deer, Thomas E., xxx-xx-xxxx
Degrand, James M., xxx-xx-xxxx
Degrande, Joe, Jr., xxx-xx-xxxx
Dehay, Jesse C., Jr., xxx-xx-xxxx
Deignan, Francis X., xxx-xx-xxxx
Delongchamp, Robert D., xxx-xx-xxxx
Delpintorres, Jose M., xxx-xx-xxxx
Dembrowsky, Paul E., xxx-xx-xxxx
Denne, Arthur C., xxx-xx-xxxx
Dennis, William G., xxx-xx-xxxx
Denny, Gerald R., II, xxx-xx-xxxx
Derossi, Gordon, xxx-xx-xxxx
Desch, Joseph M., xxx-xx-xxxx
Deshields, James C., xxx-xx-xxxx
Desilets, Jeffrey P., xxx-xx-xxxx
Desmond, John M., xxx-xx-xxxx
Detrow, Carl S., xxx-xx-xxxx
Dettmer, Herman W., xxx-xx-xxxx
Devincenzo, William M., xxx-xx-xxxx
Devine, Lawrence L., xxx-xx-xxxx
Dewerff, Robert W., xxx-xx-xxxx
Dibartolomeo, Frank, xxx-xx-xxxx
Dickman, Robert S., xxx-xx-xxxx
Diefenbach, Brent O., xxx-xx-xxxx
Diefenbach, Kurt O., xxx-xx-xxxx
Diehl, Richard G., xxx-xx-xxxx
Dietsch, David A., xxx-xx-xxxx
Diggins, William H., xxx-xx-xxxx
Dineen, Peter F., xxx-x...

Dinkel, Jon A., xxx-xx-xxxx
Dishman, Benton G., Jr., xxx-xx-xxxx
Dittman, Henry Jr., xxx-xx-xxxx
Dixon, Cornelius W., III, xxx-xx-xxxx
Dixon, Glenn R., Jr., xxx-xx-xxxx
Doak, Larry A., xxx-xx-xxxx
Dobbs, Larry E., xxx-xx-xxxx
Dockery, Charles P., III, xxx-xx-xxxx
Dodd, Daniel A., xxx-xx-xxxx
Dodd, Roger H., xxx-xx-xxxx
Dodson, William E., Jr., xxx-xx-xxxx
Doege, Larry B., xxx-xx-xxxx
Dolan, Richard E., xxx-xx-xxxx
Dolim, Henry J., Jr., xxx-xx-xxxx
Dommeyer, Carl D., xxx-xx-xxxx
Donahey, Dayl, W., Jr., xxx-xx-xxxx
Donahue, James L., xxx-xx-xxxx
Donahue, William J., xxx-xx-xxxx
Donart, James R., xxx-xx-xxxx
Dooly, Michael R. xxx-xx-xxxx
Dopler, Bruce A., xxx-xx-xxxx
Dotson, Robert S., xxx-xx-xxxx
Doucette, Christopher, xxx-xx-xxxx
Douglas, Jerry M., xxx-xx-xxxx
Downer, Charles P., Jr., xxx-xx-xxxx
Downey, James F., xxx-xx-xxxx
Downs, Stelvin L., xxx-xx-xxxx
Doyle, Bruford L., xxx-xx-xxxx
Dozier, Grover L., Jr., xxx-xx-xxxx
Dozier, James K., Jr., xxx-xx-xxxx
Drakulich, George M., xxx-xx-xxxx
Drinkard, John M. xxx-xx-xxxx
Drinnnon, Paul T., xxx-xx-xxxx
Droddy, Jesse D., xxx-xx-xxxx
Drury, Edward T., xxx-xx-xxxx
Duchamp, Eugene A. III, xxx-xx-xxxx
Duck, Eugene D., xxx-xx-xxxx
Duckworth, Dale L., xxx-xx-xxxx
Duckworth, Johnny D., xxx-xx-xxxx
Duda, Ronald B., xxx-xx-xxxx
Dudley, Lynton C., xxx-xx-xxxx
Duerbig, Alfred H., Jr., xxx-xx-xxxx
Duerr, Gerald F., xxx-xx-xxxx
Duke, William W., xxx-xx-xxxx
Dull, Richard F., xxx-xx-xxxx
Dumiak, Michael J. xxx-xx-xxxx
Duncan, Ralph E., xxx-xx-xxxx
Dunham, Robert L., Jr., xxx-xx-xxxx
Dunker, Gene L., xxx-xx-xxxx
Dunlap, Marvin D., xxx-xx-xxxx
Dunn, Ben G., xxx-xx-xxxx
Dunne, Brian J., xxx-xx-xxxx
Dunne, William E., xxx-xx-xxxx
Dunnigan, Edward J. xxx-xx-xxxx
Dunshee, Robert B., xxx-xx-xxxx
Dupre, Robert E., xxx-xx-xxxx
Dupre, Roger P., xxx-xx-xxxx
Durbin, Michael E., xxx-xx-xxxx
Dushlek, Robert W., xxx-xx-xxxx
Duwel, Philip S., xxx-xx-xxxx
Dworaczyk, John F., xxx-xx-xxxx
Dydo, John R. xxx-xx-xxxx
Dyer, John C. xxx-xx-xxxx
Dymek, Chester J., Jr. xxx-xx-xxxx
Earle, Lawrence C., xxx-xx-xxxx
Eason, Robert A., Jr., xxx-xx-xxxx
Ebdon, Thomas J., III, xxx-xx-xxxx
Ebron, Gene I., xxx-xx-xxxx
Eccellente, Robert L., xxx-xx-xxxx
Eckhardt, Gary D., xxx-xx-xxxx
Eddie, Carroll T., Jr., xxx-xx-xxxx
Eddy, Lucian B., Jr., xxx-xx-xxxx
Eden, James L., xxx-xx-xxxx
Edmondson, Michael D., xxx-xx-xxxx
Edson, Robert W., xxx-xx-xxxx
Edwards, James L., xxx-xx-xxxx
Egan, Dennis, xxx-xx-xxxx
Egedenissen, Stig, xxx-xx-xxxx
Egge, Arthur G., xxx-xx-xxxx
Eggers, Bruce A., xxx-xx-xxxx
Egolf, James D., xxx-xx-xxxx
Ehmke, William D., xxx-xx-xxxx
Ehrie, William J., xxx-xx-xxxx
Ehrig, David D., xxx-xx-xxxx
Eichner, David L., xxx-xx-xxxx
Eichorst, Kurt K., xxx-xx-xxxx
Eidson, Merrill L., xxx-xx-xxxx
Ekberg, David J., xxx-xx-xxxx
Ekstrom, Kenneth J., xxx-xx-xxxx
Elder, James S., xxx-xx-xxxx
Ellinger, Robert W. xxx-xx-xxxx

Elliott, Dale S., xxx-xx-xxxx
Elliott, Harry W., xxx-xx-xxxx
Elliott, James E., xxx-xx-xxxx
Elmer, William H., xxx-xx-xxxx
Ely, Richard N., xxx-xx-xxxx
Emerson, Roy G., xxx-xx-xxxx
Emry, Raleigh E., xxx-xx-xxxx
Endres, William J., xxx-xx-xxxx
Engelman, Frederick C., Jr., xxx-xx-xxxx
Engle, James T., xxx-xx-xxxx
Englund, Gene E., xxx-xx-xxxx
Engman, Richard N., xxx-xx-xxxx
Engstenberg, Paul J., xxx-xx-xxxx
Ensor, Richard D., xxx-xx-xxxx
Epner, Gerald I., xxx-xx-xxxx
Eppler, Frank M., xxx-xx-xxxx
Eppler, Gary D., xxx-xx-xxxx
Epps, James H., xxx-xx-xxxx
Eramo, Daniel J., Jr., xxx-xx-xxxx
Erbacher, John K., xxx-xx-xxxx
Erhardt, William F., III, xxx-xx-xxxx
Erickson, Frederick J., xxx-xx-xxxx
Eshbaugh, Vernon L., xxx-xx-xxxx
Estrada, Robert W., xxx-xx-xxxx
Estus, Robert C., Jr., xxx-xx-xxxx
Eubank, William E., III, xxx-xx-xxxx
Evans, Albert L., III, xxx-xx-xxxx
Evans, David J., xxx-xx-xxxx
Evans, Robert M., Jr., xxx-xx-xxxx
Evatt, Garvin T., Jr., xxx-xx-xxxx
Everts, Russell A., xxx-xx-xxxx
Ewart, Robert F., xxx-xx-xxxx
Ewing, Jon W., xxx-xx-xxxx
Eychner, George L., xxx-xx-xxxx
Fagan, Michael T., xxx-xx-xxxx
Faggard, Lionel E., xxx-xx-xxxx
Fairbrother, Clarence L., xxx-xx-xxxx
Faix, Joseph L., xxx-xx-xxxx
Fal, John W., xxx-xx-xxxx
Fales, David P., xxx-xx-xxxx
Fandel, William T., xxx-xx-xxxx
Farmer, Charles T., xxx-xx-xxxx
Farmer, Norman R., Jr., xxx-xx-xxxx
Farmer, Peter E., xxx-xx-xxxx
Farr, Herbert M., xxx-xx-xxxx
Farrar, James D., Jr., xxx-xx-xxxx
Farrell, William R., xxx-xx-xxxx
Farris, Prescott D., Jr., xxx-xx-xxxx
Fazekas, Frank S., xxx-xx-xxxx
Fedor, William D., xxx-xx-xxxx
Feeney, John J., xxx-xx-xxxx
Feighery, Edward, xxx-xx-xxxx
Fekke, Peter L., xxx-xx-xxxx
Ferenz, Paul J., xxx-xx-xxxx
Ferguson, William F., xxx-xx-xxxx
Ferron, Francis R., xxx-xx-xxxx
Fette, John H., xxx-xx-xxxx
Fiedler, Harald P., xxx-xx-xxxx
Fields, McArthur, xxx-xx-xxxx
Figueroa, Edmund L., xxx-xx-xxxx
Files, William S., Jr., xxx-xx-xxxx
Filo, Robert J., xxx-xx-xxxx
Finan, George K., II, xxx-xx-xxxx
Finch, Charles W., xxx-xx-xxxx
Finch, James F., xxx-xx-xxxx
Finch, James R., xxx-xx-xxxx
Fink, Dennis E., xxx-xx-xxxx
Fischer, John C., xxx-xx-xxxx
Fitch, Russell W., Jr., xxx-xx-xxxx
Fitzpatrick, William E., xxx-xx-xxxx
Flanagan, Edward E., xxx-xx-xxxx
Fleckten, Thomas C., xxx-xx-xxxx
Fleming, James P., xxx-xx-xxxx
Fletcher, Ronald W., xxx-xx-xxxx
Flood, Paul R., xxx-xx-xxxx
Flowers, David A., xxx-xx-xxxx
Flynn, Gerald R., xxx-xx-xxxx
Foley, James A., Jr., xxx-xx-xxxx
Folse, Paul J., xxx-xx-xxxx
Foncannon, John J., xxx-xx-xxxx
Font, Argentino, Jr., xxx-xx-xxxx
Foos, Larry D., xxx-xx-xxxx
Forbes, Stephen T., xxx-xx-xxxx
Ford, Maynard W., Jr., xxx-xx-xxxx
Ford, Ralph H., xxx-xx-xxxx
Fornal, Andrew R., xxx-xx-xx...
Fortner, William F., xxx-xx-xxxx
Forys, Edward, xxx-xx-xxxx
Foster, Robert Q., xxx-xx-xxxx
Fowler, Donald L., xxx-xx-xxxx
Fowler, Raymond D., xxx-xx-xxxx
Fowler, Richard B., II, xxx-xx-xxxx
Fowler, Robert F., xxx-xx-xxxx
Fowler, Robert H., II, xxx-xx-xxxx
Fowler, Stephen E., xxx-xx-xxxx
Fowler, Terry R., xxx-xx-xxxx
Fox, Gary K., xxx-xx-xxxx
Fox, Lewis R., xxx-xx-xxxx
Foye, Martin J., xxx-xx-xxxx
Francis, Richard L., xxx-xx-xxxx
Frantz, Ronald G., xxx-xx-xxxx
Franz, George M. R., xxx-xx-xxxx
Fraser, David J., xxx-xx-xxxx
Frazey, Lynn A., xxx-xx-xxxx
Freeman, Carey L., xxx-xx-xxxx
Freeman, Charles W., xxx-xx-xxxx
Freeman, Kenneth P., xxx-xx-xxxx
Freeman, Norman A., xxx-xx-xxxx
Freitas, Michael A., xxx-xx-xxxx
French, Larry W., xxx-xx-xxxx
Frey, Charles D., xxx-xx-xxxx
Friend, Shelby L., xxx-xx-xxxx
Frith, Richard W., xxx-xx-xxxx
Frost, Fredric H., III, xxx-xx-xxxx
Frost, Timothy B., xxx-xx-xxxx
Fuhrman, Roger A., xxx-xx-xxxx
Fuhrmann, John R., xxx-xx-xxxx
Fulford, Jimmy N., xxx-xx-xxxx
Fuller, Charles T., xxx-xx-xxxx
Fuller, David L., xxx-xx-xxxx
Funkhouser, Kenneth V., xxx-xx-xxxx
Fuqua, William J., Jr., xxx-xx-xxxx
Furdek, Dennis T., xxx-xx-xxxx
Furlong, Daniel J., Jr., xxx-xx-xxxx
Furr, Marshall W., xxx-xx-xxxx
Fye, Falko K., xxx-xx-xxxx
Gaffney, Michael W., xxx-xx-xxxx
Gage, Harlan R., xxx-xx-xxxx
Galer, Robert T., xxx-xx-xxxx
Gallagher, David G., xxx-xx-xxxx
Gallof, Sanford, xxx-xx-xxxx
Gallon, Robert W., xxx-xx-xxxx
Gamble, Lynn L., xxx-xx-xxxx
Gangl, Eugene L., xxx-xx-xxxx
Garaux, Dale L., xxx-xx-xxxx
Gardner, Phillip D., xxx-xx-xxxx
Garner, William J., xxx-xx-xxxx
Garretson, Henry C., III, xxx-xx-xxxx
Garrett, Richard A., xxx-xx-xxxx
Garrison, John H., xxx-xx-xxxx
Gaskell, William L., xxx-xx-xxxx
Gaspard, Arthur L., Jr., xxx-xx-xxxx
Gasparian, Richard G., xxx-xx-xxxx
Gast, James C., xxx-xx-xxxx
Gates, Robert M., xxx-xx-xx...
Gaudet, Kathleen A., xxx-xx-xxxx
Gay, John M., xxx-xx-xxxx
Gayvert, Gerald J., xxx-xx-xxxx
Geleott, Ronald W., xxx-xx-xxxx
Gelfand, Norman D., xxx-xx-xxxx
Gennin, George S., xxx-xx-xxxx
George, Clarence H., xxx-xx-xxxx
George, Raymond O., xxx-xx-xxxx
George, Robert L., xxx-xx-xxxx
Gerlach, Gerald L., xxx-xx-xxxx
German, Robert D., xxx-xx-xxxx
Germeraad, John O., xxx-xx-xxxx
Gernert, William E., III, xxx-xx-xxxx
Gerringer, Luther T., xxx-xx-xxxx
Gex, Louis J., III, xxx-xx-xxxx
Geyer, Gary S., xxx-xx-xxxx
Ghormley, Robert C., II, xxx-xx-xxxx
Gibbs, Daniel P., xxx-xx-xxxx
Giblin, Richard T., IV, xxx-xx-xxxx
Gibson, James W., xxx-xx-xxxx
Gibson, Robert C., xxx-xx-xxxx
Giddens, George G., xxx-xx-xxxx
Gideon, Francis C., Jr., xxx-xx-xxxx
Giganti, George R., xxx-xx-xxxx
Giles, Steven P., xxx-xx-xxxx
Gill, Jesse W., III, xxx-xx-xxxx
Gillespie, David C., xxx-xx-xxxx
Gillespie, David L., xxx-xx-xxxx
Gillespie, John M., II, xxx-xx-xxxx
Gilmore, William H., xxx-xx-xxxx
Giordano, Ralph K., xxx-xx-xxxx
Girard, Christopher S., xxx-xx-xxxx
Girard, Roger J., xxx-xx-xxxx
Gist, John W., Jr., xxx-xx-xxxx
Glackman, John C., III, xxx-xx-xxxx
Glaisyer, John B., xxx-xx-xxxx
Glanzer, David W., xxx-xx-xxxx
Glass, Larry J., xxx-xx-xxxx
Glasser, Gerald T., xxx-xx-xxxx
Glatz, Jack A., xxx-xx-xxxx
Glidden, Donald J., xxx-xx-xxxx
Goddard, Richard N., xxx-xx-xxxx
Godfrey, Paul A., xxx-xx-xxxx
Goebel, Gary M., xxx-xx-xxxx
Golas, Michael T., xxx-xx-xxxx
Golbitz, William C., xxx-xx-xxxx
Goldey, Alan R., xxx-xx-xxxx
Golondzinier, Theodore M., xxx-xx-xxxx
Gommel, Hugh E., Jr., xxx-xx-xxxx
Gooden, Tobe D., xxx-xx-xxxx
Goodman, James W., xxx-xx-xxxx
Gordon, Ronald E., xxx-xx-xxxx
Gosling, Thomas J., xxx-xx-xxxx
Gosnell, Larry L., xxx-xx-xx...
Goss, George J., xxx-xx-xxxx
Gossick, Roger V., xxx-xx-xxxx
Gough, Jamie III, xxx-xx-xxxx
Gover, Gary L., xxx-xx-xxxx
Goyco, Rafael A., xxx-xx-xxxx
Grabe, Ronald J., xxx-xx-xxxx
Graham, John D., xxx-xx-...
Grahek, Gerald P., xxx-xx-xxxx
Grant, David B., xxx-xx-xxxx
Grant, Keith R., xxx-xx-xxxx
Grant, Louis W., xxx-xx-xxxx
Grant, Wayne A., III, xxx-xx-xxxx
Grant, Wendell E., xxx-xx-xxxx
Grant, William J., xxx-xx-xxxx
Gravelle, Robert M., xxx-xx-xxxx
Graves, John C., xxx-xx-xxxx
Graves, Richard C., xxx-xx-xxxx
Gray, Charles A., xxx-xx-xxxx
Gray, Robert M., xxx-xx-xxxx
Graziano, Peter J., xxx-xx-xxxx
Greco, Barry J., xxx-xx-xxxx
Greebon, Oliver R., xxx-xx-xxxx
Green, Dale A., xxx-xx-xxxx
Green, Daniel F., xxx-xx-xxxx
Green, Frederick L., xxx-xx-xxxx
Greenwood, George R., xxx-xx-...
Gregg, Dennis N., xxx-xx-xxxx
Gregory, Raymond W., xxx-xx-xxxx
Gregory, Russell A., xxx-xx-xxxx
Grenier, Leon E., xxx-xx-xx...
Griffee, Robert L., xxx-xx-xxxx
Griffith, Wayne E., xxx-xx-xxxx
Grigg, Dale, xxx-xx-xxxx
Gritzmacher, Thomas J., xxx-xx-xxxx
Groce, Everard R., xxx-xx-xxxx
Grogan, James L., III, xxx-xx-xxxx
Gronquist, Keith R., xxx-xx-xxxx
Grosso, Frank J., xxx-xx-xxxx
Grove, John W., xxx-xx-xxxx
Groves, James S., xxx-xx-xxxx
Grozier, John L., xxx-xx-xxxx
Grubiak, Joseph S., Jr., xxx-xx-xx...
Grumet, David L., xxx-xx-xxxx
Guarino, Gilbert B., xxx-xx-xxxx
Gubser, Burlyn R., Jr., xxx-xx-xxxx
Guenther, Joel A., xxx-xx-xxxx
Guenther, Thomas G., xxx-xx-xxxx
Guerrero, Willard C., xxx-xx-xxxx
Gugas, Chris, Jr., xxx-xx-xxxx
Gugat, Richard F., xxx-xx-xxxx
Gundel, James T., xxx-xx-xxxx
Gunderson, Robert, xxx-xx-xxxx
Gunnell, Vernen P., xxx-xx-xxxx
Gunnels, Charles W., III, xxx-xx-xxxx
Gurney, Donald L., xxx-xx-xxxx
Gustin, Douglas E., xxx-xx-xxxx
Hacker, Kenneth J., xxx-xx-xxxx
Haddon, Robert W., xxx-xx-xxxx
Hadley, John C., Jr., xxx-xx-xxxx
Hagerhjelm, Charles R., xxx-xx-xxxx
Hahn, Roland E., xxx-xx-xxxx
Hailes, Theodore C., IV, xxx-xx-xxxx
Hainey, Francis J., xxx-xx-xxxx
Haire, John R., xxx-xx-xxxx
Hall, Billy D., xxx-xx-xxxx
Hall, John D., xxx-xx-xxxx
Hall, Thomas L., Jr., xxx-xx-xxxx
Hallenbeck, Don M., xxx-xx-xxxx
Hallgren, John W., xxx-xx-xxxx
Haltman, Harry P., xxx-xx-xxxx
Hamm, William J., xxx-xx-xxxx
Hammack, Larry C., xxx-xx-xxxx

Hammer, Michael S., xxx-xx-xxxx
Hammond, Robert E., xxx-xx-xxxx
Hamon, Thomas V., xxx-xx-xxxx
Hand, Richard G., xxx-xx-xxxx
Hand, Robert A. S., xxx-xx-xxxx
Handel, David P., xxx-xx-xxxx
Handschumacher, James F., Jr., xxx-xx-xxxx
xxx-...
Hanley, Peter F., xxx-xx-xxxx
Hanna, Richard B., xxx-xx-xxxx
Hanneman, Mark M., xxx-xx-xxxx
Hannes, Rodney G., xxx-xx-xxxx
Hannigan, John F., Jr., xxx-xx-xxxx
Hanseman, Robert W., xxx-xx-xxxx
Hansen, Harold N., xxx-xx-xxxx
Hansen, Jay W., xxx-xx-xxxx
Hansen, Reed, xxx-xx-xxxx
Hanson, David E., xxx-xx-xxxx
Hapenney, James D., II, xxx-xx-xxxx
Harbican, James L., xxx-xx-xxxx
Harcrow, Robert J., xxx-xx-xxxx
Hardaway, Ben C., Jr., xxx-xx-xxxx
Hare, Michael R., xxx-xx-xxxx
Harings, Duane J., xxx-xx-xxxx
Harken, William M., xxx-xx-xxxx
Harmon, Lawrence K., xxx-xx-xxxx
Harper, Michael J., xxx-xx-xxxx
Harrington, Richard G., xxx-xx-xxxx
Harris, Marvin J., xxx-xx-xxxx
Harris, Raymond L., xxx-xx-xxxx
Harris, Thayne S., xxx-xx-xxxx
Harrison, James W., xxx-xx-x...
Harrold, Robert D., xxx-xx-xxxx
Harrow, Edward D., Jr., xxx-xx-xxxx
Hartley, William B., Jr., xxx-xx-xxxx
Hartman, Don O., xxx-xx-xxxx
Hartmann, James R., xxx-xx-xxxx
Hartsell, William S., II, xxx-xx-xxxx
Hartshorn, Harold G., xxx-xx-xxxx
Harvey, Ronald G., xxx-xx-xxxx
Harvey, Thomas R., xxx-xx-xx...
Harville, Thomas C., Jr., xxx-xx-xxxx
Hassell, James A., xxx-xx-x...
Hatch, James L., xxx-xx-xxxx
Hatchett, Ronald L., xxx-xx-xxxx
Hatten, Donald E., xxx-xx-xxxx
Hauge, Robert S., xxx-xx-xxxx
Hausam, Donald L., xxx-xx-xxxx
Havanac, Peter J., xxx-xx-xxxx
Hawk, Thomas R., xxx-xx-xxxx
Hawkins, Joel A., xxx-xx-xxxx
Hawksworth, Gary D., xxx-xx-xxxx
Hawley, David L., xxx-xx-xxxx
Hawley, Jack C., xxx-xx-xxxx
Haynie, Ivan, xxx-xx-xxxx
Headrick, Larry R., xxx-xx-xxxx
Heath, James J., xxx-xx-xxxx
Hebner, Edwin C., xxx-xx-xxxx
Heck, Frederick B., II, xxx-xx-xxxx
Hedditch, David R., xxx-xx-xxxx
Heenan, Michael E., xxx-xx-xxxx
Heft, Robert G., III, xxx-xx-xxxx
Heinze, Herman H., xxx-xx-xxxx
Heise, Gary C., xxx-xx-xxxx
Heisey, Nelson F., xxx-xx-xxxx
Heitz, Daniel L., xxx-xx-xxxx
Helms, James M., xxx-x...
Helms, Rumsey H., Jr., xxx-xx-xx...
Heltsley, Charles M., Jr., xxx-xx-xxxx
Henby, Donald C., xxx-xx-xxxx
Henderson, Earl D., xxx-x...
Henderson, Robert L., xxx-xx-xxxx
Hendrick, Arthur K., xxx-x...
Henry, Robert A., xxx-xx-xxxx
Hensley, Horace E., xxx-xx-xxxx
Henson, James E., xxx-xx-xxxx
Herd, Barbara A., xxx-xx-xxxx
Herman, Gary T., xxx-xx-xxxx
Herndon, Frank M., xxx-xx-xxxx
Herr, Thomas C., xxx-xx-xxxx
Herrick, John E., xxx-xx-xxxx
Herring, Terrill C., xxx-xx-xxxx
Hershfield, Norman A., xxx-xx-xxxx
Heslin, Robert M., xxx-xx-xxxx
Hess, James L., xxx-xx-xxxx
Hessler, Donald J., xxx-xx-xxxx
Hetrick, Robert C., xxx-xx-xxxx
Hettick, Harvey, xxx-xx-xxxx
Hewlett, William T., xxx-xx-xxxx
Heyns, Terry L., xxx-xx-xxxx

Hicklin, Fred M., Jr., xxx-xx-xxxx
Hicks, Pershing, Jr., xxx-xx-xxxx
Hicks, Steven W., xxx-xx-xxxx
Higa, Ronald J., xxx-xx-xxxx
Higgins, Michael W., xxx-xx-xxxx
High, James D., xxx-xx-xxxx
High, Lynn O., xxx-xx-xxxx
Higham, James L., xxx-xx-xxxx
Hightower, John H., III, xxx-xx-xxxx
Higuchi, Curtis M., xxx-xx-xxxx
Hilger, David C., xxx-xx-xxxx
Hill, John L., Jr., xxx-xx-xxxx
Hill, Roger E., xxx-xx-xxxx
Hill, Ronald G., xxx-xx-xxxx
Hillman, Paul, Jr., xxx-xx-xxxx
Hilton, Maynard B., Jr., xxx-xx-xxxx
Himebrook, Richard F., xxx-xx-xxxx
Himmel, Richard W., xxx-xx-xxxx
Hinck, Walter U., xxx-xx-xxxx
Hinds, James L., xxx-xx-xxxx
Hine, Douglas K., xxx-xx-xxxx
Hines, Roderick G., xxx-xx-xxxx
Hinkle, Ronald K., xxx-xx-xxxx
Hintz, Duane H., xxx-xx-xxxx
Hintz, James A., xxx-xx-xxxx
Hintze, Ronald M., xxx-xx-xxxx
Hipp, William R., xxx-xx-xxxx
Hirsch, Fred H., xxx-xx-xxxx
Hitt, George C., xxx-xx-xxxx
Hladik, Robert F., xxx-xx-xxxx
Hlavaty, Richard J., xxx-xx-xxxx
Hoag, Robert J., III, xxx-xx-xxxx
Hobbs, James H., xxx-xx-xx...
Hodge, Stanley M., xxx-xx-xx...
Hodnett, Samuel A., Jr., xxx-xx-xxxx
Hoeflinger, William V., xxx-xx-xx...
Hoffman, Alan G., xxx-xx-xxxx
Hoffmann, John T., xxx-xx-xxxx
Hogue, Maxine K., xxx-xx-xx...
Hoh, Robert H., xxx-xx-xxxx
Hohwiesner, William H., xxx-xx-xxxx
Hokanson, Lawrence D., xxx-xx-xxxx
Hokkanen, Jerry D., xxx-xx-xxxx
Holdner, John E., xxx-xx-xxxx
Holladay, Gerald R., xxx-xx-xx...
Holland, Jackie O., xxx-xx-xxxx
Hollinger, Frederick J., xxx-x...
Holloman, Michael R., xxx-xx-xxxx
Holmes, Douglas I., Jr., xxx-xx-xxxx
Holmes, Raymond T., xxx-xx-xxxx
Holscher, Gary G., xxx-xx-xxxx
Holstein, Norman R., xxx-xx-xxxx
Holt, Jerry F., xxx-xx-xxxx
Homich, George H., xxx-xx-xxxx
Honeycutt, Larry L., xxx-xx-xxxx
Hooyer, David A., xxx-xx-xxxx
Hope, Kenneth L., xxx-xx-xxxx
Hopkins, Edward C. D., xxx-xx-xxxx
Hopkins, Joseph R., xxx-xx-xxxx
Hopkins, Leonard E., xxx-xx-xxxx
Hopping, Cecil R., xxx-xx-xxxx
Horn, Louis G., xxx-xx-xxxx
Horner, Lyle G., xxx-xx-xxxx
Horton, Michael V., xxx-xx-xxxx
Horton, William F., xxx-xx-xxxx
Hortter, Ronald C., xxx-xx-xxxx
Hostetler, Allen L., xxx-xx-xxxx
Hotsko, Anthony M., xxx-xx-xxxx
Houck, Elmer D., xxx-xx-xx...
Houck, Roger P., xxx-xx-xxxx
Howard, Timothy H., xxx-xx-xxxx
Howard, William J. R., xxx-xx-xxxx
Howell, Harold E., xxx-xx-xxxx
Hoyt, Norman S., xxx-xx-xxxx
Hubbard, Clarke D., xxx-xx-xxxx
Hubbard, Robert M., xxx-xx-xxxx
Hubbard, Ronald P., xxx-xx-xxxx
Huddle, William R., xxx-xx-xxxx
Hudkins, Raymond P., xxx-xx-xxxx
Hudson, Billy W., xxx-xx-xxxx
Hudson, Joseph M., Jr., xxx-xx-xxxx
Hudson, Kenneth E., xxx-xx-xxxx
Hudspeth, William E., xxx-xx-xxxx
Huff, Jon M., xxx-xx-xxxx
Huff, Ronald D., xxx-xx-xxxx
Huff, Stephen A., xxx-xx-xxxx
Huffman, Jeryl R., xxx-xx-xxxx
Huggins, Robert E., xxx-xx-xxxx
Hughes, Paul E., xxx-xx-xxxx
Hughey, Darryl D., xxx-xx-xxxx

Hull, Edward A., xxx-xx-xxxx
Hull, James O., xxx-xx-xxxx
Hummel, Dennis K., xxx-xx-xxxx
Humphreys, Edwin C., III, xxx-xx-xxxx
Huntsman, James M., III, xxx-xx-xxxx
Hurlbert, Joseph C., Jr., xxx-xx-xxxx
Hurst, Joseph C., xxx-xx-xxxx
Husson, Matthew A., III, xxx-xx-xxxx
Hutchins, David J., xxx-xx-xxxx
Hutchinson, Douglas P., xxx-xx-xxxx
Hutchison, James W., xxx-xx-xxxx
Huttenhow, Jay D., xxx-xx-xxxx
Hutton, Warren G., xxx-xx-xxxx
Hvozdovic, Michael J., Jr., xxx-xx-xxxx
Hynes, Dennis P., xxx-xx-xxxx
Icenhower, Stephen D., xxx-xx-xxxx
Icke, Harold J., xxx-xx-xxxx
Ihrke, Jan E., xxx-xx-xxxx
Ingalls, Lawrence H., xxx-xx-xxxx
Ingle, James A., xxx-xx-xxxx
Ingle, Michael W., xxx-xx-xxxx
Introne, Robert E., Jr., xxx-xx-xxxx
Irwin, David J., xxx-xx-xxxx
Israel, Kenneth R., xxx-xx-xxxx
Itoga, Bert K., Jr., xxx-xx-xxxx
Iverson, Gerald G., xxx-xx-xxxx
Ivie, James E., xxx-xx-xxxx
Jackelen, George G., xxx-xx-xxxx
Jackman, Allan R., xxx-xx-xxxx
Jackman, Thomas W., xxx-xx-xxxx
Jacks, Roger L., xxx-xx-xxxx
Jackson, Calvin H., xxx-xx-xxxx
Jackson, James H., Jr., xxx-xx-xxxx
Jackson, Kenneth K., xxx-xx-xxxx
Jackson, Michael D., xxx-xx-xxxx
Jacobs, Grady L., Jr, xxx-xx-xxxx
Jacobs, Michael C., Jr., xxx-xx-xxxx
Jacobs, Robert D., xxx-xx-xxxx
Jacobs, William R., xxx-xx-xx...
Jacoby, James E., xxx-xx-xxxx
Jaeger, Jan B., xxx-xx-...
Jahn, John W., II, xxx-xx-xxxx
Jahnke, Robert E., xxx-x...
Jannarone, August G., xxx-xx-xxxx
Jansen, Robert L., xxx-x...
Jarvis, Dan T., xxx-xx-xxxx
Jarvis, Joe H., xxx-xx-...
Jeffery, Monte M., xxx-xx-x...
Jeffryes, Myron D., xxx-xx-xxxx
Jehle, James R., II, xxx-xx-xxxx
Jenkins, Paul T., xxx-xx-xxxx
Jenkins, Robert F., xxx-xx-xxxx
Jenkins, William F., xxx-x...
Jennings, Gary L., xxx-xx-xxxx
Jennings, Michael E., xxx-xx-xxxx
Jensen, Albert D., xxx-xx-xxxx
Joersz, Eldon W., xxx-xx-xxxx
Johnson, Daniel F., xxx-xx-xxxx
Johnson, Darwin L., xxx-xx-xxxx
Johnson, Dennis J., xxx-xx-xxxx
Johnson, Edmund T., III, xxx-xx-xxxx
Johnson, James O., xxx-xx-xxxx
Johnson, Jay H., xxx-xx-xxxx
Johnson, Jerrell R., xxx-xx-xxxx
Johnson, Lowell E., xxx-xx-xxxx
Johnson, Robert L., xxx-xx-xxxx
Johnson, Russell A., xxx-xx-xxxx
Johnson, Sharon L., xxx-xx-xxxx
Johnson, Vaughn A., xxx-xx-xxxx
Johnson, William R., xxx-xx-xx...
Johnston, Donald J., xxx-xx-xxxx
Johnston, Richard L., xxx-xx-xxxx
Johnston, Terry L., xxx-xx-xxxx
Jolley, Richard H., xxx-xx-xxxx
Jones, Arthur J., Jr., xxx-xx-xxxx
Jones, Ernest H., Jr., xxx-xx-xxxx
Jones, George W., xxx-xx-xxxx
Jones, Grinnell, III, xxx-xx-xxxx
Jones, Herman D., Jr., xxx-xx-xxxx
Jones, James D., Jr., xxx-xx-xxxx
Jones, James G., Jr., xxx-xx-xxxx
Jones, Jerry D., xxx-xx-xxxx
Jones, Joseph A., xxx-xx-xxxx
Jones, Paul L., xxx-xx-xxxx
Jones, Paul M., Jr, xxx-xx-x...
Jones, Robert H., II, xxx-xx-xxxx
Jones, Travis O., Jr., xxx-xx-xxxx
Jones, William H., xxx-xx-xxxx
Jonson, Edward C., xxx-xx-xxxx
Joonsar, Heikki, xxx-xx-xxxx

Jordan, Charles C., III, xxx-xx-xxxx
Jordan, Francis D., Jr., xxx-xx-xxxx
Jordan, James J., xxx-xx-xxxx
Judjahn, Gerhard W., xxx-xx-xxxx
Jumper, John P., xxx-xx-xxxx
Jumps, Ronald E., xxx-xx-xxxx
Junger, Peter G., xxx-xx-xxxx
Jungwirth, Arthur H., xxx-xx-xxxx
Juracek, Randall A., xxx-xx-xxxx
Kaatz, Stephen P., xxx-xx-xxxx
Kalbert, John F. A., xxx-xx-xxxx
Kallenbach, Daniel P., xxx-xx-xxxx
Kanda, Larry M., xxx-xx-xxxx
Karel, Robert J., xxx-xx-xxxx
Karl, Donald G., xxx-xx-xxxx
Karlage, Joseph F., xxx-xx-xxxx
Kasl, Dennis L., xxx-xx-xxxx
Kasparian A. Frank, xxx-xx-xxxx
Katonak, Thomas T., xxx-xx-xxxx
Kaufman, Warren F., xxx-xx-xxxx
Kealoha, Dwight M., xxx-xx-xxxx
Kearse, Robert F., xxx-xx-xxxx
Kecskes, Stephen A., xxx-xx-xxxx
Keefer, Rodney M., xxx-xx-xxxx
Keel, Lowell C., xxx-xx-xxxx
Kehl, Ted L., xxx-xx-xxxx
Kehoe, Nicholas B., III, xxx-xx-xxxx
Kehoe, William W., xxx-xx-xxxx
Keller, Michael L., xxx-xx-xxxx
Kelley, Wayne, Jr., xxx-xx-xxxx
Kemp, Victor M., xxx-xx-xxxx
Kennedy, Charles A., xxx-xx-xxxx
Kennedy, David K., xxx-xx-xxxx
Kennedy, Michael P., xxx-xx-xxxx
Kerns, Paula V., xxx-xx-xxxx
Kerr, David T., xxx-xx-xxxx
Kes, Pieter A., xxx-xx-xxxx
Kesselring, Gordon D., xxx-xx-xxxx
Kester, James E., xxx-xx-xxxx
Kibby, Jerrald L., xxx-xx-xxxx
Kidd, John R., xxx-xx-xxxx
Kieling, Harry J., Jr., xxx-xx-xxxx
Kiesel, Stephen R., xxx-xx-xxxx
Kifer, Stephen J., xxx-xx-xxxx
Kiggans, Robert G., xxx-xx-xxxx
Killian, Jacob J., Jr., xxx-xx-xxxx
Killian, James A., xxx-xx-xxxx
Kincaid, Thomas E., xxx-xx-xxxx
Kinderman, Joseph A., xxx-xx-xxxx
King, Daniel T., xxx-xx-xxxx
King, John C., xxx-xx-xxxx
King, John R., xxx-xx-xxxx
King, Walter R., xxx-xx-xxxx
King, Winston H., xxx-xx-xxxx
Kinnison, Timothy E., xxx-xx-...
Kirbie, Darrell G., xxx-xx-xxxx
Kirchhoff, William J., xxx-xx-xxxx
Kirkpatrick, Craig M., Jr., xxx-xx-xxxx
Kirkpatrick, John R., xxx-xx-xxxx
Kirsch, John P., xxx-xx-xxxx
Kiss, Stephen E., xxx-xx-xxxx
Kissner, George G., xxx-xx-xxxx
Kitajo, Ted M., xxx-xx-xxxx
Kitkowski, George, xxx-xx-xxxx
Klein, Alford D., xxx-xx-xxxx
Klein, Richard L., xxx-xx-xxxx
Kline, Donald F., xxx-xx-xxxx
Kline, Larry L xxx-xx-xxxx
Kluter, Eugene E., xxx-xx-xxxx
Kmetz, Michael P., xxx-xx-xxxx
Knapp, Richard K., xxx-xx-xxxx
Knirsch, George R., Jr., xxx-xx-xxxx
Knode, Charles S., xxx-xx-xxxx
Knott, Paul L., xxx-xx-xxxx
Knowles, Joel B., xxx-xx-xxxx
Knowles, Roger C., xxx-xx-xxxx
Knox, William A., xxx-xx-xxxx
Knuth, Dale E., xxx-xx-xxxx
Kobussen, Richard W., xxx-xx-xxxx
Koch, Gary B., xxx-xx-xxxx
Koch, Thomas O., xxx-xx-xxxx
Koerber, Harold M., xxx-xx-xxxx
Koger, Olin D., xxx-xx-xxxx
Koiner, Wylie J., xxx-xx-xxxx
Kokko, Timo P., xxx-xx-xxxx
Kolar, John F., xxx-xx-xxxx
Kolczynski, Edward F., xxx-xx-xxxx
Kontrick, Alvin A., xxx-xx-xxxx
Kopplin, William L., xxx-xx-xxxx
Kopycinski, Paul E., xxx-xx-xxxx
Korbol, Michael J., xxx-xx-xxxx
Korker, Fred C., xxx-xx-xxxx
Kornreich, James E., xxx-xx-xxxx
Korzilius, Philip R., xxx-xx-xxxx
Kostal, Yaroslav J., xxx-xx-xxxx
Kostelny, Rudolph R., Jr., xxx-xx-...
Kowalchuk, Larry A., xxx-xx-xxxx
Kramer, Peter L., xxx-xx-xxxx
Kramer, Robert H., xxx-xx-xxxx
Krebs, Kenneth L., xxx-xx-xxxx
Krebs, Richard A., xxx-xx-xxxx
Krieg, George E., III, xxx-xx-xxxx
Kruchek, Charles L., xxx-xx-xxxx
Kruchten, Robert J., xxx-xx-xxxx
Krueger, Ray E., xxx-xx-xxxx
Krug, Stephen H., xxx-xx-xxxx
Krump, Donald L., xxx-xx-xxxx
Kruppenbacher, Paul H., xxx-xx-xxxx
Kubecka, Frankie A., xxx-xx-xxxx
Kubiak, Sue E., xxx-xx-xxxx
Kubicko, Richard M., xxx-xx-xxxx
Kuchler, James M., xxx-xx-xxxx
Kuhl, Francis A., xxx-xx-xxxx
Kulchak, Delbert G., xxx-xx-xxxx
Kunz, John W., xxx-xx-xxxx
Kurrus, Robert W., xxx-xx-xxxx
Labar, Charles R., xxx-xx-xxxx
Lackey, Frederick E., xxx-xx-xxxx
Lacroix, Richard L., xxx-xx-xxxx
Ladd, David C., xxx-xx-xxxx
Laforce, James R., xxx-xx-xxxx
Lafreniere, Raymond C., xxx-xx-xxxx
Lagana, Vincent E., xxx-xx-xxxx
Laing, Arthur R., xxx-xx-xxxx
Lake, Daniel E., xxx-xx-xxxx
Lambert, Alvin G., Jr., xxx-xx-xxxx
Lambert, Lewis A., xxx-xx-xxxx
Lambert, Morton T., xxx-xx-xxxx
Lambeth, Frank S., Jr., xxx-xx-xxxx
Lancaster, Charles A., xxx-xx-xxxx
Landon, Clarence L., xxx-xx-xxxx
Landry, Roland A., xxx-xx-xxxx
Lane, Alan D., xxx-xx-xxxx
Lane, Jack C., xxx-xx-xxxx
Lang, Paul E., xxx-xx-xxxx
Lang, Richard F., xxx-xx-xxxx
Langan, George C., Jr., xxx-xx-xxxx
Langsdale, Robert E., xxx-xx-xxxx
Langston, Allen, Jr., xxx-xx-xxxx
Lanier, Thomas S., xxx-xx-xxxx
Lanoue, Richard R., xxx-xx-xxxx
Lantry, Nevin L., xxx-xx-xxxx
Lantz, Howard E., xxx-xx-xxxx
Lantz, Paul L., xxx-xx-xxxx
Lapierre, Robert L., xxx-xx-xxxx
Lard, Lynn M., xxx-xx-xxxx
Large, James T., xxx-xx-xxxx
Lariscy, William B., xxx-xx-xxxx
Larkin, Peter A., xxx-xx-xxxx
Larocca, Michael J., xxx-xx-xxxx
Larson, Daniel F., xxx-xx-xxxx
Larson, Donald D., xxx-xx-xxxx
Larson, Robert A., xxx-xx-xxxx
Laster, William D., xxx-xx-xxxx
Laur, Timothy M., xxx-xx-xxxx
Laurier, William R., xxx-xx-xxxx
Lawrence, William L., xxx-xx-xxxx
Lazaro, Robert A. xxx-xx-xxxx
Ledford, David E., xxx-xx-xxxx
Lee, Gerald A., xxx-xx-xxxx
Lee, Richard D., xxx-xx-xxxx
Leech, Stephen D., xxx-xx-xxxx
Leek, Warren J., xxx-xx-xxxx
Leeper, William C., xxx-xx-xxxx
Leib, Thomas L., Jr., xxx-xx-xxxx
Leidemann, William J., xxx-xx-xxxx
Leinen, Michael L., xxx-xx-xxxx
Lemley, William J., xxx-xx-xxxx
Lenartz, James R., xxx-xx-xxxx
Lenhoff, Joseph R., xxx-xx-xxxx
Lennon, Thomas J., xxx-xx-xxxx
Lentz, Paul W., Jr., xxx-xx-xxxx
Leonard, Percy D., Jr., xxx-xx-xxxx
Leonhardt, Jack H., xxx-xx-xxxx
Lester, Ronald S., xxx-xx-xxxx
Lester, William D., xxx-xx-xxxx
Leuty, Elbert J., Jr., xxx-xx-xxxx
Levan, Jay E., Jr., xxx-xx-xxxx
Levka, Simon E., xxx-xx-xxxx
Lewandowski, William J., xxx-xx-xxxx
Lewicki, John A. xxx-xx-xxxx
Lewis, Edwin M., xxx-xx-xxxx
Lewis, George T., Jr., xxx-xx-xxxx
Lewis, James F., Jr., xxx-xx-xxxx
Lewis, John A. xxx-xx-xxxx
Lewis, Kenneth M., xxx-xx-xxxx
Lewis, Leonard W., xxx-xx-xxxx
Leydorf, William F., Jr., xxx-xx-xxxx
Lhotka, Allan, J., xxx-xx-xxxx
Lichtenwalter, Homer O. III, xxx-xx-xxxx
Lieb, Drayton J., xxx-xx-xxxx
Liebman, Bruce L., xxx-xx-xxxx
Lierman, John W., III, xxx-xx-xxxx
Life, Malcom L., xxx-xx-xxxx
Limmer, Robert J., xxx-xx-xxxx
Lindberg, Eric K., xxx-xx-xxxx
Lindemann, Ralph E., xxx-xx-xxxx
Linden, Vincent L., xxx-xx-xxxx
Linder, Roy L., Jr., xxx-xx-xxxx
Lindley, Robert K., xxx-xx-xxxx
Lindquist, James A., xxx-xx-xxxx
Lindsey, Robert S., xxx-xx-xxxx
Linker, Martin N., xxx-xx-xxxx
Linnemann, Hugh K., xxx-xx-xxxx
Lippincott, George J., xxx-xx-xxxx
Little, Littleton L., Jr., xxx-xx-xxxx
Livingston, Arthur P., xxx-xx-xxxx
Lloyd, David R., xxx-xx-xxxx
Lochrane, Hugh M., Jr., xxx-xx-xxxx
Loeb, Edward A., Jr., xxx-xx-xxxx
Loebach, Clarence H., Jr., xxx-xx-xxxx
Lohse, Herman D., xxx-xx-xxxx
Lombardi, Silvio F., xxx-xx-xxxx
Loncki, Joseph, xxx-xx-xxxx
Long, Brian M., xxx-xx-xxxx
Long, George E., xxx-xx-xxxx
Long, John E., xxx-xx-xxxx
Long, Roger D., xxx-xx-xxxx
Looke, William F., xxx-xx-xxxx
Loomis, Jan R., xxx-xx-xxxx
Looney, Charles A., III, xxx-xx-xxxx
Loranger, Donald E., Jr., xxx-xx-xxxx
Lord, Kenneth C., xxx-xx-xxxx
Lorden, Thomas E., xxx-xx-xxxx
Losi, Donald, xxx-xx-xxxx
Losness, James A., xxx-xx-xxxx
Lott, Donald B., xxx-xx-xxxx
Lotterhos, Julius L., III, xxx-xx-xxxx
Lotz, George B., II, xxx-xx-xxxx
Loudon, Alexander, xxx-xx-xxxx
Love, Alvin L. xxx-xx-xxxx
Love, David H., xxx-xx-xxxx
Lovelace, Michael B., xxx-xx-xxxx
Lowe, Buford L., III, xxx-xx-xxxx
Lowery, Lucas D., Jr., xxx-xx-xxxx
Lowther, William R., xxx-xx-xxxx
Lubbers, Vincent J., xxx-xx-xxxx
Lucas, Donald, xxx-xx-xxxx
Lucas, Jerry K. xxx-xx-xxxx
Lucas, William I., Jr., xxx-xx-xxxx
Luces, Saba A., xxx-xx-xxxx
Luka, Carlton K., xxx-xx-xxxx
Luke, Merlyn L., xxx-xx-xxxx
Lumley, James R., xxx-xx-xxxx
Luna, Frank J., Jr., xxx-xx-xxxx
Lupini, Robert G., xxx-xx-xxxx
Lussier, Emile A., xxx-xx-xxxx
Lynch, Michael C., xxx-xx-xxxx
Lynk, Michael C., xxx-xx-xxxx
Lynn, Edward C., xxx-xx-xxxx
Lyons, Albert E. xxx-xx-xxxx
Macewen, Howard A., xxx-xx-xxxx
Mackean, Barry C., xxx-xx-xxxx
Mackey, Thomas J., xxx-xx-xxxx
Macleod, David H., xxx-xx-xxxx
Macnicoll, Donald C., xxx-xx-xxxx
Mactaggart, Stuart E., xxx-xx-xxxx
Madole, Charels A., xxx-xx-xxxx
Magsig, Charles W., xxx-xx-xxxx
Mahan, Terry L., xxx-xx-xxxx
Maher, James E., xxx-xx-xxxx
Maier, Dennis A., xxx-xx-xxxx
Maiocco, Robert, xxx-xx-xxxx
Malandrino, Joseph P., Jr., xxx-xx-xxxx
Mangis, Edward V., xxx-xx-xxxx
Mann, Lawrence B., xxx-xx-xxxx
Mannell, Stephen C., xxx-xx-xxxx
Mannix, Emmett T., xxx-xx-xxxx

Mantor, Robert T., xxx-xx-xxxx
Marchioni, Dan J., xxx-xx-xxxx
Marcotte, Ronald H., xxx-xx-xxxx
Marcrander, David B., xxx-xx-xxxx
Marino, Francis L., xxx-xx-xxxx
Markham, Dale P., xxx-xx-xxxx
Markle, Lawrence J., xxx-xx-xxxx
Marks, Stanley R., II, xxx-xx-xxxx
Maron, John M., xxx-xx-xxxx
Marsh, James L., xxx-xx-xxxx
Marshall, Francis C., Jr., xxx-xx-xxxx
Marshall, Harvey A., xxx-xx-xxxx
Marshall, John C., xxx-xx-xxxx
Martin, Gerald A., xxx-xx-xxxx
Martin, Michael, xxx-xx-xxxx
Martin, Miles O., Jr., xxx-xx-xxxx
Martin, Richard L., xxx-xx-xxxx
Martin, Samuel T., Jr., xxx-xx-xxxx
Masters, Charles W., xxx-xx-xxxx
Mastin, Ronald L., xxx-xx-xxxx
Matestic, Ronald E., xxx-xx-xxxx
Matheny, John K., xxx-xx-xxxx
Mather, Theodore O. J., xxx-xx-xxxx
Matheson, Alva L., xxx-xx-xxxx
Mathews, James W., xxx-xx-xxxx
Mathis, Wayne R., xxx-xx-xxxx
Matkin, Donald H., xxx-xx-xxxx
Matsuda, Ronald T., xxx-xx-xxxx
Matthews, William K., xxx-xx-xxxx
Matz, Ronald L., xxx-xx-xxxx
Mauss, John F., xxx-xx-xxxx
Maxwell, William B., Jr., xxx-xx-xxxx
May, Clarence G., xxx-xx-xxxx
May, Douglas H., xxx-xx-xxxx
May, John E., xxx-xx-xxxx
Maybee, John D., xxx-xx-xxxx
Mayhall, James M., xxx-xx-xxxx
Maynard, Ralph D., xxx-xx-xxxx
Mayo, Lewis D., xxx-xx-xxxx
Mazziotta, Joseph, xxx-xx-xxxx
McAdory, Louis A., xxx-xx-xxxx
McAllister, Gerald S., xxx-xx-xxxx
McAnespie, John W., xxx-xx-xxxx
McAtee, Michael L., xxx-xx-xxxx
McBride, Gerald B., xxx-xx-xxxx
McBroome, John J., xxx-xx-xxxx
McCall, James W., xxx-xx-xxxx
McCauley, Patrick H., xxx-xx-xxxx
McCauley, Robert H., xxx-xx-xxxx
McClain, John N., xxx-xx-xxxx
McClannan, Herbert, xxx-xx-xxxx
McClellan, Jerry L., xxx-xx-xxxx
McClure, Alan R., xxx-xx-xxxx
McClure, Kenneth J., xxx-xx-xxxx
McClure, William C., III, xxx-xx-xxxx
McCormack, Kenneth R., xxx-xx-xxxx
McCoy, James F., xxx-xx-xxxx
McCracken, Wilson L., xxx-xx-xxxx
McCroskey, Donald G., xxx-xx-xxxx
McDade, Charles F., xxx-xx-xxxx
McDermott, John D., xxx-xx-xxxx
McDonald, Thomas S., xxx-xx-xxxx
McDougall, Fritz J., xxx-xx-xxxx
McDougall, Hugh M., xxx-xx-xxxx
McDowell, Charles R., xxx-xx-xxxx
McDowell, Lance E., xxx-xx-xxxx
McElhaney, John R., xxx-xx-xxxx
McElhinney, Robert E., xxx-xx-xxxx
McElvain, Kevin L., xxx-xx-xxxx
McEwen, Jerry A., xxx-xx-xxxx
McFadden, Joseph H., xxx-xx-xxxx
McFalls, John O., III, xxx-xx-xxxx
McFarland, Milton R., xxx-xx-xxxx
McGarity, Hugh D., xxx-xx-xxxx
McGarry, John T., xxx-xx-xxxx
McGaughy, Michael P., xxx-xx-xxxx
McGill, Arley H., II, xxx-xx-xxxx
McGuire, Michael W., xxx-xx-xxxx
McGurk, Thomas D., xxx-xx-xxxx
McHenry, Frank A., Jr., xxx-xx-xxxx
McInay, Gary D., xxx-xx-xxxx
McIlroy, Patrick T., xxx-xx-xxxx
McIlvoy, David W., xxx-xx-xxxx
McIntosh, Joe R., xxx-xx-xxxx
McKee, Robert J., Jr., xxx-xx-xxxx
McLarty, Robert D., xxx-xx-xxxx
McLaughlin, John J., xxx-xx-xxxx
McLellan, James R., xxx-xx-xxxx
McMahan, Dennis J., xxx-xx-xxxx
McMahon, Robert L., xxx-xx-xxxx
McMains, Robert E., xxx-xx-xxxx
McMullen, Norman C., xxx-xx-xxxx
McMullen, Thomas E., xxx-xx-xxxx
McNabb, Joseph V., Jr., xxx-xx-xxxx
McNair, Clifford L., xxx-xx-xxxx
McNamara, Robert A., Jr., xxx-xx-xxxx
McNees, Terry C., xxx-xx-xxxx
McSheffrey, James J., xxx-xx-xxxx
Meade, Thomas G., xxx-xx-xxxx
Means, Paul E., xxx-xx-xxxx
Meeboer, William J., Jr., xxx-xx-xxxx
Meikel, Arthur P., III, xxx-xx-xxxx
Mekaru, Mark M., xxx-xx-xxxx
Mellor, Fred W., xxx-xx-xxxx
Melton, Marvin R., Jr., xxx-xx-xxxx
Menchen, Paul E., xxx-xx-xxxx
Menkello, Frederick V., xxx-xx-...
Menzies, Stephen P., xxx-xx-xxxx
Mercy, Frank B., xxx-xx-xxxx
Merino, Ronald A., xxx-xx-xxxx
Merrell, Jack G., Jr., xxx-xx-xxxx
Merryman, John B., xxx-xx-xxxx
Messamore, Claude E., Jr., xxx-xx-xxxx
Meyer, Alfred M., xxx-xx-xxxx
Meyers, Charles J., Jr., xxx-xx-xxxx
Michel, Marshall L., III, xxx-x...
Michie, William D., xxx-xx-xxxx
Milberg, Raymond F., xxx-x...
Miles, Frederick E., II, xxx-xx-xxxx
Miles, James W., xxx-xx-xxxx
Mill, John D., xxx-xx-xxxx
Miller, David C., xxx-xx-xxxx
Miller, David I., xxx-xx-xxxx
Miller, Donald R., xxx-xx-xxxx
Miller, James E., Jr., xxx-xx-xxxx
Miller, John D., xxx-xx-xxxx
Miller, John E., xxx-xx-xxxx
Miller, Kenneth G., xxx-xx-xxxx
Miller, Paul M., II, xxx-xx-xxxx
Miller, Phillip A., xxx-xx-xxxx
Miller, Ray D., xxx-xx-xxxx
Miller, Robert W. A., xxx-xx-xxxx
Miller, Stephen J., xxx-xx-xxxx
Miller, William C., xxx-xx-xxxx
Mills, Randall M., xxx-xx-xxxx
Mills, Rix M., xxx-xx-xxxx
Minihan, Kenneth A., xxx-xx-xxxx
Mirandaortiz, Jose L., xxx-xx-xxxx
Misak, Charles K., xxx-xx-xxxx
Mistrot, Ralph W., Jr., xxx-xx-xxxx
Mitchel, David L., xxx-xx-xxxx
Miyamasu, Noel S., xxx-xx-xxxx
Mizelle, Carroll E., xxx-xx-xxxx
Moates, Thomas H., III, xxx-xx-xxxx
Moffett, Ferris K., xxx-xx-xxxx
Moitoza, Edwin G., xxx-xx-xxxx
Momberg, Richard T., xxx-xx-xx...
Monagan, Stephen J., xxx-xx-xxxx
Monaghan, James W., xxx-xx-xxxx
Monahan, Thomas J., xxx-xx-xxxx
Monheim, Thomas J., xxx-xx-xxxx
Monkus, Stanley W., xxx-xx-xxxx
Monschke, Richard A., xxx-xx-xxxx
Moody, Howard Q., xxx-xx-xxxx
Moomaw, William E., xxx-xx-xxxx
Moon, Vorry C., xxx-xx-xxxx
Moon, William B., xxx-xx-xxxx
Moore, Cal W., xxx-xx-xxxx
Moore, Clyde T., Jr., xxx-xx-xxxx
Moore, David P., xxx-xx-xxxx
Moore, Garland F., xxx-xx-xxxx
Moore, James P., xxx-xx-...
Moore, John E., Jr., xxx-xx-xxxx
Moore, Louis W., xxx-xx-xxxx
Moore, Melvyn W., xxx-xx-xxxx
Moore, Ralph E., Jr., xxx-xx-xxxx
Moore, Troy, xxx-xx-xxxx
Moore, William P., xxx-xx-xxxx
Moorehead, James E., xxx-xx-xxxx
Morace, Ernest H., xxx-xx-xxxx
Moran, Felix F., III, xxx-xx-xxxx
Moran, Michael J., xxx-xx-xxxx
Morey, Ronald L., xxx-xx-xxxx
Morgan, Dallas D., xxx-xx-xxxx
Morgan, Donald Y., Jr., xxx-xx-xxxx
Morgenstern, Frederic L., III, xxx-xx-xxxx
Morley, David W., xxx-xx-xxxx
Morrelli, Peter E., xxx-xx-xxxx
Morris, Robert D., xxx-xx-xxxx
Morrison, Russell C., Jr., xxx-xx-xxxx
Morrison, William B., III, xxx-xx-xxxx
Morse, Donald E., xxx-xx-xxxx
Morse, Joel S., xxx-xx-xxxx
Morton, Robert W., xxx-xx-xxxx
Mosbruger, Charles D., xxx-xx-xxxx
Moscatelli, John J., xxx-xx-xxxx
Moses, Louis J., xxx-xx-xxxx
Moses, Noidrie J., Jr., xxx-xx-xxxx
Mosier, Stephen A., xxx-xx-xxxx
Moss, Forrest M., xxx-xx-xxxx
Mosteller, Clifton H., Jr., xxx-xx-xxxx
Mote, Charles S., xxx-xx-xxxx
Mowbray, Robert G., xxx-xx-xxxx
Mrozek, Jerry L., xxx-xx-xxxx
Mueh, Hans J., xxx-xx-xxxx
Muelhoefer, Alfred K., xxx-xx-xxxx
Mueller, David P., xxx-xx-xxxx
Mueller, James W., xxx-xx-xxxx
Mueller, Kurt H., xxx-xx-xxxx
Muench, Robert S., xxx-xx-xxxx
Muhn, Van R., xxx-xx-xxxx
Mull, Michael M., xxx-xx-xxxx
Mullen, Kevin B., xxx-xx-xxxx
Mullenix, David E., xxx-xx-xxxx
Mulligan, Michael W., xxx-xx-xxxx
Munn, Raymond K., xxx-xx-xxxx
Munz, Laurence D., xxx-xx-xxxx
Murch, Walter G., xxx-xx-xxxx
Murphy, James M., xxx-xx-xxxx
Murphy, Raymond H., Jr., xxx-xx-xxxx
Mutka, Charles J., xxx-xx-xxxx
Myer, John W., xxx-xx-xxxx
Myers, Richard A., xxx-xx-xxxx
Myers, Wayne A., xxx-xx-xxxx
Myrick, Dennis R., xxx-xx-xxxx
Nabours, Warren R., xxx-xx-xxxx
Nader, Alfred H., Jr., xxx-xx-xxxx
Nadig, Brian F., xxx-xx-xxxx
Nagy, John T., xxx-xx-xxxx
Nall, Joseph M., xxx-xx-xxxx
Nangle, James T., xxx-xx-xxxx
Narancich, Jerry W., xxx-xx-xxxx
Narsavage, Joseph M., Jr., xxx-xx-xxxx
Neff, Arthur D., xxx-xx-xxxx
Negley, Robert M., Jr., xxx-xx-xxxx
Neisz, Wendell R., xxx-xx-xxxx
Nejezchleb, Allen L., xxx-xx-xxxx
Nelson, Jerry L., xxx-xx-xxxx
Nelson, Philip G., xxx-xx-xxxx
Nenninger, William P., xxx-xx-xxxx
Nesbitt, Lance D., xxx-xx-xxxx
Nestor, Steven F., xxx-xx-xxxx
Neu, Paul H., xxx-xx-xxxx
Neville, Rey A., xxx-xx-xxxx
Newbern, David W., xxx-xx-xxxx
Newell, Thomas G., xxx-xx-xxxx
Newman, Ward C., Jr., xxx-xx-xxxx
Newton, George L., III, xxx-xx-xxxx
Newton, James A., Jr., xxx-xx-xxxx
Newton, Lloyd W., xxx-xx-xxxx
Nibeck, Stuart N., xxx-xx-xxxx
Nichols, Douglas E., xxx-xx-xxxx
Nichols, James R., xxx-xx-xxxx
Nieberlein, Richard W., xxx-xx-xxxx
Niebling, John W., xxx-xx-xxxx
Nieman, Richard L., xxx-xx-xxxx
Nimmo, Sam D., xxx-xx-xxxx
Nix, Douglas M., xxx-xx-xxxx
Nixon, Hugh W., Jr., xxx-xx-xxxx
Nofziger, Richard W., xxx-xx-xxxx
Noland, Stephen J., xxx-xx-xxxx
Nordquist, Leo P., xxx-xx-xxxx
Norton, Maurice E., III, xxx-xx-xxxx
Novak, John T., xxx-xx-xxxx
Novak, Theodore J., Jr., xxx-xx-xxxx
Novotny, Ray A., xxx-xx-xxxx
Null, Robert L., xxx-xx-xxxx
Nygren, Larry J., xxx-xx-xxxx
Oakes, David, xxx-xx-xxxx
O'Brien, Patrick D., xxx-xx-xxxx
O'Brien, William K., xxx-xx-xxxx
Obuchowski, Alphonso J., Jr., xxx-xx-xxxx
O'Connor, Daniel J., xxx-xx-xxxx
O'Connor, Denis L., xxx-xx-xxxx
O'Connor, Gary E., xxx-xx-xxxx
O'Connor, Michael A., xxx-xx-xxxx
O'Day, Kathleen, xxx-xx-xxxx
Ogden, Robert H., Jr., xxx-xx-xxxx
O'Keefe, Edward F., Jr., xxx-xx-xxxx
Okon, Walter J., xxx-xx-xxxx

Oldham, Mack L., xxx-xx-xxxx
Oliver, George H., xxx-xx-xxxx
Oliver, Richard J., xxx-xx-xxxx
Oliver, Richard L., xxx-xx-xxxx
Oliverio, Ronald D., xxx-xx-xxxx
Olivieri, Joseph H., xxx-xx-xxxx
Olschner, Clarence E., III, xxx-xx-xxxx
Olsen, David G., xxx-xx-x...
Olsen, Douglas M., xxx-xx-xxxx
Olson, Nathan B., xxx-xx-xxxx
Olson, Scott W., xxx-xx-xxxx
O'Neal, James C., xxx-xx-xxxx
Opdycke, Don R., xxx-xx-xxxx
Ori, Joseph A., xxx-xx-xxxx
Orlando, Donald P., xxx-xx-xxxx
Osborn, Alvin L., Jr., xxx-xx-xxxx
Osborne, Richard T., xxx-xx-xxxx
Osterloh, Robert J., xxx-xx-xxxx
Osuch, Robert J., xxx-xx-xxxx
Oswell, Barry S., xxx-xx-xxxx
Ottewill, William A., xxx-xx-xxxx
Overkamp, Robert J., xxx-xx-xxxx
Owens, Robert C., xxx-xx-xxxx
Ownby, Ted, Jr., xxx-xx-xxxx
Ozias, Arthur W., III, xxx-xx-xxxx
Page, Bobby G., xxx-xx-xxxx
Paguyo, Eusebio T., xxx-xx-xxxx
Pahl, Robert S., xxx-xx-xxxx
Paladino, Nicholas D., xxx-xx-xxxx
Palmer, Gary T., xxx-xx-xxxx
Palomaki, Douglas I., xxx-xx-xxxx
Pargeter, Stephen R., xxx-xx-x...
Park, John J., xxx-xx-xxxx
Parker, Charles B., xxx-xx-xxxx
Parker, Walter A., xxx-xx-xxxx
Parkerson, Warren O., III, xxx-xx-xxxx
Parkinson, Michael J., xxx-xx-xxxx
Parks, Richard J., xxx-xx-xxxx
Parks, Watson C., Jr., xxx-xx-xxxx
Parlatore, Carl P., xxx-xx-xxxx
Parmentier, Michael A., xxx-xx-xxxx
Parr, Michael J., xxx-xx-xxxx
Parsons, James H., xxx-xx-xxxx
Parsons, Rick N., xxx-xx-xxxx
Pate, Lowell G., xxx-xx-xxxx
Paterson, Daniel E., xxx-xx-xxxx
Patrick, David W., xxx-xx-xxxx
Patterson, Arthur T., xxx-xx-xxxx
Patterson, Douglas A., xxx-xx-xxxx
Patterson, Gerald G., xxx-xx-xxxx
Patterson, Larry, xxx-xx-xxxx
Patterson, Marshall B., xxx-xx-xxxx
Patterson, Ronald C., xxx-xx-xxxx
Patterson, Vernon G., xxx-xx-xxxx
Paul, Larry E., xxx-xx-xxxx
Pavlow, Leo, xxx-xx-xxxx
Payne, Gary G., xxx-xx-xxxx
Payne, William A., xxx-xx-xxxx
Pearson, David K., xxx-xx-xxxx
Pearson, Walter R., xxx-xx-xxxx
Peavy, James A., Jr., xxx-xx-xxxx
Peck, Allan L., xxx-xx-xxxx
Peck, Robert A., xxx-xx-xxxx
Peck, Ronald L., xxx-xx-xxxx
Pecoul, William E., xxx-xx-xxxx
Peller, Rudolph M., Jr., xxx-xx-xxxx
Peksens, Rudolf F., xxx-xx-xxxx
Pelletier, Robert C. M., xxx-xx-xxxx
Pendergrass, James H., xxx-xx-xxxx
Peoples, Robert J., xxx-xx-xxxx
Perrine, Merle D., xxx-xx-xxxx
Perry, Glenn M., II, xxx-xx-xxxx
Perry, Joseph H., xxx-xx-xxxx
Perry, Robert J., xxx-xx-xxxx
Perry, William R., Jr., xxx-xx-xxxx
Peshut, Samuel, xxx-xx-xxxx
Peters, John C., xxx-xx-xxxx
Petersen, Edward A., III, xxx-xx-xxxx
Petersen, John W., xxx-xx-xxxx
Peterson, Daniel R., xxx-xx-xxxx
Peterson, Donald L., xxx-xx-xxxx
Peterson, George D., xxx-xx-xxxx
Peterson, Harvey E., xxx-xx-xxxx
Peterson, Robert G., xxx-xx-xxxx
Petrazio, Joseph A., Jr., xxx-xx-xxxx
Pettenger, John F., Jr., xxx-xx-xxxx
Pfaff, Karl J., Jr., xxx-xx-xxxx
Pfanner, John A., III, xxx-xx-xxxx
Pfeiffer, Jerry R., xxx-xx-xxxx
Phillippi, Stephen W., xxx-xx-xxxx
Phillips, David C., xxx-xx-xxxx
Phillips, Richard J., Jr., xxx-xx-xxxx
Phillips, Thomas D., xxx-xx-xxxx
Phillips, Weldon P., xxx-xx-xxxx
Pierce, Roger G., Jr., xxx-xx-xxxx
Pierce, Warren L., xxx-xx-xxxx
Piermarini, Dennis A., xxx-xx-xxxx
Pigford, Vincent S., xxx-xx-xxxx
Pirkle, James M., xxx-xx-xxxx
Pitocco, Richard, xxx-xx-xxxx
Pittman, Harry B., xxx-xx-xxxx
Platt, James R., xxx-xx-xxxx
Plummer, Duane H., xxx-xx-xxxx
Plump, Wayne E., xxx-xx-xxxx
Pluta, John C., xxx-xx-xxxx
Polk, Charles J., xxx-xx-xxxx
Pomeroy, Frederick J., xxx-xx-xxxx
Pool, Walter C., xxx-xx-xxxx
Pope, Arnold B., xxx-xx-xxxx
Popp, Bernard J., xxx-xx-xxxx
Porter, John C., xxx-xx-xxxx
Porter, Stephen G., xxx-xx-xxxx
Porterfield, Samuel D., xxx-xx-xxxx
Porth, Andrew G., xxx-xx-xxxx
Posey, James N., xxx-xx-xxxx
Possehl, Wayne A., xxx-xx-xxxx
Potter, Gary C., xxx-xx-xxxx
Potter, Roland K., xxx-xx-xxxx
Potts, James B., xxx-xx-xxxx
Powell, Richard G., xxx-xx-xxxx
Powell, Robert D., xxx-xx-xxxx
Power, Thomas M., xxx-xx-xxxx
Powers, Aubrey P., Jr., xxx-xx-xxxx
Pratchett, Terry A., xxx-xx-xxxx
Pratt, Thomas E., xxx-xx-xxxx
Predovich, Larry A., xxx-xx-xxxx
Price, Donald R., xxx-xx-xxxx
Price, James E., Jr., xxx-xx-xxxx
Prince, Cecil D., xxx-xx-xxxx
Procek, Michael E., Jr., xxx-xx-xxxx
Proctor, Claude O., Jr., xxx-xx-xxxx
Proefrock, Myron C., xxx-xx-xxxx
Ptachik, Christopher, xxx-xx-xxxx
Pugh, Charles F., xxx-xx-xxxx
Pulley, Donald C., xxx-xx-xxxx
Purcell, William A., xxx-xx-xxxx
Purkiss, Charles T., xxx-xx-xxxx
Puryear, Franklin G., xxx-xx-xxxx
Pusch, Donald E., xxx-xx-xxxx
Pyle, James L., xxx-xx-xxxx
Quigley, James C., xxx-xx-xxxx
Rabata, Francis D., xxx-xx-xxxx
Raggio, Robert F., xxx-xx-xxxx
Rahn, Larry B., xxx-xx-xxxx
Rahter, William R., xxx-xx-xx...
Raineri, Edwin A., xxx-xx-xxxx
Raino, Paul D., xxx-xx-xxxx
Raises, John W., xxx-xx-xxxx
Ramsdell, Charles I., Jr., xxx-xx-xxxx
Randall, Thomas E., xxx-xx-xxxx
Rankin, Michael D., xxx-xx-xxxx
Rankin, Richard C., xxx-xx-xxxx
Rankin, William B., xxx-xx-xxxx
Ransdell, Edward W., Jr., xxx-xx-xxxx
Rapuzzi, Donald A., xxx-xx-xxxx
Rasmussen, Howard N., xxx-xx-xxxx
Rasmussen, Richard A., xxx-xx-xxxx
Rasmusson, William L., xxx-xx-xxxx
Rathje, Norman F., xxx-xx-xxxx
Rauch, Stanley A., xxx-xx-xxxx
Rausch, Vincent L., xxx-xx-xxxx
Rawson, Danny L., xxx-xx-xxxx
Ray, Clarence W., xxx-xx-xxxx
Ray, Patrick R., xxx-xx-xxxx
Raz, Jerry E., Jr., xxx-xx-xxxx
Rector, Gene L., xxx-xx-xxxx
Redifer, Eric L., xxx-xx-xxxx
Reed, Albert T., xxx-xx-xxxx
Reeves, James I., xxx-xx-xxxx
Register, Patrick S., xxx-xx-xxxx
Rehkop, James L., xxx-xx-xxxx
Reid, Howard S., Jr., xxx-xx-xxxx
Reid, Wilson D., Jr., xxx-xx-xxxx
Reinhard, Kenneth O., xxx-xx-xxxx
Reksten, Errol L., xxx-xx-xxxx
Remcho, Vincent T., Jr., xxx-xx-xxxx
Repass, William F., xxx-xx-xxxx
Rephlo, John R., xxx-xx-xxxx
Reston, Russell T., xxx-xx-xxxx
Reuber, David B., xxx-xx-xxxx
Revels, William R., III, xxx-xx-xxxx
Reyer, Charles A., Jr., xxx-xx-xxxx
Reynolds, Howard L., xxx-xx-xxxx
Rhame, Robert L., xxx-xx-xxxx
Rhoads, Frank D., xxx-xx-xxxx
Rhodes, Joseph L., Jr., xxx-xx-xxxx
Rhodes, Nick, Jr., xxx-xx-xxxx
Rhynard, Wayne E., Jr., xxx-xx-xxxx
Rice, James W., xxx-xx-xxxx
Rich, Claude A., Jr., xxx-xx-xxxx
Rich, Danny F., xxx-xx-...
Richards, Roland C., xxx-xx-xxxx
Richardson, Charles L., xxx-xx-xxxx
Richardson Kenneth R., xxx-xx-xxxx
Richardson, Mercer B., xxx-xx-xxxx
Richmond, David W., Jr., xxx-xx-xxxx
Rickenbach, David R., xxx-xx-xxxx
Rickert, David E., xxx-xx-xxxx
Rickert, Wayne L., Jr., xxx-xx-xxxx
Riedler, James A., xxx-xx-xxxx
Riemondy, David A., xxx-xx-xxxx
Rierson, James W., Jr., xxx-xx-xxxx
Riley, William J., xxx-xx-xxxx
Rimicci, Jeffrey T., xxx-xx-xxxx
Rinehart, John M., xxx-xx-xxxx
Rinewalt, Randall M., xxx-xx-xxxx
Riney, Freddy H., xxx-xx-xxxx
Rinklin, Russell A., Jr., xxx-xx-xxxx
Rish, Wyman M., xxx-xx-xxxx
Rising, Eddie J., II, xxx-xx-xxxx
Ritchey, Milton W., xxx-xx-xxxx
Ritt, Kenneth R., xxx-xx-xxxx
Riva, Denis P., xxx-xx-xxxx
Rivera, Joseph F., Jr., xxx-xx-xxxx
Roadruck, Max J., Jr., xxx-xx-xxxx
Roark, James M., xxx-xx-xxxx
Robbins, David L., xxx-xx-xxxx
Roberts, Charles E., Jr., xxx-xx-xxxx
Roberts, James N., xxx-xx-xxxx
Roberts, Kenneth R., xxx-xx-xxxx
Roberts, Laurence D., xxx-xx-xxxx
Robertson, Hallie E., xxx-xx-xxxx
Robertson, Thomas A., Jr., xxx-xx-xxxx
Robillard, Robert E., Jr., xxx-xx-xxxx
Robinson, Ray G., xxx-xx-xxxx
Robson, John E., xxx-xx-xxxx
Roden, Michael W., xxx-xx-xxxx
Roderick, Robert D., xxx-xx-xxxx
Rodgers, Francis X., xxx-xx-xxxx
Rodrigues, Fernando N., xxx-xx-xxxx
Rodway, Loren A., xxx-xx-...
Roellig, Richard H., xxx-xx-xx...
Roemer, Richard D., xxx-xx-xxxx
Roetter, Charles W. W., xxx-xx-xxxx
Rogers, Floyd V., Jr., xxx-xx-xxxx
Rohowsky, George, xxx-xx-xxxx
Rohrer, Thomas H., xxx-xx-xxxx
Roman, Robert J., xxx-xx-xxxx
Romanchek, James J., xxx-xx-xxxx
Rosa, James W., xxx-xx-xxxx
Rose, Charles M., Jr., xxx-xx-xxxx
Rose, Floyd E., Jr., xxx-xx-xxxx
Rosenberg, Roger E., xxx-xx-xxxx
Rosenquist, Parker W., xxx-x...
Ross, Alan A., xxx-xx-xxxx
Ross, Albert E., xxx-xx-xxxx
Ross, Donald H., xxx-xx-xxxx
Rossi, Robert A., xxx-xx-xxxx
Roth, Dale B., xxx-xx-xxxx
Round, Eugene L., xxx-xx-xxxx
Roundtree, William J., xxx-xx-xxxx
Roush, Milford T., Jr., xxx-xx-...
Rousseau, Kenneth P., xxx-xx-xxxx
Rowcliffe, Paul H., xxx-xx-xxxx
Rowden, William A., xxx-xx-xxxx
Rowland, Larry A., xxx-xx-xxxx
Rowley, John M., xxx-xx-xxxx
Roy, Daniel L., xxx-xx-xxxx
Rudnick, Simon H., xxx-xx-xxxx
Ruester, William J., xxx-xx-xxxx
Rumble, Susan A., xxx-xx-xxxx
Rumble, Wesley L., xxx-xx-xxxx
Runkle, Marty T., xxx-xx-xxxx
Runner, Thomas A., xxx-xx-xxxx
Ruple, Samuel L., xxx-xx-xxxx
Ruppar, Allan W., xxx-xx-xxxx
Ruprecht, Ray E., xxx-xx-xxxx
Rushing, Robert G., xxx-xx-xxxx
Russ, Robert W., xxx-xx-xxxx
Russell, John J., xxx-xx-xxxx

Russell, Thaddeus T., Jr., xxx-xx-xxxx
Russo, Stephen J., xxx-xx-xxxx
Ryan, William J., III, xxx-xx-xxxx
Ryanczak, Michael F., xxx-xx-xxxx
Rybczyk, John, xxx-xx-xxxx
Saczynski, Jerome J., xxx-xx-xxxx
Sakaldasis, George J., xxx-xx-xxxx
Sakamoto, Gerald H., xxx-xx-xxxx
Sakuma, Gary S., xxx-xx-xxxx
Salat, Frank E., xxx-xx-xxxx
Salsbury, Leonard D., xxx-xx-xxxx
Sams, Ronald W., xxx-xx-xxxx
Sanchez, Diego, Jr., xxx-xx-xxxx
Sanders, Charles T., xxx-xx-xxxx
Sanders, Jay H., xxx-xx-xxxx
Sanders, Milton R., xxx-xx-xxxx
Sandquist, Karen L., xxx-xx-xxxx
Sandrock, John H., xxx-xx-xxxx
Santarelli, Eugene D., xxx-xx-xxxx
Sapp, Carey D., Jr., xxx-xx-xxxx
Sarff, Charles M., xxx-xx-xxxx
Sargent, Michael A., xxx-xx-xxxx
Sarkissian, John M., xxx-xx-xxxx
Sassman, Clifford D., xxx-xx-xxxx
Satterwhite, Willard N., Jr., xxx-xx-xxxx
Sattler, Dennis H., xxx-xx-xxxx
Sauls, David W., xxx-xx-xxxx
Savage, William J., xxx-xx-xxxx
Saxe, William E., xxx-xx-xxxx
Schaeffer, Roy C., xxx-xx-xxxx
Schaer, Rodney J., xxx-xx-xxxx
Schafer, John C., xxx-xx-xxxx
Schauffele, Walter W., xxx-xx-xxxx
Scheck, Ronald R., xxx-xx-xxxx
Scheiber, Edmund M., Jr., xxx-xx-xxxx
Scheithauer, Arthur C., Jr., xxx-xx-xxxx
Schenkel, James F., xxx-xx-xxxx
Scherck, Paul E., Jr xxx-xx-xxxx
Scherschel, Frederick E., xxx-xx-xxxx
Schmidt, Michael F., xxx-xx-xxxx
Schmidt, Steven C., xxx-xx-xxxx
Schmidt, Terry A., xxx-xx-xxxx
Schneider, Bernard J., xxx-xx-xxxx
Schneider, Eric M., xxx-xx-xxxx
Schnittger, William F., xxx-xx-xxxx
Schnurr, Jack C., xxx-xx-xxxx
Schrecker, Walter N., xxx-xx-xxxx
Schrimpf, George E., xxx-xx-xxxx
Schull, Robert R., xxx-xx-xxxx
Schulte, Richard J., xxx-xx-xxxx
Schultz, Dennis L., xxx-xx-xxxx
Schweitzer, Kenneth L., xxx-xx-xxxx
Schwindle, James M., xxx-xx-xxxx
Scott, James K., xxx-xx-xxxx
Scott, Nathan L., xxx-xx-xxxx
Scott, Roger D., xxx-xx-xxxx
Seagraves, Harold O., xxx-xx-xxxx
Seaman, Frederick, xxx-xx-xxxx
Seavers, Richard A., xxx-xx-xxxx
Sechrest, Walter S., xxx-xx-xxxx
Segar, Bryce D., xxx-xx-xxxx
Segars, Robert V., III, xxx-xx-xxxx
Seibel, Michael F., xxx-xx-xxxx
Seibel, Michael W., xxx-xx-xxxx
Seifert, Lee R., Jr., xxx-xx-xxxx
Seiler, Peter F., xxx-xx-xxxx
Sellers, Benjamin W., Jr., xxx-xx-xxxx
Sells, James R., xxx-xx-xxxx
Senter, Douglas M., xxx-xx-xxxx
Serrill, James D., xxx-xx-xxxx
Sessum, Joseph L., xxx-xx-xxxx
Sevigny, Norman J., xxx-xx-xxxx
Sewell, James T., xxx-xx-xxxx
Shafer, Robert E., II, xxx-xx-xxxx
Shafer, Robert J., xxx-xx-xxxx
Shanafelt, Gary L., xxx-xx-xxxx
Shannon, Lemuel P., xxx-xx-xxxx
Sharer, Bruce W., xxx-xx-xxxx
Sharkey, David J., xxx-xx-xxxx
Sharpless, David W., xxx-xx-xxxx
Shaw, Jerry A., xxx-xx-xxxx
Shaw, William C., Jr., xxx-xx-xxxx
Sheffield, Charles A., xxx-xx-xxxx
Sheffler, Fred W., xxx-xx-xxxx
Shelton, Jack W., Jr., xxx-xx-xxxx
Shelton, Lee M., II, xxx-xx-xxxx
Shelton, Randell W., xxx-xx-xxxx
Shepard, William K., xxx-xx-xxxx
Shepherd, John L., xxx-xx-xxxx
Sheppard, Robert A., xxx-xx-xxxx
Sherman, Howard C., xxx-xx-xxxx
Shibuya, Calvin H., xxx-xx-xxxx
Shiner, John F., xxx-xx-xxxx
Shipman, Jerry W., xxx-xx-xxxx
Shirley, Graham E., xxx-xx-xxxx
Shriber, Jack R., xxx-xx-xxxx
Shugars, Jerry G., xxx-xx-xxxx
Shuler, Dwight M., xxx-xx-xxxx
Shulstad, Raymond A., xxx-xx-xxxx
Shultis, Donald C., Jr., xxx-xx-xxxx
Shutak, Michael D., xxx-xx-xxxx
Shutt, James A., xxx-xx-xxxx
Siau, Robert M., xxx-xx-xxxx
Sickler, Ronald E., xxx-xx-xxxx
Sidwell, Larry W., xxx-xx-xxxx
Siebert, John V., xxx-xx-xxxx
Sifford, W. C., xxx-xx-xxxx
Silver, Nelson D., xxx-xx-xxxx
Simmons, Delvin G., xxx-xx-xxxx
Simmons, Mark O., xxx-xx-xxxx
Simmons, Michael W., xxx-xx-xxxx
Simpson, James M., xxx-xx-xxxx
Simpson, Robert D., xxx-xx-xxxx
Sims, David K., xxx-xx-xxxx
Sims, Joseph E., xxx-xx-xxxx
Sims, Robert G., xxx-xx-xxxx
Sinclair, Timothy A., xxx-xx-xxxx
Sizemore, Robert C., xxx-xx-xxxx
Skabo, Lynn P., xxx-xx-xxxx
Skees, Robert D., xxx-xx-xxxx
Skipp, Robert, xxx-xx-xxxx
Skokan, James R., xxx-xx-xxxx
Skora, Wayne P., xxx-xx-xxxx
Slaughter, Claude B., Jr., xxx-xx-xxxx
Slavin, Thomas J., xxx-xx-xxxx
Sledge, James H., xxx-xx-xxxx
Sleighter, Donald G., xxx-xx-xxxx
Sloop, Gary M., xxx-xx-xxxx
Sloyer, Wayne E., xxx-xx-xxxx
Sluis, James K., xxx-xx-xxxx
Small, Harvey B., xxx-xx-xxxx
Small, Joseph L., xxx-xx-xxxx
Small, Kenneth L., xxx-xx-xxxx
Smalley, John H., xxx-xx-xxxx
Smith, Ardie K., xxx-xx-xxxx
Smith, Barry L., xxx-xx-xxxx
Smith, Benjamin D., xxx-xx-xxxx
Smith, Daniel M., xxx-xx-xxxx
Smith, David B., xxx-xx-xxxx
Smith, David K., xxx-xx-xxxx
Smith, Dennis L., xxx-xx-xxxx
Smith, Gordon M., xxx-xx-xxxx
Smith, Harold A., xxx-xx-xxxx
Smith, Harvey M., xxx-xx-xxxx
Smith, James E., xxx-xx-xxxx
Smith, Jan R., xxx-xx-xxxx
Smith, Larry P., xxx-xx-xxxx
Smith, Lee J., xxx-xx-xxxx
Smith, Lee T., xxx-xx-xxxx
Smith, Peter S., xxx-xx-xxxx
Smith, Ray C., xxx-xx-xxxx
Smith, Raymond, xxx-xx-xxxx
Smith, Robert A., xxx-xx-xxxx
Smith, Robert J., xxx-xx-xxxx
Smith, Ronald E., xxx-xx-xxxx
Smith, Ronald L., xxx-xx-xxxx
Smith, Thomas F., xxx-xx-xxxx
Smith, Troy J., xxx-xx-xxxx
Smith, William D., xxx-xx-xxxx
Smith, William F., xxx-xx-xxxx
Snell, Cecil L., xxx-xx-xxxx
Snell, Linwood H., Jr., xxx-xx-xxxx
Snider, Jerry C., xxx-xx-xxxx
Snider, John J., xxx-xx-xxxx
Snider, Victor V., xxx-xx-xxxx
Snyder, Eric B., xxx-xx-xxxx
Snyder, Kenneth J., xxx-xx-xxxx
Snyder, Robert E., xxx-xx-xxxx
Snyder, Roger L., xxx-xx-xxxx
Sobotka, Francis E., xxx-xx-xxxx
Soeda, Calvin S., xxx-xx-xxxx
Soehnen, Rainer, xxx-xx-xxxx
Sokol, Thomas C., xxx-xx-xxxx
Solak, Walter L., Jr., xxx-xx-xxxx
Solee, Richard D., xxx-xx-xxxx
Soliz, Peter xxx-xx-xxxx
Sollenberger, Stephen S., xxx-xx-xxxx
Solomonson, Clifford J., xxx-xx-xxxx
Sorum, David R., xxx-xx-xxxx
Sparks, James W., xxx-xx-xxxx
Spears, James R., xxx-xx-xxxx
Spencer, Lester L., xxx-xx-xxxx
Spencer, Paul C., xxx-xx-xxxx
Spires, David N., xxx-xx-xxxx
Spitler, Jack B., xxx-xx-xxxx
Spittler, Thomas J., xxx-xx-xxxx
Spohn, Verner J., Jr., xxx-xx-xxxx
Spotts, John C., xxx-xx-xxxx
Spagg, Merwin E., xxx-xx-xxxx
Sprole, William T., III, xxx-xx-xxxx
Sproul, Lyle A., xxx-xx-xxxx
Spurgeon, Jimmy H., xxx-xx-xxxx
Squiers, Harry R., xxx-xx-xxxx
Squires, Ralph H., Jr., xxx-xx-xxxx
Stadler, Frank W., xxx-xx-xxxx
Stafford, Millard D., Jr., xxx-xx-xxxx
Stallard, Leroy, xxx-xx-xxxx
Stamp, John M., xxx-xx-xxxx
Stampfli, Robert G., xxx-xx-xxxx
Stanford, Dennis G., xxx-xx-xxxx
Stangel, James E., xxx-xx-xxxx
Stanley, Dennis J., xxx-xx-xxxx
Stanley, James M., xxx-xx-xxxx
Stanley, Rowland D., xxx-xx-xxxx
Stansbury, Walt P. E., xxx-xx-xxxx
Starnell, Peter J., xxx-xx-xxxx
Starr, William, xxx-xx-xxxx
Staub, Lester E., xxx-xx-xxxx
Steadman, Eugene, Jr., xxx-xx-xxxx
Stears, Howard J., xxx-xx-xxxx
Stecklow, John E., xxx-xx-xxxx
Steele, Vernon F., xxx-xx-xxxx
Steen, Roger G., xxx-xx-xxxx
Steffen, Ronald R., xxx-xx-xxxx
Stein, Paul E., xxx-xx-xxxx
Stein, Ronald E., xxx-xx-xxxx
Steinfeld, James H., xxx-xx-xxxx
Stephen, Stephen R., xxx-xx-xxxx
Stephens, Boyd W., xxx-xx-xxxx
Stephens, Brian B., xxx-xx-xxxx
Stephens, Freya L., xxx-xx-xxxx
Stephens, Robert H., II, xxx-xx-xxxx
Stephenson, Lee A., xxx-xx-xxxx
Sternberg, Charles D., xxx-xx-xxxx
Stevens, Dale A., xxx-xx-xxxx
Stevens, Emanual N., Jr., xxx-xx-xxxx
Stevens, Harvey S., xxx-xx-xxxx
Stevens, Richard M., xxx-xx-xxxx
Stevenson, Harry C., xxx-xx-xxxx
Stevenson, Jeffrey R., xxx-xx-xxxx
Stewart, Joseph W., xxx-xx-xxxx
Stewart, Wendell L., xxx-xx-xxxx
Stiebohr, Kenneth A., xxx-xx-xxxx
Stinson, Philip D., xxx-xx-xxxx
Stokholm, Paul G., xxx-xx-xxxx
Stone, Francis X., Jr., xxx-xx-xxxx
Stone, John W., Jr., xxx-xx-xxxx
Stone, Michael C., xxx-xx-xxxx
Stone, William M., xxx-xx-xxxx
Storer, Harold S., Jr., xxx-xx-xxxx
Stowe, Gerry F., xxx-xx-xxxx
St. Pierre, Wendell W., xxx-xx-xxxx
Strahl, Douglas F., xxx-xx-xxxx
Strain, Charles R., xxx-xx-xxxx
Strand, David W., xxx-xx-xxxx
Strong, Frederick W., III, xxx-xx-xxxx
Strunk, David R., xxx-xx-xxxx
Struthers, Allen A., Jr., xxx-xx-xxxx
Strzemieczny, Alan L., xxx-xx-xxxx
Stuart, David M., xxx-xx-xxxx
Stuart, John E., xxx-xx-xxxx
Stuart, William O., III, xxx-xx-xxxx
Stuckey, Roy G., xxx-xx-xxxx
Studdard, Gary L., xxx-xx-xxxx
Sturgeon, Joseph S., Jr., xxx-xx-xxxx
Stutsman, Frederick C., xxx-xx-xxxx
Stutts, Charles B., Jr., xxx-xx-xxxx
Suerken, John F., xxx-xx-xxxx
Sugg, Joseph P., xxx-xx-xxxx
Sulkin, Arthur B., xxx-xx-xxxx
Sullivan, Lawrence G., xxx-xx-xxxx
Summers, Larry E., xxx-xx-xxxx
Sumter, Leonard Jr., xxx-xx-xxxx
Sunderland, Harry R., xxx-xx-xxxx
Sundseth, Dennis A., xxx-xx-xxxx
Suro, George A., xxx-xx-xxxx

Sutherland Mont E., xxx-xx-xxxx
Svoboda, Joseph G., xxx-xx-xxxx
Swaney, Robert W., xxx-xx-xxxx
Swanson, John G., xxx-xx-xxxx
Swartz, Frank A., xxx-xx-xxxx
Swartz, Steven L., xxx-xx-xxxx
Sweet, Robert B., xxx-xx-xxxx
Swenson, Stanley B., xxx-xx-xxxx
Swezey, William D. B., xxx-xx-xxxx
Swihura, Anton G., xxx-xx-xxxx
Swilley, Mason R., Jr., xxx-xx-xxxx
Swinyard, James W., xxx-xx-xxxx
Swisher, William S., xxx-xx-xxxx
Sylvia, Allen L., xxx-xx-xxxx
Szczypien, John Jr., xxx-xx-xxxx
Tackett, Ronald G., xxx-xx-xxxx
Taiclet, Robert, xxx-xx-xxxx
Talcott, Ronald T., xxx-xx-xxxx
Tallent, Rex A., Jr., xxx-xx-xxxx
Talley, Howard B., xxx-xx-xxxx
Taravella, Philip R., xxx-xx-xxxx
Tarzier, Laimon T., xxx-xx-xxxx
Tate, Thomas R., III, xxx-xx-xxxx
Tattini, James G., xxx-xx-xxxx
Tavernise, Emilio G., xxx-xx-xxxx
Taylor, Charles T., xxx-xx-xxxx
Taylor, Russell A., xxx-xx-xxxx
Taylor, Ulysses S., III, xxx-xx-xxxx
Taylor, Wade A., Jr., xxx-xx-xxxx
Taylor, William R., xxx-xx-xxxx
Taysom, Michael S., xxx-xx-xxxx
Teak, James W., xxx-xx-xxxx
Teal, Jesse R., Jr., xxx-xx-xxxx
Tebbe, Stanley T., xxx-xx-xxxx
Tedrow, Floyd K., xxx-xx-xxxx
Teetz, Connie O., xxx-xx-xxxx
Teilborg, Edwin R., xxx-xx-xxxx
Temple, John R., xxx-xx-...
Tencza, Joseph J., Jr., xxx-xx-xxxx
Terrell, Larry L., xxx-xx-xxxx
Terrell, Royce W., xxx-xx-xxxx
Teske, Clayton H., xxx-xx-xxxx
Teske, John A., xxx-xx-xxxx
Thacker, Brian T., xxx-xx-xxxx
Thames, James D., xxx-xx-xxxx
Thomas, Bredette C., Jr., xxx-xx-xxxx
Thomas, David R., xxx-xx-xxxx
Thomas, Donald J. Sr., xxx-xx-xxxx
Thomas, Jon R., xxx-xx-xxxx
Thomas, William A., xxx-xx-xxxx
Thompson, Albert T., xxx-xx-xxxx
Thompson, Donald Y., xxx-xx-xxxx
Thompson, Earl F., xxx-xx-xxxx
Thompson, Elmer L., xxx-xx-xxxx
Thompson, James D., xxx-xx-xxxx
Thompson, Link, xxx-xx-xxxx
Thompson, Paul L., II, xxx-xx-xxxx
Thompson, Richard G., Jr., xxx-xx-xxxx
Thompson, Robert H., xxx-xx-xxxx
Thompson, Ronald L., xxx-xx-xxxx
Thompson, Russell F., xxx-xx-xxxx
Thoreson, Paul T., xxx-xx-xxxx
Thorn, Michael E., xxx-xx-xxxx
Thrift, Robert J., xxx-xx-xxxx
Tilley, James W. II., xxx-xx-xxxx
Tillman, Nolan V., xxx-xx-xxxx
Titus, James R. W., xxx-xx-xxxx
Tolar, James K., xxx-xx-xxxx
Tolson, Billy E., xxx-xx-xxxx
Tolson, Billy E., xxx-xx-xxxx
Tone, Robert L., xxx-xx-xxxx
Toney, David H., xxx-xx-xxxx
Tooley, Edward S., xxx-xx-xxxx
Torkelson, Truman R., xxx-xx-xxxx
Toth, Paul J., xxx-xx-xxxx
Touslee, Richard L., xxx-xx-xxxx
Tower, Thomas R., xxx-xx-xxxx
Towns, Oliver D., xxx-xx-xxxx
Townsend, Gene E., xxx-xx-xxxx
Townsend, James N., xxx-xx-xxxx
Townsend, Lawrence W., xxx-xx-xxxx
Tracey, William T., xxx-xx-xxxx
Tracy, Charles H., xxx-xx-xxxx
Tradelius, Paul C., xxx-xx-xxxx
Traeger, James C., xxx-xx-xxxx
Trease, Kenneth R., xxx-xx-xxxx
Treger, Herbert L., xxx-xx-xxxx
Trembour, William F., xxx-xx-xxxx
Trobaugh, James W., xxx-xx-xxxx
Trout, William L., xxx-xx-xxxx
Trubshaw, Sonya S., xxx-xx-xxxx
Tubbs, Ronald W., xxx-xx-xxxx
Tucker, George L., Jr., xxx-xx-xxxx
Tucker William L., xxx-xx-xxxx
Tudor, Sky A., xxx-xx-xxxx
Turner Leo K., Jr., xxx-xx-xxxx
Turner, Thomas M., xxx-xx-xxxx
Tuttle Ralph H., xxx-xx-xxxx
Tway, Duane C., Jr., xxx-xx-xxxx
Tyler, Paul E., xxx-xx-xxxx
Tymitz, George P., xxx-xx-xxxx
Updyke, Junius E., xxx-xx-xxxx
Usrey, Jessie B., xxx-xx-xxxx
Utley, Michael K., xxx-xx-xxxx
Uyak, Herman W., Jr., xxx-xx-xxxx
Vacker, Robert J., xxx-xx-xxxx
Vadney, Herbert R., xxx-xx-xxxx
Vairo, Joseph M., xxx-xx-xxxx
Valentine, Jerry G., xxx-xx-xxxx
Valine, Ronald J., xxx-xx-xx...
Vance, Jane H., xxx-xx-xxxx
Vance, William G., xxx-xx-xxxx
Vandeputte, Gary G., xxx-xx-xxxx
Vandoren, Earl R., Jr., xxx-xx-xxxx
Vanduyn, John E. Jr., xxx-xx-xxxx
Vangilder, Walter L., xxx-xx-xx...
Vanguilder, George G., xxx-xx-xxxx
Vanmeter, William C., xxx-xx-xxxx
Vanmierlo, Ronald L., xxx-xx-xxxx
Vantiem, George A., xxx-xx-xxxx
Vanuk, Daniel A., xxx-xx-xxxx
Vanvalin, Gary A., xxx-xx-xxxx
Vanzee, Lloyd E., xxx-xx-xxxx
Varner, Orville E., xxx-xx-xxxx
Varner, Stuart M., xxx-xx-xx...
Vasser, William C., Jr., xxx-xx-xxxx
Vaught, Johnnie L., xxx-xx-xxxx
Veach, Charles L., xxx-xx-xxxx
Venanzi, Gerald S., xxx-xx-xxxx
Venezia, Robert A., xxx-xx-xxxx
Vercruyse, Roger J., xxx-xx-xxxx
Vesely, David L., xxx-xx-xxxx
Vetter, Dean R., xxx-xx-xxxx
Veve, Rafael A., xxx-xx-xxxx
Veverka, Joanne S., xxx-xx-xxxx
Villarreal, Lorenzo II, xxx-xx-x...
Viney, Daniel C., xxx-xx-xxxx
Vining, Terry W., xxx-xx-xxxx
Viotti, Paul R., xxx-xx-xxxx
Vogel, Carl J., xxx-xx-xxxx
Vogt, Richard J., xxx-xx-xxxx
Voigt, David A., xxx-xx-xxxx
Vollmar, Herbert A., xxx-xx-xxxx
Vongunten, William H., xxx-xx-xxxx
Vraa, Ronald D., xxx-xx-xxxx
Vrooman, Roger M., xxx-xx-xxxx
Wacker, Jerry A., xxx-xx-xxxx
Wacker, William L., xxx-xx-xxxx
Waddell, Castner R., xxx-xx-xxxx
Wade, Paul R., Jr., xxx-xx-xxxx
Wagoner, Donald L., xxx-xx-xxxx
Wahineokai, Wayne W., xxx-xx-xxxx
Wales, Edwin A., xxx-xx-xxxx
Walker, Donald R., xxx-xx-xxxx
Walker, Eddie, xxx-xx-xxxx
Walker, Richard R., xxx-xx-xxxx
Walker, Robert A., xxx-xx-xxxx
Walker, Roger E., Jr., xxx-xx-xxxx
Walker, Ronald L., xxx-xx-xxxx
Walker, Thomas W., xxx-xx-xxxx
Wallace, Richard C., xxx-xx-xxxx
Wallace, Wayne L., xxx-xx-xxxx
Waller, Howard P., xxx-xx-xxxx
Waller, James E., Jr., xxx-xx-xxxx
Wallick, Robert L., Jr., xxx-xx-xxxx
Walls, Barry R., xxx-xx-xxxx
Walls, Charles O., III, xxx-xx-xxxx
Walsh, Brian M., xxx-xx-xxxx
Walsh, Thomas B., xxx-xx-xxxx
Walters, Neal R., xxx-xx-xxxx
Waltman, Denzel D., Jr., xxx-xx-xxxx
Walton, Juanita I. H., xxx-xx-xxxx
Wantzloeben, Kenneth L., xxx-xx-xxxx
Ward, David C., xxx-xx-xxxx
Ward, Richard P., xxx-xx-xxxx
Ward, Thomas J., xxx-xx-xxxx
Ward, Wendell H., xxx-xx-xxxx
Wardle, John R., xxx-xx-xxxx
Ware, Russell L., xxx-xx-xxxx
Warfel, Joseph R., xxx-xx-xxxx
Warner, Ralph E. II, xxx-xx-xxxx
Warren, Lee M., xxx-xx-xxxx
Warren, Thomas N., xxx-xx-xxxx
Waters, George H., xxx-xx-xxxx
Waxman, Richard L., xxx-xx-xxxx
Wayne, John B., xxx-xx-xxxx
Weaver, John V. O., Jr., xxx-xx-xxxx
Weaver, Kenneth A., xxx-xx-xxxx
Weaver, Thomas M., xxx-xx-xxxx
Webb, James G., xxx-xx-xxxx
Weekes, Wallace C., xxx-xx-xxxx
Weeks. Martin W., Jr., xxx-xx-xxxx
Wege, Ralph, xxx-xx-xxxx
Wegner, Lavern J., xxx-xx-xxxx
Weidman, James D., xxx-xx-xxxx
Weihe, Tyson E., xxx-xx-xxxx
Weihing, Floyd T., Jr., xxx-xx-xxxx
Weinman, Arnold L., xxx-xx-xxxx
Weirtz, Dean E., xxx-xx-xxxx
Weisert, Donald H., xxx-xx-xxxx
Weiss, Daniel H., xxx-xx-xxxx
Weisweaver, Thomas R., xxx-xx-xxxx
Welch, Orion J., Jr., xxx-xx-xxxx
Wells, Frank H., xxx-xx-xxxx
Wells, Harold T., xxx-xx-xxxx
Wendlandt, Richard T., xxx-xx-xxxx
Wendling, Gerald A., xxx-xx-xxxx
Wendrock, Robert F., Jr., xxx-xx-xxxx
Wengert, Paul F., xxx-xx-xxxx
Weninger, Ronald M., xxx-xx-xxxx
Werling, Wesley T., xxx-xx-xxxx
Wernle, Charles F., II, xxx-xx-xxxx
West, Larry K., xxx-xx-xxxx
West, Lloyd A., xxx-xx-xxxx
West, Walter T., xxx-xx-xxxx
Westermeier, Franz E., xxx-xx-xxxx
Wetzel, Kenneth R., xxx-xx-xxxx
Weyker, Donald G., xxx-xx-xxxx
Wheeler, Henry A., xxx-xx-xxxx
Wheeler, Leonard B., Jr., xxx-xx-xxxx
Wheeler, Michael O., xxx-xx-xxxx
Whipple, George N., xxx-xx-xxxx
Whisnant, Cleatus G., xxx-xx-xxxx
White, Edward C., Jr., xxx-xx-xxxx
White, James E., xxx-xx-xx...
White, James P., xxx-xx-xxxx
White, Kirby J., xxx-xx-xxxx
White, Mark A., xxx-xx-xxxx
White, Phillip W., xxx-xx-xxxx
White, James G., xxx-xx-xxxx
Whitehead, Darell R., xxx-xx-...
Whitesel, Stephen H., xxx-xx-xxxx
Whiting, Truman C., Jr., xxx-xx-xxxx
Whiton, Roger C., xxx-xx-xxxx
Whittaker, Jonathan W., xxx-xx-xxxx
Whitten, Frederick C., xxx-xx-xxxx
Wiater, Paul H., xxx-xx-xxxx
Wickiser, Jimmy W., xxx-xx-xxxx
Wideman, William P., xxx-xx-xxxx
Wieborg, James E., xxx-xx-xxxx
Wier, Harvey D., Jr., xxx-xx-xxxx
Wilburn, Sammy F., xxx-xx-xx...
Wilder, Jimmy R., xxx-xx-xx...
Wildinger, Joseph V., Jr., xxx-xx-xx...
Wiles, Thomas E., xxx-xx-xxxx
Wiley, Robert A., xxx-xx-xxxx
Wilkins, Errol C., xxx-xx-xxxx
Willett, David A., xxx-xx-xxxx
Willette, Edward D., xxx-xx-xxxx
Williams, Carl M., xxx-xx-xxxx
Williams, Douglas H., xxx-xx-xxxx
Williams, Earl W., xxx-xx-xxxx
Williams, George M., Jr., xxx-xx-xxxx
Williams, Hamilton, Jr., xxx-xx-xxxx
Williams, Jason N., xxx-xx-xxxx
Williams Paul L., xxx-xx-xxxx
Williams, Ralph R., xxx-xx-...
Williamson, Alfred E. III, xxx-xx-xxxx
Williamson, David M., xxx-xx-xxxx
Williamson, Henry W., Jr., xxx-xx-xxxx
Williford, James V., xxx-xx-xxxx
Wills, Charles F., xxx-xx-xxxx
Wilson, Francis M., xxx-xx-xxxx
Wilson, Henry L., xxx-xx-xxxx
Wilson, John L., xxx-xx-xxxx
Wilson, Joseph C., Jr., xxx-xx-xxxx
Wilson, Luther R., xxx-xx-xxxx
Wilson, Peter C., xxx-xx-xxxx

Wilson, Robert M., xxx-xx-xxxx
Winston, John M., xxx-xx-xxxx
Winter, James G., xxx-xx-xxxx
Winterberg, Ferris L., xxx-xx-xxxx
Witners, Bennett L., xxx-xx-xxxx
Winters, James J., xxx-xx-xxxx
Wise, Sidney J., xxx-xx-xxxx
Witty, Jack L., xxx-xx-xxxx
Wockenfuss, Edgar F., Jr., xxx-xx-xxxx
Woelz, Karl J., xxx-xx-xxxx
Wojack, Ronald P., xxx-xx-xxxx
Wojcik, Michael R., xxx-xx-xxxx
Wojtas, John J., Jr., xxx-xx-xxxx
Wolcott, David T., xxx-xx-xxxx
Wolcott, Kent E., xxx-xx-xxxx
Wood, Barry K., xxx-xx-xxxx
Wood, Billy R., xxx-xx-xxxx
Wood, James G., Jr., xxx-xx-xxxx
Woodall, Carl E., Jr., xxx-xx-xxxx
Woodruff John D., xxx-xx-xxxx
Woods, Kenneth R., xxx-xx-xxxx
Woody, James R., xxx-xx-xxxx
Woody, Willis C., Jr., xxx-xx-xxxx
Woolace, James L., xxx-xx-xxxx
Woolley, Robert G., xxx-xx-xxxx
Worcester, Robert H., xxx-xx-xxxx
Worcester, Stephen A., xxx-xx-xxxx
Work, Terrell W., xxx-xx-xxxx
Working, Lyle A., xxx-xx-xxxx
Wormington, John R., xxx-xx-xxxx
Worrell, Kenneth E., xxx-xx-xxxx
Worth, Raymond S., xxx-xx-xxxx
Worthen, Russell F., xxx-xx-xxxx
Worthington, John A., xxx-xx-xxxx
Wortman, James F., xxx-xx-xxxx
Wozniak, David W., xxx-xx-xxxx
Wray, David W., xxx-xx-xxxx
Wray, James C., xxx-xx-xxxx
Wright, Donald J., xxx-xx-xxxx
Wright, George K., xxx-xx-xxxx
Wright, Jahn L., xxx-xx-xxxx
Wright, James C. W., xxx-xx-xxxx
Wright, Karen S., xxx-xx-xxxx
Wright, Ralph E., xxx-xx-xxxx
Wright, Robert P., xxx-xx-xxxx
Wright, Russell G., xxx-xx-xxxx
Wright, Stephen A., xxx-xx-xxxx
Wright, Wayne H., xxx-xx-xxxx
Wrigley, Frank, xxx-xx-xxxx
Wrublewski, Adam F., xxx-xx-xxxx
Xander, Thomas C., xxx-xx-xx...
Yagmin, James F., xxx-xx-xxxx
Yamamoto, James T., xxx-xx-...
Yarolem, Wayne R., xxx-xx-xxxx
Yeager, John G., xxx-xx-xxxx
Yoachim, William G., xxx-xx-xx...
Yoste, Florian H. III, xxx-xx-xxxx
Young, Douglas, xxx-xx-xxxx
Young, James A., xxx-xx-xx...
Young, John E., xxx-xx-xxxx
Young, Samuel E. Jr., xxx-xx-xxxx
Young, William J. Jr., xxx-xx-xx...
Zachousky, James S., xxx-xx-xxxx
Zajicek, Thomas P., xxx-xx-xxxx
Zambelli, Anthony C., xxx-xx-xxxx
Zebley, Frederick L. Jr., xxx-xx-xx...
Zellmer, Kenneth E., xxx-xx-xxxx
Zent, Llewellyn II, xxx-xx-xxxx
Zerbe, Michael S., xxx-xx-xxxx
Zettler, Wilbur T., xxx-xx-xxxx
Zielie, Paul A., xxx-xx-xxxx
Zimmermann, Conrad R., xxx-xx-xxxx
Zinsser, Harry F. Jr., xxx-xx-xxxx
Zody, James G., xxx-xx-xxxx
Zuniga, Jerome B., xxx-x...
Zwerg, John W., xxx-x...

CHAPLAIN CORPS

Black, Vernon R., xxx-x...
Booke, Peter W., xxx-x...
Boone, Joseph F., xxx-xx-xxxx
Donahugh, Donald E., xxx-xx-xxxx
Dzik, Richard F., xxx-x...
Frissell, Charles R., xxx-xx-xxxx
Galloway, Edward E., xxx-x...
Hancock, Jimmie L., xxx-xx-xxxx
Harnett, James R., xxx-xx-xxxx
Hendry, Owen J., xxx-xx-xxxx
Hubbard, Beryl T., xxx-xx-xxxx
Jahren, John C., xxx-x...
Lipscomb, William W., xxx-xx-xxxx
Macrander, Charles W., xxx-xx-xxxx
Manning, Joseph H., xxx-xx-xxxx
McAllister, Robert L., xxx-xx-xxxx
McGuffey, Kenneth D., xxx-xx-xxxx
Moffitt, Robert E., xxx-xx-xxxx
Nicita, Vincent R., xxx-xx-xxxx
Oleary, Niall F., xxx-xx-xxxx
Pressley, Clyde F. Jr., xxx-xx-xxxx
Rhyne, Jerry L., xxx-xx-xxxx
Riza, Bradford L., xxx-xx-xxxx
Rowell, Albert J., xxx-xx-xxxx
Sassman, William A., xxx-xx-x...
Shepanski, Donatus C., xxx-xx-xxxx
Singletary, John D., xxx-xx-xxxx
Tripp, Robert J., xxx-xx-xxxx

DENTAL CORPS

Blaser, Paul K., xxx-xx-xxxx
Domjne, Patrick L., xxx-xx-xxxx
Dufort, Charles R., xxx-xx-xxxx
Engelmeier, Robert L., xxx-xx-xxxx
Farhood, Vincent W., xxx-xx-xxxx
Farr, Stephen C., xxx-xx-xxxx
Gieser, Dennis P., xxx-xx-xxxx
Giles, Joseph E., xxx-xx-xxxx
Gross, Stephen, xxx-xx-xxxx
Hager, Ronald C., xxx-xx-xxxx
Hanson, Robert W., xxx-xx-xxxx
Haveman, Carl W., xxx-xx-xxxx
Hess, David S., xxx-xx-xxxx
Igo, Robert M., xxx-xx-xxxx
Knowles, James W. Jr., xxx-xx-xxxx
Lagree, Jay D., xxx-xx-xxxx
Langston, John R., xxx-xx-xxxx
Lewis, Jeffrey D., xxx-xx-xxxx
Loden, Claude D., xxx-xx-xxxx
Loeckel, Richard E., xxx-xx-xxxx
Mayhew, Robert B., xxx-xx-xxxx
Neudigate, William C., xxx-xx-xxxx
Oesterle, Larry J., xxx-xx-xxxx
Roggenkamp, Clyde L., xxx-xx-xxxx
Rome, William J., xxx-xx-xxxx
Sarg, Ronald G., xxx-xx-xx...
Schrader, James A., xxx-xx-xxxx
Scott, James R., xxx-xx-xxxx
Sherrill, Yowell M., xxx-xx-xxxx
Snell, Gerald M., xxx-xx-xxxx
Staley, Jon E., xxx-xx-xxxx
Stoffers, Kenneth W., xxx-xx-xxxx
Swan, Richard H., xxx-xx-xxxx
Thurmond, John W., xxx-xx-xxxx
Westbrook, Steve D., xxx-xx-xxxx

JUDGE ADVOCATE

Allen, Robert D. M., xxx-xx-xxxx
Anderson, Perry L., xxx-xx-xxxx
Balch, Edwin H., Jr., xxx-xx-xx...
Brasel, Jerry M., xxx-xx-xxxx
Bristol, Matt C. C., III, xxx-xx-xxxx
Callinan, Michael C., xxx-xx-xxxx
Capio, Ralph J., xxx-xx-xxxx
Carnahan, Burrus M., xxx-xx-xxxx
Carrington, Royle P., III, xxx-xx-xxxx
Clarke, Leonard S., xxx-xx-xxxx
Corbin, Norman L., xxx-xx-xxxx
Darter, Lewie J., III, xxx-xx-xxxx
Davidson, John P., xxx-xx-xxxx
Donat, James L., xxx-xx-xxxx
Driscoll, David J., xxx-xx-xxxx
Dumerer, James E., xxx-xx-xxxx
Durham, Bryant L., xxx-xx-xxxx
Elliott, William R., Jr., xxx-xx-xxxx
Emerson, Michael R., xxx-xx-xxxx
Engebretsen, David H., xxx-xx-xxxx
Fiore, Joseph C., xxx-xx-xxxx
Harrington, Donald J., xxx-xx-xxxx
Hornbrook, Edwin F., xxx-xx-xxxx
Ingram, James E., Jr., xxx-xx-xxxx
Johnson, Phillip A., xxx-xx-xxxx
Leonard, Robert H., xxx-xx-xxxx
Moran, Francis C., Jr., xxx-xx-xxxx
Mounts, Robert T., xxx-xx-xxxx
Nolte, Donald A., xxx-xx-xxxx
Novak, Richard A., xxx-xx-xxxx
Petersen, James O., xxx-xx-xxxx
Purdon, Richard L., xxx-xx-xxxx
Ranciglio, Alessandro J., xxx-xx-xxxx
Rigsby, Allen W., Jr., xxx-xx-xxxx
Rothenburg, Richard F., xxx-xx-xxxx
Scanlin, Thomas D., xxx-xx-xxxx
Schilling, Edwin C., III, xxx-xx-xxxx
Shaughnessy, John R., Jr., xxx-xx-xxxx
Smallridge, Gary C., xxx-xx-xxxx
Summerfield, Ralph S., xxx-xx-xxxx
Sweeney, Howard P., xxx-xx-xxxx
Tate, Robert W., II, xxx-xx-xxxx
Tomes, Robert E., xxx-xx-xxxx
Warren, Stephen A., xxx-xx-xxxx
Wheeler, Jon S., xxx-xx-xxxx
Wickham, Richard J., xxx-xx-xxxx
Wilson, Michael B., xxx-xx-xxxx

MEDICAL CORPS

Abraham, David A., xxx-xx-xxxx
Arnold, Colin B., xxx-xx-xxxx
Bishop, John A., xxx-xx-xxxx
Burch, John E., Jr., xxx-xx-xxxx
Christian, Charles B., Jr., xxx-xx-xxxx
Clark, Max A., xxx-xx-xxxx
Clarke, William R., xxx-xx-xxxx
Coburn, Bry H., xxx-xx-xxxx
Cramer, Frederick S., xxx-xx-xxxx
Dematte, Eugene M., xxx-xx-xxxx
Eglinton, Gary S., xxx-xx-xxxx
Fisk, David E., xxx-xx-xxxx
Floyd, John L., Jr., xxx-xx-xxxx
Gilstrap, Larry C., III, xxx-xx-xxxx
Gutierrez, Armando N., xxx-xx-xxxx
Harasimonwicz, Joseh A., xxx-xx-xxxx
Hoffman, Peter F., xxx-xx-xxxx
Holt, Gilbert A., Jr., xxx-xx-xxxx
Hoogerland, David L., xxx-xx-xxxx
Lainof, Kerry W., xxx-xx-xxxx
Lentz, Carl W., III, xxx-xx-xxxx
Mendlick, Richard M., xxx-xx-xxxx
Noffsinger, Jay E., xxx-xx-xxxx
Rasmussen, Reed C., xxx-xx-xxxx
Ryan, Mitchell N., xxx-xx-xxxx
Sanderson, John N., xxx-xx-xxxx
Schwender, George E., xxx-xx-xxxx
Shepler, Thomas R., xxx-xx-xxxx
Spadoni, James R., xxx-xx-xxxx
Stith, John A., xxx-xx-xxxx
Thornton, William V. S., xxx-xx-xxxx
Tolley, Douglas G., Jr., xxx-xx-xxxx
Vanbuskirk, Ronald, xxx-xx-xxxx
Walters, Charles L., xxx-xx-xxxx
Wright, Donald G., xxx-xx-xxxx

NURSE CORPS

Aldridge, Patricia D., xxx-xx-xxxx
Armstrong, Frances P., xxx-xx-xxxx
Baiocchetti, Loreto A., xxx-xx-xxxx
Cadieux, Arthur J., xxx-xx-xxxx
Cook, Rosa L., xxx-xx-xxxx
Cramer, Ladonn B., xxx-xx-xxxx
Cummings, Myra F., xxx-xx-xxxx
Easley, Phyllis A., xxx-xx-xxxx
Fadusko, Jeanne A., xxx-xx-xxxx
Forbes, Janyce L., xxx-xx-xxxx
Garner, Patricia C., xxx-xx-xxxx
Gebhart, Eileen G., xxx-xx-xxxx
Gokee, Henry F., xxx-xx-xxxx
Goker, Elizabeth J., xxx-xx-xxxx
Hagens, Robert L., xxx-xx-xxxx
Hotop, Marcella C., xxx-xx-xxxx
Huber, Priscilla J., xxx-xx-xxxx
Hughes, Ellen A., xxx-xx-xxxx
Jackson, Melissa R., xxx-xx-xxxx
Kaplan, Mary M., xxx-xx-xxxx
Knight, Annamarie, xxx-xx-xx...
Lavine, Jean A., xxx-xx-xxxx
Link, Vincent H., xxx-xx-xxxx
List, Sara F., xxx-xx-xxxx
Lowery, Antoinette T., xxx-xx-xxxx
Lunceford, Marilyn Y., xxx-xx-xxxx
Lux, Frances P., xxx-xx-xxxx
Maher, Janet T., xxx-xx-xxxx
Messer, Monica S., xxx-xx-xxxx
Miller, James E., xxx-xx-xx...
Mootz, Paul E., xxx-xx-xxxx
Norgaard, Gayle D., xxx-xx-xxxx
Norton, Patricia, xxx-xx-xxxx
Ontko, James P., xxx-xx-xxxx
Owen, Carolyn F., xxx-xx-xxxx
Purdy, Patricia A., xxx-xx-xxxx
Rinne, Michael S., xxx-xx-xxxx
Ritter, Patricia J., xxx-xx-xxxx
Ryan, Elizabeth K., xxx-xx-xxxx
Salmons, Freddie E., xxx-xx-xxxx
Satterley, Daniel B., xxx-xx-xxxx
Semrad, Louis, Jr., xxx-xx-xxxx

Shockley, George E., Jr., xxx-xx-xxxx
Tadano, Margaret C., xxx-xx-xxxx
Thomas, Awilda, xxx-xx-xxxx
Vancavage, Caroline J., xxx-xx-xxxx
Watkins, Sylvia A., xxx-xx-xxxx
Wenzel, Sandra L., xxx-xx-xxxx
Wilder, Barbara E., xxx-xx-xxxx
Willis, Juanita M., xxx-xx-xxxx
Workman, Connie D., xxx-xx-xxxx
Zweck, Robert L., xxx-xx-xxxx

MEDICAL SERVICE CORPS

Bjerken, Paul A., xxx-xx-xxxx
Bloomquist, Carroll R., xxx-xx-xxxx
Breault, George A., xxx-xx-xxxx
Brown, Charles W., III, xxx-xx-xxxx
Burchfield, Larry R., xxx-xx-xxxx
Chappelle, Raymond J., Jr., xxx-xx-xxxx
Coleman, Steven L., xxx-xx-xxxx
Dikes, James E., xxx-xx-xxxx
Driver, David C., xxx-xx-xxxx
Garcia, Joe, xxx-xx-xxxx
Hare, Charles E., xxx-xx-xxxx
Harrison, James T., xxx-xx-xxxx
Holtz, Daniel D., xxx-xx-xxxx
Knight, Jimmy M., xxx-xx-xxxx
Lee, Jerry N., xxx-xx-xxxx
Mayo, Billy W., xxx-xx-xxxx
McCausland, Orrin J., xxx-xx-xxxx
McGough, Richard G., xxx-xx-xxxx
Moore, William W., xxx-xx-xxxx
Petermann, Mark H., xxx-xx-xxxx
Phill, Charles M., xxx-xx-xxxx
Raynor, Richard R., xxx-xx-xxxx
Renoudet, Donald D., xxx-xx-xxxx
Wilson, Ira D., xxx-xx-xxxx
Young, Chester L., xxx-xx-xxxx

VETERINARY CORPS

Albersmeyer, Michael M., xxx-xx-xxxx
Bekaert, Denis A., xxx-xx-xxxx
Cartledge, Robert M., xxx-xx-xxxx
Gunnels, Robert D., xxx-xx-xxxx
Hewins, Stanley O., xxx-xx-xxxx
Mills, Andrew C. S., xxx-xx-xxxx
Pletcher, John M., xxx-xx-xxxx
Rankin, James T., Jr., xxx-xx-xxxx
Skalka, Dennis R., xxx-xx-xxxx
Somers, Rick A., xxx-xx-xxxx
Vandellen, Adrian F., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

Alter, William A., III, xxx-xx-xxxx
Arnold, Barbara P., xxx-xx-xxxx
Bowen, Victor G., xxx-xx-xxxx
Brannon, Larry D., xxx-xx-xxxx
Campbell, James M., xxx-xx-xxxx
Chavella, Joyce D., xxx-xx-xxxx
Clegern, Robert W., xxx-xx-xxxx
Crouse, Dan T., xxx-xx-xxxx
Elliott, Nancy R., xxx-xx-xxxx
Erwin, Charles S., xxx-xx-xxxx
Gibson, Sidney C., xxx-xx-xxxx
Goodson, Richard A., xxx-xx-xxxx
Hadden, David A., xxx-xx-xxxx
Hughes, Robert O., xxx-xx-xxxx
Jenkins, James L., xxx-xx-xxxx
Jernigan, Mary Ann, xxx-xx-xxxx
Jones, Charles R., xxx-xx-xxxx
Jones, Wayne D., xxx-xx-xxxx
Key, James A., xxx-xx-xxxx
Kiffer, James J., xxx-xx-xxxx
Kolquist, Saundra A., xxx-xx-xxxx
Lombard, Robert A., Jr., xxx-xx-xxxx
Lynch, Thomas P., Sr., xxx-xx-xxxx
Majors, James S., xxx-xx-xxxx
Pauls, Chester F., xxx-xx-xxxx
Ricker, Philip R., xxx-xx-xxxx
Sayre, Larry E., xxx-xx-xxxx
Sellers, Richard F., Jr., xxx-xx-xxxx
Shaffstall, Robert M., xxx-xx-xxxx
Smith, Jack R., xxx-xx-xxxx
Taylor, Boyce A., xxx-xx-xxxx
Thomson, David F., xxx-xx-xxxx
Tremblay, James W., xxx-xx-xxxx
Webb, Thomas S., xxx-xx-xxxx
Weber, Leo R., xxx-xx-xxxx
Wells, Robert L., xxx-xx-xxxx
Wilkerson, Lillard C., xxx-xx-xxxx
Wilson, Lawrence F., xxx-xx-xxxx
Wood, David G., xxx-xx-xxxx

IN THE ARMY

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, U.S.C., sections 3370 and 3383:

ARMY PROMOTION LIST

To be colonel

Berryman, William C., xxx-xx-xxxx
Bowling, Rodney I., xxx-xx-xxxx
Brown, Harold S., xxx-xx-xxxx
Bryant, Rudolph, xxx-xx-xxxx
Collar, Robert D., xxx-xx-xxxx
Dollar, Jerry, xxx-xx-xxxx
Fox, John F., xxx-xx-xxxx
Gambrell, Samuel C., xxx-xx-xxxx
Green, Paul M., xxx-xx-xxxx
Gunn, James E., xxx-xx-xxxx
Kerr, Keith H., xxx-xx-xxxx
Knight, Roger P., xxx-xx-xxxx
Kowalski, Louis E., xxx-xx-xxxx
Lorenz, Karl A., xxx-xx-xxxx
Naples, Anthony F., xxx-xx-xxxx
Paynton, Jan H., xxx-xx-xxxx
Pennycuick, Robert F., xxx-xx-xxxx
Provencher, Paul, xxx-xx-xxxx
Reay, Tommy L., xxx-xx-xxxx
Redmond, Michael, xxx-xx-xxxx
Rigg, Richard J., xxx-xx-xxxx
Schellhase, Walter R., xxx-xx-xxxx
Spikes, Harold J., xxx-xx-xxxx
Valtunas, Andrew V., xxx-xx-xxxx
Walker, Jack W., xxx-xx-xxxx
Wojtas, Jerome R., xxx-xx-xxxx

CHAPLAIN

To be colonel

Epps, Bryan C., xxx-xx-xxxx
Shaub, Robert W., xxx-xx-xxxx
Terry, Frederick D., xxx-xx-xxxx

MEDICAL CORPS

To be colonel

Hamilton, Thomas P., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be colonel

Wygle, Peter R., xxx-xx-xxxx

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, U.S.C., sections 3367 and 3383:

ARMY PROMOTION LIST

To be lieutenant colonel

Adkinson, William E., xxx-xx-xxxx
Alvarado, Paul H., xxx-xx-xxxx
Andersen, Jerry M., xxx-xx-xxxx
Armstrong, Arthur R., xxx-xx-xxxx
Atherton, James T., xxx-xx-xxxx
Biles, Derwood C., xxx-xx-xxxx
Black, Joseph L., xxx-xx-xxxx
Boudoucies, John A., xxx-xx-xxxx
Brannon, James F., xxx-xx-xxxx
Brown, Doris M., xxx-xx-xxxx
Bryan, Jerry G., xxx-xx-xxxx
Buckley, John B., xxx-xx-xxxx
Bultman, Roger C., xxx-xx-xxxx
Burgess, Roland P., xxx-xx-xxxx
Campbell, Hugh B., xxx-xx-xxxx
Carr, George L., xxx-xx-xxxx
Carr, Joseph V., Jr., xxx-xx-xxxx
Cary, John, xxx-xx-xxxx
Casey, Patrick H., xxx-xx-xxxx
Caulkins, Lawrence T., xxx-xx-xxxx
Clayton, Marvin C., xxx-xx-xxxx
Conlon, Joseph F., xxx-xx-xxxx
Crittenden, James M., xxx-xx-xxxx
Cruthirds, Niles D., xxx-xx-xxxx
Curtis, Chester R., xxx-xx-xxxx
Daniel, Dennis K., xxx-xx-xxxx
Dayhuff, Charles H., xxx-xx-xxxx
Deloney, Leslie C., xxx-xx-xxxx
Denker, Hugo C., xxx-xx-xxxx
DeShon, Harry A., xxx-xx-xxxx
Dixon, Lyle A., xxx-xx-xxxx
Doolittle, Max L., xxx-xx-xxxx
Doyle, Glenn A., xxx-xx-xxxx
Drake, Harry F., xxx-xx-xxxx
Drapeau, Robert L., xxx-xx-xxxx
Dugger, Daniel R., xxx-xx-xxxx
Edmondston, Francis M., xxx-xx-xxxx
Felhoelter, William B., xxx-xx-xxxx
Ferris, James J., xxx-xx-xxxx
Fisher, Harold G., xxx-xx-xxxx
Freshour, Charles E., xxx-xx-xxxx
Garlock, Joel D., xxx-xx-xxxx
Giacoppe, George N., xxx-xx-xxxx
Giudice, Henry M., xxx-xx-xxxx
Goldsmith, George Jr., xxx-xx-xxxx
Goodwin, Ray C., xxx-xx-xxxx
Griffin, John L., xxx-xx-xxxx
Gunning, Ronald T., xxx-xx-xxxx
Hahn, David G., xxx-xx-xxxx
Haley, John M., xxx-xx-xxxx
Hartnitt, Bruce D., xxx-xx-xxxx
Hartzog, Robert L., Jr., xxx-xx-xxxx
Heath, Dwright N., xxx-xx-xxxx
Hesselink, Gerald D., xxx-xx-xxxx
Hix, Gayle D., xxx-xx-xxxx
Huff, Marvin, xxx-xx-xxxx
Hutson, Robert A., xxx-xx-xxxx
Hyams, James E., xxx-xx-xxxx
Janco, Peter R., xxx-xx-xxxx
Janelle, Roland H., xxx-xx-xxxx
Kelly, Peter J., xxx-xx-xxxx
Kidd, Ronald M., xxx-xx-xxxx
Kiger, Louis S., xxx-xx-xxxx
Knopp, Harry T., xxx-xx-xxxx
Kofmettl, William F., xxx-xx-xxxx
Kosowski, Bernard M., xxx-xx-xxxx
Krach, Donald F., xxx-xx-xxxx
Laney, Charles A., xxx-xx-xxxx
Lanham, John W., xxx-xx-xxxx
Lanham, Zeddie D., xxx-xx-xxxx
Lavy, Jack W., xxx-xx-xxxx
Leander, Denny W., xxx-xx-xxxx
Lemieux, Gerard M., xxx-xx-xxxx
Litton, James L., xxx-xx-xxxx
Lowman, John S., xxx-xx-xxxx
Lowrie, Virgil A., xxx-xx-xxxx
Lubbe, Joseph R., xxx-xx-xxxx
Lunde, Raymond H., xxx-xx-xxxx
Lynch, Howard F., xxx-xx-xxxx
Macaluso, Anthony, Sr., xxx-xx-xxxx
MacHemehl, Jerry L., xxx-xx-xxxx
MacLachlan, Bruce B., xxx-xx-xxxx
Mahon, John J., xxx-xx-xxxx
Martin, Joseph D., xxx-xx-xxxx
Martinez-Olivo, Reinaldo, xxx-xx-xxxx
Mason, Robert W., xxx-xx-xxxx
Masterson, Joseph A., xxx-xx-xxxx
Maze, Franklin, xxx-xx-xxxx
McBride, Charles L., xxx-xx-xxxx
McCage, Ronald D., xxx-xx-xxxx
McCann, Paul L., xxx-xx-xxxx
McGrew, John H., xxx-xx-xxxx
McKenna, John J., xxx-xx-xxxx
McVeigh, James P., xxx-xx-xxxx
Meikle, James W., S., xxx-xx-xxxx
Miller, John S., xxx-xx-xxxx
Moates, William A., xxx-xx-xxxx
O'Reilly, John J., xxx-xx-xxxx
Pasholk, Ronald W., xxx-xx-xxxx
Patterson, David H., Jr., xxx-xx-xxxx
Peacock, Thomas A., xxx-xx-xxxx
Pearson, Robert W., xxx-xx-xxxx
Perrone, Paul J., xxx-xx-xxxx
Perry, Donald T., xxx-xx-xxxx
Possumato, Nicholas D., xxx-xx-xxxx
Prisk, Gary R., xxx-xx-xxxx
Pulsifer, William P., xxx-xx-xxxx
Purdy, James A., xxx-xx-xxxx
Reitzel, Maurice D., xxx-xx-xxxx
Revis, Paul N., xxx-xx-xxxx
Rewerts, Milan A., xxx-xx-xxxx
Rich, Terrence L., xxx-xx-xxxx
Roth, John C., xxx-xx-xxxx
Sargent, George W., xxx-xx-xxxx
Schrader, Johnie R., xxx-xx-xxxx
Schwartz, Francis D., xxx-xx-xxxx
Shade, Luke L., xxx-xx-xxxx
Shideler, Robert W., xxx-xx-xxxx
Simon, Benjamin J., xxx-xx-xxxx
Sloan, Allan P., xxx-xx-xxxx
Smith, James B., xxx-xx-xxxx
Smith, William C., xxx-xx-xxxx
Soltes, Charles R., xxx-xx-xxxx
Starnes, Donald D., xxx-xx-xxxx
Stoll, Walter J., xxx-xx-xxxx
Storat, Richard E., xxx-xx-xxxx

Styles, Charles F., xxx-xx-xxxx
Taylor, David P., xxx-xx-xxxx
Tramma, Joseph M., xxx-xx-xxxx
Trobaugh, James E., xxx-xx-xxxx
Truett, Curtis P., xxx-xx-xxxx
Vaughan, Cristopher C., xxx-xx-xxxx
Vigelis, Eugene, xxx-xx-xxxx
Wagner, Richard E., xxx-xx-xxxx
Waldman, Richard J., xxx-xx-xxxx
Waldrup, William C., Jr., xxx-xx-xxxx
Warr, James W., xxx-xx-xxxx
Wetherby, Carlton L., xxx-xx-xxxx
Wittsell, Edward L., xxx-xx-xxxx
Woodruff, Philip, xxx-xx-xxxx
Woodworth, David K., xxx-xx-xxxx
Wright, Thomas E., xxx-xx-xxxx

CHAPLAIN

To be lieutenant colonel

Durbin, Paul G., xxx-xx-xxxx
Hert, Darrald P., xxx-xx-xxxx
Johnson, Clifford H., xxx-xx-xxxx
Rose, Robert H., xxx-xx-xxxx

MEDICAL CORPS

To be lieutenant colonel

Luna, Rodrigo F. C., xxx-xx-xxxx
May, Duane L., xxx-xx-xxxx
Urizar, Rodrigo E., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be lieutenant colonel

Woodard, John R., xxx-xx-xxxx

The following-named officers for appointment in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, sections 591, 593, and 594:

MEDICAL CORPS

To be colonel

Brooks, Clifton R., xxx-xx-xxxx

ARMY NURSE CORPS

To be lieutenant colonel

Baszynski, Alice J., xxx-xx-xxxx
Stevenson, Margaret R., xxx-xx-xxxx

DENTAL CORPS

To be lieutenant colonel

Boyko, Nicholas, xxx-xx-xxxx
Cancellara, Anthony N., xxx-xx-xxxx
Carbone, John W., xxx-xx-xxxx
Cremer, Jerry L., xxx-xx-xxxx
Griffin, Robert E., Jr., xxx-xx-xxxx
Johnson, Richard L., xxx-xx-xxxx
Lopez, Jesus, Jr., xxx-xx-xxxx
Olechowski, George W., xxx-xx-xxxx
Oleskeyvich, James M., xxx-xx-xxxx
Pulskamp, Frank E., xxx-xx-xxxx
Randolph, Richard B., xxx-xx-xxxx
Taves, Melvin E., xxx-xx-xxxx

MEDICAL CORPS

To be lieutenant colonel

Adams, Billy M., xxx-xx-xxxx
Bell, Exter F., xxx-xx-xxxx
Bell, William H., xxx-xx-xxxx
Berryman, Arthur H., xxx-xx-xxxx
Bianco, Emidio A., xxx-xx-xxxx
Bice, Clarence M., xxx-xx-xxxx
BoLene, Robert V., xxx-xx-xxxx
Campbell, Carlos B., xxx-xx-xxxx
Campbell, Mike C., xxx-xx-xxxx
Chai, Kyong S., xxx-xx-xxxx
Chaput, Christopher J., xxx-xx-xxxx
Cierebiej, Albert, xxx-xx-xxxx
Davies, Ross S., xxx-xx-xxxx
Drennen, Robert V. E., xxx-xx-xxxx
Engel, Rolf R., xxx-xx-xxxx
Eves, John H., xxx-xx-xxxx
Gladue, Joseph R., xxx-xx-xxxx
Guanzon, Leo A., xxx-xx-xxxx
Harvey, John C., xxx-xx-xxxx
Hickerson, James S., xxx-xx-xxxx
Hughes, Edward M., xxx-xx-xxxx
Kahane, Stanley B., xxx-xx-xx...
Kilbury, Merlin J., Jr., xxx-xx-xxxx
Klutzow, Friedrich, xxx-xx-xxxx
Kurtze, Arthur G., xxx-xx-xxxx
Lugo-Faria, Merlin D., xxx-xx-xxxx
Marcel, Jesse A., Jr., xxx-xx-xxxx
McCree, Robert L., xxx-xx-xxxx
McLaughlin, Max V., xxx-xx-xxxx
Montes, Jose A., xxx-xx-xxxx
Oliver, Richard T., xxx-xx-xxxx
Roldan, ErLinda C., xxx-xx-xxxx
Saldana, Guido F., xxx-xx-xxxx
Smith, Leonard, xxx-xx-xxxx
Stelter, Gerald P., xxx-xx-xxxx
Tankleff, Bert N., xxx-xx-xxxx
Tucker, Wayne L., xxx-xx-xxxx
Updegraff, Bryan R., xxx-xx-xxxx
Varnado, Jimmie W., xxx-xx-xxxx
Waldman, Martin L., xxx-xx-xxxx
Watanabe, Henry K., xxx-xx-xxxx
Weiss, Joseph F., xxx-xx-xxxx
West, Edward T., Jr., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be lieutenant colonel

Guinn, Joe L., xxx-xx-xxxx

The following-named officers for appointment in the Army of the United States, under the provisions of title 10, United States Code, section 3494:

MEDICAL CORPS

To be colonel

Boone, Stephen C., xxx-xx-xxxx

MEDICAL CORPS

To be lieutenant colonel

Clark, Charles F., xxx-xx-xxxx
Levine, Matthew E., xxx-xx-xxxx
Moorman, Claude T., xxx-xx-xxxx
Stouder, Stephen R., xxx-xx-xxxx
Talbot, Asa R., xxx-xx-...

The following-named Army National Guard officers for appointment in the Reserve of the Army of the United States, under the provisions of Title 10, U.S.C., Section 3385:

ARMY PROMOTION LIST

To be colonel

Appel, Darvin R., xxx-xx-xxxx
Blair, Ollie J., xxx-xx-xxxx
Bourgeois, Charles A., xxx-xx-xxxx
Bowen, Francis J., xxx-xx-xxxx
Brown, Ralph H., xxx-xx-xxxx
Burdick, Donald, xxx-xx-xxxx
Cole, Francis E., xxx-xx-xxxx
Cook, William A., xxx-xx-xxxx
DeMara, Richard D., xxx-xx-xxxx
Donnelly, Raymond J., xxx-xx-xxxx
Farley, Norman H., xxx-xx-xxxx
Finley, Philip B., xxx-xx-xxxx
Fleming, James B., xxx-xx-xxxx
Hall, Ernest E., xxx-xx-xxxx
Hiatte, Donald L., xxx-xx-xxxx
Hohnbaum, Donald C., xxx-xx-xxxx
Horgan, Francis J., xxx-xx-xxxx
Jackson, Earnest L., xxx-xx-xxxx
Lander, Richard J., xxx-xx-xxxx
Maruzzella, Frank R., xxx-xx-xxxx
Miller, Walter W., xxx-xx-xxxx
Mitchell, Don E., xxx-xx-xxxx
Moore, William E., xxx-xx-xxxx
Morris, James R., xxx-xx-xxxx
Niven, Benjamin F., Jr., xxx-xx-xxxx
Noel, Martin A., xxx-xx-xxxx
Riggs, Howard N., xxx-xx-xxxx
Roberts, Harold E., xxx-xx-xxxx
Russell, Oscar G., Jr., xxx-xx-xxxx
Springer, Bobby J., xxx-xx-xxxx
Thrash, Melvin C., xxx-xx-xxxx
Timmerman, Raymond T., Jr., xxx-xx-xxxx
Vath, Alvin R., xxx-xx-xxxx
White, Donald L., xxx-xx-xxxx
Woolpert, Deane V., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be colonel

Anderson, John W., xxx-xx-xxxx
Sutton, Lewis J., xxx-xx-xxxx

ARMY PROMOTION LIST

To be lieutenant colonel

Adair, Bennie C., xxx-xx-xxxx
Adams, Gary L., xxx-xx-xxxx
Allmon, Douglas J., xxx-xx-xxxx
Arnett, Jack D., xxx-xx-xxxx
Bowden, Marion A., xxx-xx-xxxx
Bray, Lloyd L., xxx-xx-xxxx
Bruck, John D., xxx-xx-xxxx
Carter, William D., xxx-xx-xxxx
Chapman, George C., xxx-xx-xxxx
Christy, Donald E., xxx-xx-xxxx
Collazo-Irizarry, Nector, xxx-xx-xxxx
Davis, John C., xxx-xx-xxxx
Echols, Robert L., xxx-xx-xxxx
Franke, Loren W., xxx-xx-xxxx
Frate, Philip, Jr., xxx-xx-xxxx
Gault, Billy F., xxx-xx-xxxx
George, Samuel A., Jr., xxx-xx-xxxx
Gershner, Leon, Jr., xxx-xx-xxxx
Hallock, Francis C., xxx-xx-xxxx
Hamilton, Johnnie C., xxx-xx-xxxx
Haralson, John W., xxx-xx-xxxx
Harkins, John F., xxx-xx-xxxx
Harrison, Robert L., xxx-xx-xxxx
Houston, Charles D., xxx-xx-xxxx
Howard, Thomas E., xxx-xx-xxxx
Jacobs, Wesley V., xxx-xx-xxxx
Johnson, Peter L., xxx-xx-xxxx
Kane, William C., xxx-xx-xxxx
Klein, Kenneth C., xxx-xx-xxxx
Koonce, Calvin E., xxx-xx-xxxx
Mangraviti, James, xxx-xx-xxxx
McGilbra, Allan F., xxx-xx-xxxx
Moreno-Rodriguez, Gilberto, xxx-xx-xxxx
Morgano, Vito, xxx-xx-xxxx
Moore, Leon, xxx-xx-xxxx
Munford, Paul H., xxx-xx-xxxx
Myers, Charles D., xxx-xx-xxxx
O'Leary, Joseph P., xxx-xx-xxxx
Peterson, Laurice K., xxx-xx-xxxx
Ramey, John B., xxx-xx-xxxx
Ripley, John J., xxx-xx-xxxx
Robberson, DeLano G., xxx-xx-xxxx
Rochester, Earle F., xxx-xx-xxxx
Rooney, Edward J., xxx-xx-xxxx
Roper, Olin W., xxx-xx-xxxx
Samuels, James B., xxx-xx-xxxx
Schaub, Cornelius C., xxx-xx-xxxx
Schmidt, Richard C., xxx-xx-xxxx
Shott, Ernest M., xxx-xx-xxxx
Showalter, Stephen A., xxx-xx-xxxx
Sivilla, John M., xxx-xx-xxxx
Snyder, Ernest M., xxx-xx-xxxx
Stachel, Jorg, xxx-xx-xxxx
Swenson, Zack, xxx-xx-xxxx
Torres, Reinerio, xxx-xx-xxxx
Van Fleet, Frank C., xxx-xx-xxxx
Whitaker, Charles W., xxx-xx-xxxx
Williams, Earl W., xxx-xx-xxxx
Wills, Robert C., xxx-xx-xxxx
Wood, William B., xxx-xx-xxxx
Young, William D., xxx-xx-xxxx
Zanoff, John, xxx-xx-xxxx

CHAPLAIN

To be lieutenant colonel

Beverley, James A., xxx-xx-xxxx
Hoyal, James A., xxx-xx-xxxx

ARMY NURSE CORPS

To be lieutenant colonel

Brown, Virginia S., xxx-xx-xxxx

DENTAL CORPS

To be lieutenant colonel

Andrews, Hugh H., xxx-xx-xxxx
Hall, Robert P., 424–30–7645.

MEDICAL CORPS

To be lieutenant colonel

Bicknell, Donald S., xxx-xx-xxxx
DeCarlo, Gasto, xxx-xx-xxxx
Laidlaw, William M., xxx-xx-xxxx
Melton, Robert A., Jr., xxx-xx-xxxx
Neun, Charles J., Jr., xxx-xx-xxxx
Sargeant, James G., xxx-xx-xxxx
Schillhamer, William R., Jr., xxx-xx-xxxx
Schwartz, Jack, xxx-xx-xxxx
Steinbeck, Herbert F., xxx-xx-xxxx
Toms, Stephen, xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be lieutenant colonel

Nissen, Thomas R., xxx-xx-xxxx

IN THE ARMY

The following-named officers for promotion in the Regular Army of the United

States, under the provisions of title 10, United States Code, sections 3284 and 3299:

ARMY PROMOTION LIST

To be major

Acton, Michael R., xxx-xx-xxxx
Adam, Klaus M., xxx-xx-xxxx
Adams, Melville W., xxx-xx-xxxx
Akers, Frank H., xxx-xx-xxxx
Albright, Carl W., xxx-xx-xxxx
Aleva, Robert J., xxx-xx-xxxx
Alexander, George M., xxx-xx-xxxx
Alexander, James P., xxx-xx-xxxx
Allanach, William C., xxx-xx-xxxx
Allen, Gerald W., xxx-xx-xxxx
Allen, Jon J., xxx-xx-xxxx
Allen, Richard D., xxx-xx-xxxx
Allison, Robert C., xxx-xx-xxxx
Almes, Edward W., xxx-xx-xxxx
Almojuela, Thomas N., xxx-xx-xxxx
Amick, David B., xxx-xx-xxxx
Amiot, Robert J., xxx-xx-xxxx
Andersen, Timothy W., xxx-xx-xxxx
Anderson, Ben L., xxx-xx-xxxx
Anderson, Dale R., xxx-xx-xxxx
Anderson, David M., xxx-xx-xxxx
Anderson, Edward G., xxx-xx-xxxx
Anderson, John D., xxx-xx-xxxx
Anderson, Leonard G., xxx-xx-xxxx
Anderson, Louie H., xxx-xx-xxxx
Anderson, Melvin L., xxx-xx-xxxx
Andrews, Edward L., xxx-xx-xxxx
Andrle, John C., xxx-xx-xxxx
Angell, Raymond S., xxx-xx-xxxx
Angell, Gary M., xxx-xx-xxxx
Angsten, Joseph J., xxx-xx-xxxx
Anthony, Edward H., xxx-xx-xxxx
Anthony, Henry G., xxx-xx-xxxx
Antoine, Lawrence V., xxx-xx-xxxx
Aquino, Paschal A., xxx-xx-xxxx
Archebelle, Edwin B., xxx-xx-xxxx
Arko, Anthony, xxx-xx-xxxx
Armstrong, David J., xxx-xx-xxxx
Arrants, William M., xxx-xx-xxxx
Arthur, David W., xxx-xx-xxxx
Asiello, Robert M., xxx-xx-xxxx
Asimakopoulos, Peter L., xxx-xx-xxxx
Atchison, Jere L., xxx-xx-xxxx
Atkins, Edsel R., xxx-xx-xxxx
Auger, John D., xxx-xx-xxxx
Augsburger, Grayson, xxx-xx-xxxx
Avriett, Robert J., xxx-xx-xxxx
Back, John F., xxx-xx-xxxx
Badger, James L., xxx-xx-xxxx
Baily, Charles M., xxx-xx-xxxx
Baird, Thomas F., xxx-xx-xxxx
Baker, Richard L., xxx-xx-xxxx
Baker, Robert M., xxx-xx-xxxx
Baker, Thomas W., xxx-xx-xxxx
Barbara, James C., xxx-xx-xxxx
Barbee, William R., xxx-xx-xxxx
Barefoot, Allen, Jr., xxx-xx-xxxx
Barnes, Darvin E., xxx-xx-xxxx
Barnhill, Jerry R., xxx-xx-xxxx
Barrington, John E., xxx-xx-xxxx
Barry, William A., xxx-xx-xxxx
Bartley, Randall B., xxx-xx-xxxx
Battcher, John A., xxx-xx-xxxx
Baumgartner, Glenn, xxx-xx-xxxx
Beale, Thomas L., xxx-xx-xxxx
Beard, Otis R., xxx-xx-xxxx
Beaver, John W., xxx-xx-xxxx
Belch, Peter P., xxx-xx-xxxx
Bell, Ronald D., xxx-xx-xxxx
Belz, George D., xxx-xx-xxxx
Benefield, Johnie H., xxx-xx-xx...
Bennett, Kelley E., xxx-xx-xxxx
Berg, David B., xxx-xx-xxxx
Bergeron, Alfred J., xxx-xx-xxxx
Bergman, William K., xxx-xx-xxxx
Berkey, Richard O., xxx-xx-xxxx
Bernard, Joseph P., xxx-xx-xxxx
Berry, Gerald J., xxx-xx-xxxx
Berry, Steven D., xxx-x...
Bertagnolli, Joseph, xxx-xx...
Beverley, William W., xxx-xx-xxxx
Biegen, William K., xxx-xx-xxxx
Bijold, Gerald P., xxx-xx-xxxx
Bikus, John J., xxx-xx-xxxx
Billings, Darryl R., xxx-xx-xxxx
Bischoff, Robert C., xxx-xx-xxxx
Bise, Lanny C., xxx-xx-xxxx
Bishop, Lewis M., xxx-xx-xxxx
Black, John H., xxx-xx-xxxx
Blackburn, David A., xxx-xx-xxxx
Blackwell, Leon B., xxx-xx-xxxx
Blades, Jon W., xxx-xx-xxxx
Blanchard, Sherman, xxx-xx-xxxx
Blaylock, Norman R., xxx-xx-xxxx
Bloyd, John R., xxx-xx-xxxx
Blumenfeld, Charles, xxx-xx-xxxx
Bock, William P., xxx-xx-xxxx
Bockman, Frank W., xxx-xx-xxxx
Bohuslar, John W., xxx-xx-xxxx
Boles, Edward A., xxx-xx-xxxx
Bolick, Miles A., xxx-xx-xxxx
Bond, Peter A., xxx-xx-xxxx
Bonnell, Kenneth L., xxx-xx-xxxx
Borek, Theodore B., xxx-xx-xxxx
Bornmann, Rex N., xxx-xx-xxxx
Bounds, Gary L., xxx-xx-xxxx
Bowen, Kenneth G., xxx-xx-xxxx
Bowles, Edward S., xxx-xx-xxxx
Boyd, Michael F., xxx-xx-xxxx
Boyer, Robert F., xxx-xx-xxxx
Brasili, Samuel A., xxx-xx-xxxx
Braudaway, Jessie A., xxx-xx-xxxx
Braze, David J., xxx-xx-xxxx
Breman, Stephen L., xxx-xx-xxxx
Bridges, Franklin G., xxx-xx-xxxx
Bridges, Terrell D., xxx-xx-xxxx
Brinker, Walter E., xxx-xx-xxxx
Brisbine, Glen E., xxx-xx-xxxx
Brittingham, Michael, xxx-xx-xxxx
Broadhurst, Carl R., xxx-xx-xxxx
Brockington, Anthony, xxx-xx-xxxx
Brooks, Susan, xxx-xx-xxxx
Brown, Bradford M., xxx-xx-xxxx
Brown, Clark C., xxx-xx-xxxx
Brown, David J., xxx-xx-xxxx
Brown, Donald F., xxx-xx-xxxx
Brown, Floyd L., xxx-xx-xxxx
Brown, Jerry A., xxx-xx-xxxx
Brown, Robert J., xxx-xx-xxxx
Brown, Robert M., xxx-xx-xxxx
Brown, Wayne K., xxx-xx-xxxx
Bruegger, Robert D., xxx-xx-xxxx
Brunnhoeffer, Gilbert, xxx-xx-xxxx
Bryant, Hurley D., xxx-xx-xxxx
Bryant, James W., xxx-xx-xxxx
Bryson, Gene K., xxx-xx-xxxx
Buchwald, Clarence, xxx-xx-xxxx
Buckley, Daniel J., xxx-xx-xxxx
Buczacki, John B., xxx-xx-xxxx
Buetti, Anthony J., xxx-xx-xxxx
Bullock, Howard R., xxx-xx-xxxx
Bumanglag, Carlos J., xxx-xx-xxxx
Bundons, Albert R., xxx-xx-xxxx
Burbidge, John M., xxx-xx-xxxx
Burdette, Robert J., xxx-xx-xxxx
Burnette, Larry R., xxx-xx-xxxx
Burns, Kennith R., xxx-xx-xxxx
Burnside, John G., xxx-xx-xxxx
Busch, Brian J., xxx-xx-xxxx
Bush, Charles D., xxx-xx-xxxx
Bush, John R., xxx-xx-xxxx
Buys, Albert P., xxx-xx-xxxx
Buzby, Brian, xxx-xx-xxxx
Byard, Frederick B., xxx-xx-xxxx
Byrne, William G., xxx-xx-xxxx
Cabot, O. H. Perry, xxx-xx-xxxx
Cadorette, Raymond, xxx-xx-xxxx
Cain, James R., xxx-xx-xxxx
Caine, Bruce T., xxx-xx-xxxx
Calek, Joseph R., xxx-xx-xxxx
Callahan, Francis R., xxx-xx-xxxx
Callaway, John H., xxx-xx-xxxx
Callaway, Larry W., xxx-xx-xxxx
Cameron, Tom O., xxx-xx-xxxx
Campbell, Carole M., xxx-xx-xxxx
Campbell, Julian M., xxx-xx-xxxx
Canar, Robert G., xxx-xx-xxxx
Cannon, Walter W., xxx-xx-xxxx
Canon, Charles M., xxx-xx-xxxx
Capozzi, Roy M., xxx-xx-xxxx
Capps, James H., xxx-xx-xxxx
Cardell, Larry E., xxx-xx-xxxx
Carden, Joe B., xxx-xx-xxxx
Carlson, Kenneth G., xxx-xx-xxxx
Carlton, John W., xxx-xx-xxxx
Carmack, James R., xxx-xx-xxxx
Carpenter, Ronald B., xxx-xx-xxxx
Carr, Jerry T., xxx-xx-xxxx
Carter, Willard T., xxx-xx-xxxx
Cartwright, Robert, xxx-xx-xxxx
Carzoli, Richard L., xxx-xx-xxxx
Casalengo, Roger W., xxx-xx-xxxx
Case, James W., xxx-xx-xxxx
Catalano, Thomas S., xxx-xx-xxxx
Cathey, Theodore F., xxx-xx-xxxx
Cecere, Peter M., xxx-xx-xxxx
Cecil, Gerald T., xxx-xx-xxxx
Celani, Albert F., xxx-xx-xxxx
Cepak, Charlie J., xxx-xx-xxxx
Cercone, Joseph A., xxx-xx-xxxx
Ceremenaro, James A., xxx-xx-xxxx
Chambers, James V., xxx-xx-xxxx
Chapman, Abner B., xxx-xx-xxxx
Chapman, William J., xxx-xx-xxxx
Cheatham, Calvin W., xxx-xx-xxxx
Chellis, Allen R., xxx-xx-xxxx
Chidichimo, Salvatore, xxx-xx-xxxx
Childs, Ernest L., xxx-xx-xxxx
Chilton, Forrest S., xxx-xx-xxxx
Christiano, Michael, xxx-xx-xxxx
Christiansen, Edward, xxx-xx-xxxx
Ciarlo, Fred H., xxx-xx-xxxx
Clare, Joseph F., xxx-xx-xxxx
Clark, Douglas M., xxx-xx-xxxx
Clark, Hugh D., xxx-xx-xxxx
Clark, James E., xxx-xx-xxxx
Clark, Louis R., xxx-xx-xxxx
Clark, Michael R., xxx-xx-xxxx
Clark, Patrick W., xxx-xx-xxxx
Clark, Wesley K., xxx-xx-xxxx
Clegg, Ronald W., xxx-xx-xxxx
Clemens, Judd L., xxx-xx-xxxx
Coates, Charles F., xxx-xx-xxxx
Coats, Landis R., xxx-xx-xxxx
Cobb, Douglas H., xxx-xx-xxxx
Cochran, Franklin H., xxx-xx-xxxx
Coen, Kendall B., xxx-xx-xxxx
Coffey, Robert S., xxx-xx-xxxx
Coffman, Raymond J., xxx-xx-xxxx
Coggins, Gary M., xxx-xx-xxxx
Cole, Carlos E., xxx-xx-xxxx
Cole, William P., xxx-xx-xxxx
Coleman, Bruce S., xxx-xx-xxxx
Coleman, Charles E., xxx-xx-xxxx
Collard, Nelson B., xxx-xx-xxxx
Collier, Samuel M., xxx-xx-xxxx
Collins, Carl L., xxx-xx-xxxx
Collins, James L., xxx-xx-xxxx
Collins, Kenneth R., xxx-xx-xxxx
Collmeyer, Michael, xxx-xx-xxxx
Condon, John L., xxx-xx-xxxx
Conley, John E., xxx-xx-xxxx
Connally, Sharon C., xxx-xx-xxxx
Conner, James C., xxx-xx-xxxx
Connolly, John F., xxx-xx-xxxx
Conrad, Thomas F., xxx-xx-xxxx
Cook, Joseph L., xxx-xx-xxxx
Cook, Paul E., xxx-xx-xxxx
Cooney, Norman R., xxx-xx-xxxx
Cooper, James P., xxx-xx-xxxx
Cooper, William E., xxx-xx-xxxx
Coradini, William J., xxx-xx-xxxx
Corbin, James E., xxx-xx-xxxx
Cordes, Arben P., xxx-xx-xxxx
Cork, Stephen D., xxx-xx-xxxx
Corley, Milton D., xxx-xx-xxxx
Corn, Vollney B., xxx-xx-xxxx
Corthell, Jeffrey L., xxx-xx-xxxx
Cosgrove, Colin B., xxx-xx-xxxx
Cottrell, Peter J., xxx-xx-xxxx
Coughlin, John F., xxx-xx-xxxx
Cowings, John S., xxx-xx-xxxx
Cowsert, Garrett T., xxx-xx-xxxx
Cox, Ronald H., xxx-xx-xxxx
Coyle, Raymond A., xxx-xx-xxxx
Crabtree, Jack D., xxx-xx-xxxx
Craig, Aubrey D., xxx-xx-xxxx
Craig, Terry L., xxx-xx-xxxx
Cravens, James J., Jr., xxx-xx-xxxx
Crawford, Danny L., xxx-xx-xxxx
Cretella, Joseph G., xxx-xx-xxxx
Crews, Gerald L., xxx-xx-xxxx
Crittsinger, Clifford, xxx-xx-xxxx
Crocker, George A., xxx-xx-xxxx
Crockett, John R., xxx-xx-xxxx

Cropper, Siegfried, xxx-xx-xxxx
Crosby, Robert W., xxx-xx-xxxx
Crowell, David V., xxx-xx-xxxx
Cruikshank, Ralph H., xxx-xx-xxxx
Culbreth, Larry M., xxx-xx-xxxx
Cullem, James M., xxx-xx-xxxx
Cummings, Charles G., xxx-xx-xxxx
Curl, Terry W., xxx-xx-xxxx
Curtis, Craig H., xxx-xx-xxxx
Cushing, John R., xxx-xx-xxxx
Dalfonzo, Joseph A., xxx-xx-xxxx
Daly, Lawrence T., xxx-xx-xxxx
Daly, Timothy E., xxx-xx-xxxx
Daniels, Jerry W., xxx-xx-xxxx
Daprato, Norman P., xxx-xx-xxxx
Darley, Roger G., xxx-xx-xxxx
Darnell, Ronald H., xxx-xx-xxxx
Darone, Ronald D., xxx-xx-xxxx
Davies, James, III, xxx-xx-xxxx
Davis, Homer L., xxx-xx-xxxx
Davis, James H., xxx-xx-xxxx
Davis, Louis R., xxx-xx-xxxx
Davis, Merrill W., xxx-xx-xxxx
Davis, Nathan, xxx-xx-xxxx
Davis, Richard N., xxx-xx-xxxx
Dawson, Lester P., xxx-xx-xxxx
Day, Lawrence W., xxx-xx-xxxx
Dean, Byron K., xxx-xx-xxxx
Debiase, James P., xxx-xx-xxxx
Delaney, Russell J., xxx-xx-xxxx
Delgado, Richard, xxx-xx-xxxx
Delk, Lucious E., xxx-xx-xxxx
Dellomo, John L., xxx-xx-xxxx
Dempsey, Daniel J., xxx-xx-xxxx
Denniston, Leroy W., xxx-xx-xxxx
Deperro, John F., xxx-xx-xxxx
Dephillips, Terry L., xxx-xx-xxxx
Derby, Anson W., xxx-xx-xxxx
Derouen, Donald B., xxx-xx-xxxx
Derr, Stanley E., xxx-xx-xxxx
Devlin, Donald L., xxx-xx-xxxx
Dickens, James A., xxx-xx-xxxx
Dickinson, Paul W., xxx-xx-xxxx
Difiore, Matthew F., xxx-xx-xxxx
Dismukes, William F., xxx-xx-xxxx
Divalentin, Anthony, xxx-xx-xxxx
Divita, Joseph M., xxx-xx-xxxx
Dixon, Gerald E., xxx-xx-xxxx
Dixon, James H., xxx-xx-xxxx
Dock, William E., xxx-xx-xxxx
Dombrowsky, Thomas, xxx-xx-xxxx
Donahoe, John F., xxx-xx-xxxx
Donnithorne, Larry, xxx-xx-xxxx
Dooley, Buryl E., xxx-xx-xxxx
Dopler, Jack E., xxx-xx-xxxx
Dorsey, Mercer M., xxx-xx-xxxx
Dort, Dean R., xxx-xx-xxxx
Doty, Donald W., xxx-xx-xxxx
Dougherty, Russell, xxx-xx-xxxx
Dowling, Ted K., xxx-xx-xxxx
Doyle, James B., xxx-xx-xxxx
Doyle, James T., xxx-xx-xxxx
Drewes, Carl E., xxx-xx-xxxx
Driscoll, Eugene J., xxx-xx-xxxx
Droke, Willard B., xxx-xx-xxxx
Dubia, John A., xxx-xx-xxxx
Duncan, Franklin E., xxx-xx-xxxx
Duncan, Jimmy L., xxx-xx-xxxx
Dunn, Carroll H., xxx-xx-xxxx
Dunnem, Alvin E., xxx-xx-xxxx
Durazzo, Franklyn P., xxx-xx-xxxx
Durbin, Terrence E., xxx-xx-xxxx
Eakin, William C., xxx...
Eastman, Robert J., xxx-xx-xxxx
Eaton, Bruce R., xxx-xx-xxxx
Ebbitt, Harold K., xxx-xx-xxxx
Eberle, John C., xxx-xx-xxxx
Eckel, Hasko K., xxx-xx-xxxx
Ecuyer, Lawrence J., xxx-xx-xxxx
Edge, Harold B., xxx-xx-xxxx
Edgerton, Thomas J., xxx-x...
Edwards, Floyd E., xxx-xx-xxxx
Edwards, Jerome G., xxx-xx-xxxx
Ehart, Stephen H., xxx-x...
Eichenberger, David, xxx-xx-x...
Eiland, Lewis K., xxx-xx-xxxx
Eisenberg, Stephen, xxx-xx-xxxx
Elder, Robin L., xxx-xx-xx...
Elders, James F., xxx-xx-xxxx
Elders, Telford E., xxx-xx-xxxx
Eller, Thomas H., xxx-xx-xxxx
Emerick, Robert G., xxx-xx-xxxx
Emerson, Samuel C., xxx-xx-xxxx
Eng, Harry F., xxx-xx-xxxx
English, Ronald W., xxx-xx-xxxx
Epperson, Gary E., xxx-xx-xxxx
Ericksen, Scott R., xxx-xx-xxxx
Ernst, Carl F., xxx-xx-xxxx
Ernst, Federick G., xxx-xx-xxxx
Esmay, Jerry D., xxx-xx-xxxx
Estes, John R., xxx-xx-xxxx
Estrada, Martin, xxx-xx-xxxx
Evans, Gordon E., xxx-xx-xxxx
Evans, Mickey S., xxx-xx-xxxx
Everitt, Donald B., xxx-xx-xxxx
Ewing, Vernon C., xxx-xx-xxxx
Eye, Richard D., xxx-xx-xxxx
Faber, Morris R., xxx-xx-xxxx
Fagersten, James R., xxx-xx-xxxx
Fairhead, Michael P., xxx-xx-xxxx
Falcon, John D., xxx-xx-xxxx
Farewell, Thomas E., xxx-xx-xxxx
Farrar, John L., xxx-xx-xxxx
Farrell, Henry R., xxx-xx-xxxx
Farris, Karl, xxx-xx-xxxx
Farthing, Clifford, xxx-xx-xxxx
Fassett, Richard M., xxx-xx-xxxx
Faust, Edmond L., xxx-xx-xxxx
Fazen, Robert P., xxx-xx-xxxx
Felch, John E., Jr., xxx-xx-xxxx
Fellenz, Michael P., xxx-xx-xxxx
Felletter, Vincent, xxx-xx-xxxx
Fender, Charles K., xxx-xx-xxxx
Ferguson, Richard E., xxx-xx-xxxx
Ferguson, William E., xxx-xx-xxxx
Ferrea, Albert J., xxx-xx-xxxx
Feurer, Michael H., xxx-xx-xxxx
Fichter, James M., xxx-xx-xxxx
Fields, Clifford L., xxx-xx-xxxx
Fields, Harold D., xxx-xx-xxxx
Fields, Thomas J., xxx-xx-xxxx
Fields, Timothy G., xxx-xx-xxxx
Figgins, Charles E., xxx-xx-xxxx
Filson, James W., xxx-xx-xxxx
Finch, Alfred J., xxx-xx-xxxx
Fincke, Dale E., xxx-xx-xxxx
Finley, Earl W., xxx-xx-xxxx
Fish, John H., xxx-xx-xxxx
Fitzgerald, Henry E., xxx-xx-xxxx
Fitzgerald, Thomas, xxx-xx-xxxx
Fitzpatrick, Joseph, xxx-xx-xxxx
Fix, Donald J., xxx-xx-xxxx
Flanders, Charles L., xxx-xx-xxxx
Flannery, Corbett M., xxx-xx-xxxx
Fleming, John J., xxx-xx-xxxx
Fletcher, Douglas M., xxx-xx-xxxx
Flowers, James H., xxx-xx-xxxx
Fontenot, Russell J., xxx-xx-xxxx
Ford, Robert L., xxx-xx-xxxx
Foster, Douglas E., xxx-xx-xxxx
Foster, Michael R., xxx-xx-xxxx
Fousek, Richard J., xxx-xx-xxxx
Fowler, David F., xxx-xx-xxxx
Fox, Richard W., xxx-xx-xxxx
Frankel, Ronald S., xxx-xx-xxxx
Franklin, Jerry L., xxx-xx-xxxx
Frazer, Schley J., xxx-xx-xxxx
Frazier, Billy W., xxx-xx-xxxx
Frazier, Thomas M., xxx-xx-xxxx
Frederick, James L., xxx-xx-xxxx
Freitas, William F., xxx-xx-xxxx
Frey, Douglas J., xxx-xx-xxxx
Frey, Jeffery B., xxx-xx-xxxx
Frost, Billy W., xxx-xx-xxxx
Fry, Jerry R., xxx-xx-xxxx
Fry, Michael D., xxx-xx-xxxx
Fuentes, Vincent O., xxx-xx-xxxx
Gabel, Kolman A., xxx-xx-xxxx
Gagne, John P., xxx-xx-xxxx
Gagnon, Robert L., xxx-xx-xxxx
Galligan, Francis B., xxx-xx-xxxx
Garretson, Peter W., xxx-xx-xxxx
Garst, Robert E., xxx-xx-xxxx
Gartenberg, Joel M., xxx-xx-xxxx
Genter, Billy V., xxx-xx-xxxx
Gentry, Don R., xxx-xx-xxxx
George, Wayne D., xxx-xx-xxxx
Gerald, Stuart W., xxx-xx-xxxx
Gerard, William F., xxx-xx-xxxx
Gerding, Richard L., xxx-xx-xxxx
Gesker, Joseph M., xxx-xx-xxxx
Gibson, Claud L., xxx-xx-xxxx
Gibson, Donald A., xxx-xx-xxxx
Gibson, Emmitt E., xxx-xx-xxxx
Gilbert, Richard H., xxx-xx-xxxx
Gilbertson, Clark D., xxx-xx-xxxx
Gilbertson, Michael, xxx-xx-xxxx
Gildersleeve, James, xxx-xx-xxxx
Gill, Paul C., xxx-xx-xxxx
Gillenwater, Paul G., xxx-xx-xxxx
Gilliam, Charles E., xxx-xx-xxxx
Gimbert, Jack H., xxx-xx-xxxx
Gimiam, Allan D., xxx-xx-xxxx
Glann, George W., xxx-xx-xxxx
Glass, John D., xxx-xx-xxxx
Gleason, James C., xxx-xx-xxxx
Glisson, Henry T., xxx-xx-xxxx
Goertemiller, John, xxx-xx-xxxx
Gollattscheck, Mark, xxx-xx-xxxx
Gonzales, Joe C., xxx-xx-xxxx
Goodhart, Raymond R., xxx-xx-xxxx
Gooding, Jerold L., xxx-xx-xxxx
Goodman, Michael J., xxx-xx-xxxx
Gordon, Jonathan C., xxx-xx-xxxx
Gorgas, Frederick K., xxx-xx-xxxx
Gornto, Ronald E., xxx-xx-xxxx
Gorski, Richard V., xxx-xx-xxxx
Gorton, Ashton, E., xxx-xx-xxxx
Graham, Roger D., xxx-xx-xxxx
Grandel, Ronald D., xxx-xx-xxxx
Grant, Arthur V., xxx-xx-xxxx
Grant, Thomas A., xxx-xx-xxxx
Grass, Stephen A., xxx-xx-xxxx
Grau, Lester W., xxx-xx-xxxx
Graves, Arthur J., xxx-xx-xxxx
Graves, Harold G., xxx-xx-xxxx
Gray, John W., xxx-xx-xxxx
Gray, Kenneth D., xxx-xx-xxxx
Gray, Robert E., xxx-xx-xxxx
Greaney, Arthur L., xxx-xx-xxxx
Green, Louis C., xxx-xx-xxxx
Green, Robert A., xxx-xx-xxxx
Green, Ronald A., xxx-xx-xxxx
Green, Wesley, III, xxx-xx-xxxx
Greene, Robert F., Jr., xxx-xx-xxxx
Greene, William P., xxx-xx-xxxx
Greenwood, Robert M., xxx-xx-xxxx
Greeson, Jon M., xxx-xx-xxxx
Grice, Kenneth R., xxx-xx-xxxx
Griesse, Ronald M., xxx-xx-xxxx
Griffin, James G., xxx-xx-xxxx
Griffin, Karl R., xxx-xx-xxxx
Griswold, Wilburn C., xxx-xx-xxxx
Gross, John E., xxx-xx-xxxx
Grugle, Roger A., xxx-xx-xxxx
Guin, Jerry R., xxx-xx-xxxx
Guy, Earl P., xxx-xx-xxxx
Hackett, John L., xxx-xx-xxxx
Haeme, Raymond A., xxx-xx-xxxx
Hagler, Ralph L., xxx-xx-xxxx
Halliday, Robert W., xxx-xx-xxxx
Hallums, James D., xxx-xx-xxxx
Hamilton, Gary E., xxx-xx-xxxx
Hampton, Marvin E., xxx-xx-xxxx
Hampton, Ralph C., xxx-xx-xxxx
Hanau, Steven L., xxx-xx-xxxx
Haney, Richard J., xxx-xx-xxxx
Hanson, Charles M., xxx-xx-xxxx
Harbison, Larry J., xxx-xx-xxxx
Hardister, James C., xxx-xx-xxxx
Hardwick, Danny G., xxx-xx-xxxx
Harley, George E., xxx-xx-xxxx
Harman, William R., xxx-xx-xxxx
Harold, Robert S., xxx-xx-xxxx
Harper, Paul R., xxx-xx-xxxx
Harper, Richard T., xxx-xx-xxxx
Harper, Sidney W., xxx-xx-xxxx
Harrington, Peter B., xxx-xx-xxxx
Harris, Boyd M., xxx-xx-xxxx
Harris, Nick C., xxx-xx-...
Harris, Richard H., xxx-xx-xxxx
Harris, Robert F., xxx-xx-xxxx
Harris, Steven R., xxx-xx-xxxx
Harrison, Matthew C., xxx-xx-xxxx
Hart, J. D., xxx-xx-xxxx
Hart, John, Jr., xxx-xx-xxxx
Hart, Robert R., xxx-xx-xxxx
Hartford, Thomas F., xxx-xx-xxxx
Hartley, Charles R., xxx-xx-xxxx
Hartley, Lonnie G., xxx-xx-xxxx

Hartline, Franklin, xxx-xx-xxxx
Harvey, Noel M., xxx-xx-xxxx
Harvey, William T., xxx-xx-xxxx
Harvill, Daniel O., xxx-xx-xxxx
Harville, Jerry L., xxx-xx-xxxx
Hassen, David E., xxx-xx-xxxx
Hassett, James P., xxx-xx-xxxx
Hassinger, Richard, xxx-xx-xxxx
Hathaway, Edward N., xxx-xx-xxxx
Hathorn, Frederick, xxx-xx-xxxx
Hauck, Robert L., xxx-xx-xxxx
Hauser, John R., xxx-xx-xxxx
Hawkins, William E., xxx-xx-xxxx
Hayes, James M., xxx-xx-xxxx
Hayes, John R., xxx-xx-xxxx
Haynes, Thomas R., xxx-xx-xxxx
Hayward, Lucille B., xxx-xx-xxxx
Hazen, James C., xxx-xx-xxxx
Hazer, Kaleem, Jr., xxx-xx-xxxx
Heacock, Edgar J., xxx-xx-xxxx
Heath, Frederick G., xxx-xx-xxxx
Hedges, Paul C., xxx-xx-xxxx
Hedgpath, Donald R., xxx-xx-xxxx
Heimericks, Leonard, xxx-xx-xxxx
Hemphill, Douglass, xxx-xx-xxxx
Hemphill, John R., xxx-xx-xxxx
Henderson, Aubrey E., xxx-xx-xxxx
Henderson, John H., xxx-xx-xxxx
Henderson, Morey M., xxx-xx-xxxx
Hendricks, David P., xxx-xx-xxxx
Hendrix, John W., xxx-xx-xxxx
Hennigh, Thomas L., xxx-xx-xxxx
Hepler, John F., xxx-xx-xxxx
Hermoyian, Edward J., xxx-xx-xxxx
Herndon, Robert L., xxx-xx-xxxx
Hess, Robert E., xxx-xx-xxxx
Hicks, Charles R., xxx-xx-xxxx
Hicks, Robert R., xxx-xx-xxxx
Hill, Carl D., xxx-xx-xxxx
Hill, Howard W., xxx-xx-xxxx
Hiltbrand, Lance K., xxx-xx-xxxx
Hines, Jimmy R., xxx-xx-xxxx
Hink, William M., xxx-xx-xxxx
Hinkle, Lawrence R., xxx-xx-xxxx
Hirning, Ervin N., xxx-xx-xxxx
Hirsch, Patrick R., xxx-xx-xxxx
Hitchcock, John L., xxx-xx-xxxx
Hixon, William F., xxx-xx-xxxx
Hmara, Jeffrey L., xxx-xx-xxxx
Hobrle, John W., xxx-xx-xxxx
Hock, Frank M., xxx-xx-xxxx
Hodes, Robert W., xxx-xx-xxxx
Hoerle, Arno J., xxx-xx-xxxx
Holborn, Alden J., xxx-xx-xxxx
Holder, Leonard D., xxx-xx-xxxx
Holland, John L., xxx-xx-xxxx
Hollis, Wardell, Jr., xxx-xx-xxxx
Hollowell, Paul C., xxx-xx-xxxx
Holmes, Miles W., xxx-xx-xxxx
Hood, John E., xxx-xx-xxxx
Hoodenpyle, James C., xxx-xx-xxxx
Hoose, Frederick R., xxx-xx-xxxx
Hoover, Steven P., xxx-xx-xxxx
Hopkins, Frank E., xxx-xx-xxxx
Hopkins, Wyland W., xxx-xx-xxxx
Hopp, Carl F., xxx-xx-xxxx
Horridge, David J., xxx-xx-xxxx
Horst, Kelso W., xxx-xx-xxxx
Hotard, Ernest P., xxx-xx-xxxx
Howe, Robert L., xxx-xx-xxxx
Howell, Briley W., xxx-xx-xxxx
Howell, John R., xxx-xx-xxxx
Howell, Kent P., xxx-xx-xxxx
Hoyman, William W., xxx-xx-xxxx
Huchun, Kim, xxx-xx-xxxx
Huckabay, Warren T., xxx-xx-xxxx
Hudgins, James W., xxx-xx-xxxx
Huey, James T., xxx-xx-xxxx
Huff, Howard F., xxx-xx-xxxx
Hughes, Lyttle P., xxx-xx-xxxx
Hugus, David K., xxx-xx-xxxx
Humphrey, Elbert A., xxx-xx-xxxx
Hunt, Lynn J., xxx-xx-xxxx
Hunt, Russell C., xxx-xx-xxxx
Hunter, Harold L., xxx-xx-xxxx
Hustead, Michael W., xxx-xx-xxxx
Huston, Robert E., xxx-xx-xxxx
Hutchins, Andrew C., xxx-xx-xxxx
Hutchison, James M., xxx-xx-xxxx
Hvezdos, Michael S., xxx-xx-xxxx

Imamura, Robert M., xxx-xx-xxxx
Ingalls, Allan S., xxx-xx-xxxx
Ireland, John C., xxx-xx-xxxx
Ivanjack, Walter F., xxx-xx-xxxx
Jablonski, Robert C., xxx-xx-xxxx
Jackson, James H., xxx-xx-xxxx
Jackson, John W., xxx-xx-xxxx
Jacobelly, Robert C., xxx-xx-xxxx
Jacobs, Jack H., xxx-xx-xxxx
James, Richard J., xxx-xx-xxxx
Jandreau, James L., xxx-xx-xxxx
Jefferds, Fred, xxx-xx-xxxx
Jefferis, James L., xxx-xx-xxxx
Jenkins, James E., xxx-xx-xxxx
Jenkins, James G., xxx-xx-xxxx
Jenkins, John M., xxx-xx-xxxx
Jenkins, Kenneth M., xxx-xx-xxxx
Jenkinson, Earl H., xxx-xx-xxxx
Jensen, Jerold L., xxx-xx-xxxx
Jernigan, David S., xxx-xx-xxxx
Jewett, Gary E., xxx-xx-xxxx
Johansen, Ralph F., xxx-xx-xxxx
Johnson, Billy R., xxx-xx-xxxx
Johnson, David C., xxx-xx-xxxx
Johnson, Harold L., xxx-xx-xxxx
Johnson, Jesse L., xxx-xx-xxxx
Johnson, Leland C., xxx-xx-xxxx
Johnson, Neil A., xxx-xx-xxxx
Johnson, Philip P., xxx-xx-xxxx
Johnson, Ralph E., xxx-xx-xxxx
Johnson, Warren A., xxx-xx-xxxx
Johnson, Wesley L., xxx-xx-xxxx
Johnston, Clifford, xxx-xx-xxxx
Johnston, Thomas M., xxx-xx-xxxx
Jones, Gary A., xxx-xx-xxxx
Jones, James M., xxx-xx-xxxx
Jones, James N., xxx-xx-xxxx
Jones, Lindon D., xxx-xx-xxxx
Jones, Paul D., xxx-xx-xxxx
Jones, Richard L., xxx-xx-xxxx
Joseph, John K., xxx-xx-xxxx
Judd, John R., xxx-xx-xxxx
Junnier, Barry C., xxx-xx-xxxx
Jurgevich, Nancy J., xxx-xx-xxxx
Kacerguis, Peter A., xxx-xx-xxxx
Kakel, William W., xxx-xx-xxxx
Kale, William H., xxx-xx-xxxx
Kalergis, George J., xxx-xx-xxxx
Kammerer, Robert E., xxx-xx-xxxx
Kane, Edward P., xxx-xx-xxxx
Karney, Robert E., xxx-xx-xxxx
Karr, Kennard G., xxx-xx-xxxx
Katin, Jon D., xxx-xx-xxxx
Keane, John M., xxx-xx-xxxx
Keefe, Kenneth L., xxx-xx-xxxx
Keenan, James N., xxx-xx-xxxx
Kehres, John K., xxx-xx-xxxx
Keith, Chester E., xxx-xx-xxxx
Kelley, David J., xxx-xx-xxxx
Kelley, Richard T., xxx-xx-xxxx
Kelly, John L. I., xxx-xx-xxxx
Kelly, Kenneth F., xxx-xx-xxxx
Kelly, Ronald F., xxx-xx-...
Kelsey, John S., xxx-xx-xxxx
Kemp, Jerry C., xxx-xx-xxxx
Kennett, Michael B., xxx-xx-xxxx
Kenyon, Norbert L., xxx-xx-xxxx
Keravuori, Jouni, xxx-xx-xxxx
Ketzis, Sandor I., xxx-xx-xxxx
Kimak, Michael D., xxx-xx-xxxx
Kimery, Bruce, F., xxx-xx-xxxx
King, Gerald F., xxx-xx-xxxx
King, Robert D., xxx-xx-xxxx
Kinman, Leroy E., xxx-xx-xxxx
Kirby, Bobby G., xxx-xx-xxxx
Kirby, Jefferson D., xxx-xx-xxxx
Kirchoffner, Donald, xxx-xx-xxxx
Kirk, Howard C., xxx-xx-xxxx
Kirk, Johnny, L., xxx-xx-xxxx
Kirkland, Travis P., xxx-xx-xxxx
Kirkpatrick, Lyman, xxx-xx-xxxx
Kittredge, Albert A., xxx-xx-xxxx
Klaver, Robert P., xxx-xx-xxxx
Kline, David T., xxx-xx-xxxx
Kline, Richard D., xxx-xx-xxxx
Klinger, Terry G., xxx-xx-xxxx
Knedler, Charles M., xxx-xx-xxxx
Kneisler, James R., xxx-xx-xxxx
Knight, Lonnie E., xxx-xx-xxxx
Knowlton, David L., xxx-xx-xxxx

Knox, John W., xxx-xx-xxxx
Kobes, Eugene H., xxx-xx-xxxx
Kobey, David, xxx-xx-xxxx
Kokenes, Gerald P., xxx-xx-xxxx
Kollenborn, Byron B., xxx-xx-xxxx
Kone, Wilson V., xxx-xx-xxxx
Korkalo, Roy E., xxx-xx-xxxx
Kovacs, Stephen Z., xxx-xx-xxxx
Krantz, Kenneth A., xxx-xx-xxxx
Kriebel, James, xxx-xx-xxxx
Kromer, Robert A., xxx-xx-xxxx
Krout, Homer L., xxx-xx-xxxx
Kucharski, Francis, xxx-xx-xxxx
Kutter, Wolk D., xxx-xx-xxxx
Kuykendall, Joseph, xxx-xx-xxxx
Kvasnicka, Wayne L., xxx-xx-xxxx
Lackey, Jimmie R., xxx-xx-xxxx
Lalicker, Elmer L., xxx-xx-xxxx
Lambert, John D., Jr., xxx-xx-xxxx
Lancaster, Ralph E., xxx-xx-xxxx
Land, Henry P., xxx-xx-xxxx
Landon, Kenneth L., xxx-xx-xxxx
Lane, John J., xxx-xx-xxxx
Langendorf, Henry S., xxx-xx-xxxx
Lanier, James R., xxx-xx-xxxx
Lanpher, Patrick C., xxx-xx-xxxx
Laposta, Robert H., xxx-xx-xxxx
Laroche, John J., xxx-xx-xxxx
Larsen, Frank E., xxx-xx-xxxx
Larson, David L., xxx-xx-xxxx
Latham, George A., xxx-xx-xxxx
Lauderdale, Charles, xxx-xx-xxxx
Lauer, Donald M., xxx-xx-xxxx
Lauffer, George W., xxx-xx-xxxx
Law, William P., xxx-xx-xxxx
Lawrence, John T., xxx-xx-xxxx
Laws, Jerry L., xxx-xx-xxxx
Lawson, Douglas B., xxx-xx-xxxx
Leach, Lanse M., xxx-xx-xxxx
Leary, Robert N., xxx-xx-xxxx
Leassear, Leonard A., xxx-xx-xxxx
Lecuyer, Jack A., xxx-xx-xxxx
Lee, Charles S., xxx-xx-xxxx
Lee, James H., xxx-xx-xxxx
Lee, Michal F., xxx-xx-xxxx
Leekley, Edward H., xxx-xx-xxxx
Leinen, Robert D., xxx-xx-xxxx
Lempke, Duane A., xxx-xx-xxxx
Lepore, Frank C., xxx-xx-xxxx
Lesh, Newton D., xxx-xx-xxxx
Lesniak, Allen P., xxx-xx-xxxx
Lewis, Murray B., xxx-xx-xxxx
Ligon, Peyton F., xxx-xx-xxxx
Linder, David L., xxx-xx-xxxx
Lindsay, Jock C., xxx-xx-xxxx
Lippincott, Larry R., xxx-xx-xxxx
Littlefield, Neil P., xxx-xx-xxxx
Livecchi, Samuel G., xxx-xx-xxxx
Livingston, Robert, xxx-xx-xxxx
Locklin, Charles W., xxx-xx-xxxx
Loftheim, Jon W., xxx-xx-xxxx
Long, Marion G., Jr., xxx-xx-xxxx
Longley, David H., xxx-xx-xxxx
Lowry, Robert D., xxx-xx-xxxx
Lowry, William J., xxx-xx-xxxx
Loy, Robert A., xxx-xx-xxxx
Loyd, George G., xxx-xx-xxxx
Lum, David A., xxx-xx-xxxx
Lunde, Eric D., xxx-xx-xxxx
Lutes, Stephen R., xxx-xx-xxxx
Macaluso, Mario A., xxx-xx-xxxx
MacDougall, Parker, xxx-xx-xxxx
MacHarrie, William, xxx-xx-xxxx
MacKell, Edward J., xxx-xx-xxxx
Magee, Gerry A., xxx-xx-xxxx
Maggart, Lon E., xxx-xx-xxxx
Magnusson, John A., xxx-xx-xxxx
Maini, Paul B., xxx-xx-xxxx
Malone, Tommie H., xxx-xx-xxxx
Manley, Mark J., xxx-xx-xxxx
Manlove, Richard W., xxx-xx-xxxx
Mann, Morris M., xxx-xx-xxxx
Mann, Thomas R., xxx-xx-xxxx
Manning, Robert F., xxx-xx-xxxx
Marcaccio, Joseph P., xxx-xx-xxxx
March, Charles E., xxx-xx-xxxx
Marinovich, Branko, xxx-xx-xxxx
Marques, Steven J., xxx-xx-xxxx
Marsh, Curtis N., xxx-xx-xxxx
Marshall, John W., xxx-xx-xxxx

Martin, John T., xxx-xx-xxxx
Mashburn, Harold J., xxx-xx-xxxx
Massieu, Raymond W., xxx-xx-xxxx
Matlosz, Henry S., xxx-xx-xxxx
Matthews, David F., xxx-xx-xxxx
Matthews, John W., xxx-xx-xxxx
Mauldin, Bruce P., xxx-xx-xxxx
Maurice, Timothy P., xxx-xx-xxxx
Mayew, Walter L., xxx-xx-xxxx
McAllister, Howard, xxx-xx-xxxx
McArdle, John C., xxx-xx-xxxx
McCalla, John H., xxx-xx-xxxx
McCallum, James S., xxx-xx-xxxx
McCarthy, Edward P., xxx-xx-xxxx
McClellan, Dennis W., xxx-xx-xxxx
McCleney, Dickie H., xxx-xx-xxxx
McCloud, John A., xxx-xx-xxxx
McCollam, Albert E., xxx-xx-xxxx
McCoy, Frederick W., xxx-xx-xxxx
McCullough, David D., xxx-xx-xxxx
McDermott, Michael, xxx-xx-xxxx
McDonald, James A., xxx-xx-xx...
McDonald, Robert C., xxx-xx-xxxx
McDonnell, John J., xxx-xx-xxxx
McDougal, Winn B., xxx-xx-xxxx
McFarren, Freddy E., xxx-xx-xxxx
McGarry, Dale B., xxx-xx-xxxx
McGinness, Harry J., xxx-xx-xxxx
McGoogan, Franklin, xxx-xx-xxxx
McHugh, Thomas J., xxx-xx-xxxx
McIntosh, William A., xxx-xx-xxxx
McKay, Michael V., xxx-xx-xxxx
MceKarn, Chaunchy F., xxx-xx-xxxx
McKee, Stephen, F., xxx-xx-xxxx
McKemey, William J., xxx-xx-xxxx
McKenzie, David M., xxx-xx-xxxx
McKinney, Willm R., xxx-xx-xxxx
MsKnight, David A., xxx-xx-xxxx
McLaughlin, Thomas, xxx-xx-xxxx
McLeod, Glenn A., xxx-xx-xxxx
McMakin, James P., xxx-xx-xxxx
McMillan, Wesley J., xxx-xx-xxxx
McPeak, William S., xxx-xx-xxxx
McRae, George J., xxx-xx-xxxx
McWherter, Michael, xxx-xx-xxxx
McWherter, Patrick, xxx-xx-xxxx
Measels, Michael L., xxx-xx-xxxx
Meccia, Robert M., xxx-xx-xxxx
Medlock, Randall B., xxx-xx-xxxx
Meek, Ronnie A., xxx-xx-xxxx
Meese, Lawrence R., xxx-xx-xxxx
Meikle, James G., xxx-xx-xxxx
Mellor, John L., Jr., xxx-xx-xxxx
Menig, Robert W., xxx-xx-xxxx
Menix, Wilbert R., xxx-xx-xxxx
Menser, Kent D., xxx-xx-xxxx
Mentell, Robert A., xxx-xx-xxxx
Mercer, Donald L., xxx-xx-xxxx
Merkerson, Willie J., xxx-xx-xxxx
Meurer, Frederick E., xxx-xx-xxxx
Meyer, Thomas P., xxx-xx-xxxx
Meyers, Fred L., xxx-x...
Michael, Danny R., xxx-xx-xxxx
Michael, Larry J., xxx-xx-xxxx
Middleton, Norris C., xxx-xx-xxxx
Middleton, Thomas C., xxx-x...
Miezelis, Joseph A., xxx-xx-xxxx
Miggins, Michael D., xxx-xx-xxxx
Mihata, Kevin K., xxx-x...
Miller, Billy J., xxx-xx-xxxx
Miller, Bruce, xxx-x...
Miller, Frank L., xxx-xx-xxxx
Miller, Henry S., xxx-xx-xxxx
Miller, Joe D., xxx-xx-xxxx
Miller, John M., xxx-xx-xxxx
Miller, Martin W., xxx-xx-xxxx
Miller, Ronald L., xxx-x...
Millikan, Erlend J., xxx-x...
Mitchell, Richard R., xxx-xx-xxxx
Mitrook, Ronald, xxx-xx-xxxx
Moerls, John M., xxx-xx-xx...
Moffett, Donald L., xxx-xx-x...
Mohr, Harry W., xxx-xx-xxxx
Moll, Jeremiah C., xxx-xx-xxxx
Monday, Joseph A., xxx-xx-xxxx
Monteverde, Miguel, xxx-xx-xxxx
Montgomery, Waldo W., xxx-xx-xx...
Moody, David L., xxx-xx-xxxx
Mooney, Jackie E., xxx-xx-xxxx
Moore, Earnest R., xxx-xx-xxxx
Moore, Jack M., xxx-xx-xxxx
Morgan, Douglas D., xxx-xx-xxxx
Morimoto, Joshua T., xxx-xx-xxxx
Morris, Robert E., xxx-xx-xxxx
Morsch, Ronald L., xxx-xx-xxxx
Mortis, Robert W., xxx-xx-xxxx
Morton, Curtis R., xxx-xx-xxxx
Moss, David R., xxx-xx-xxxx
Moss, Paul R., xxx-xx-xxxx
Moss, Vernon D., xxx-xx-xxxx
Mueller, Mark A., xxx-xx-xxxx
Mueller, Kenneth L., xxx-xx-xxxx
Mullins, Lynwood S., xxx-xx-xxxx
Mullori, Dominick M., xxx-xx-xxxx
Murphy, Donald T., xxx-xx-xxxx
Murphy, Gary R., xxx-xx-xxxx
Murphy, James R., xxx-xx-xxxx
Murphy, Thomas L., xxx-xx-xxxx
Murray, Richard N., xxx-xx-xxxx
Murty, Monty R., xxx-xx-xxxx
Muzzy, John K., xxx-xx-xxxx
Myers, Byron D., xxx-xx-xxxx
Naish, Lyle T., xxx-xx-xxxx
Nason, Alan B., xxx-xx-xx...
Neary, Patrick H., xxx-xx-xxxx
Neilan, Robert J., xxx-xx-xxxx
Nelson, Charles S., xxx-xx-xxxx
Nelson, Ronald W., xxx-xx-xxxx
Nelson, Rondle L., xxx-xx-xxxx
Nemec, Henry A., xxx-xx-xxxx
Nemetz, Donald A., xxx-xx-xxxx
Nesmith, Vardell E., xxx-xx-xxxx
Ness, Robert L., xxx-xx-xxxx
Nettling, John T., xxx-xx-xxxx
Nevares, Henry, Jr., xxx-xx-xxxx
Newell, Clayton R., xxx-xx-xxxx
Newsham, Thomas D., xxx-xx-xxxx
Nichol, John B., xxx-xx-xxxx
Niedermeyer, Glenn, xxx-xx-xxxx
Niemann, Patrick J., xxx-xx-...
Nienhuis, Marlan L., xxx-xx-xxxx
Niles, David P., xxx-xx-xxxx
Nix, John H., xxx-xx-xxxx
Noel, Lloyd A., xxx-xx-xxxx
Norris, Jack K., xxx-xx-xxxx
Norris, Michael A., xxx-xx-xxxx
Norris, Michael R., xxx-xx-xxxx
Norris, Roger H., xxx-xx-xxxx
Norton, George E., xxx-xx-xxxx
Nottingham, Donald, xxx-xx-xxxx
Nuccitelli, Robert, xxx-xx-xxxx
O'Brien, Alfred H., xxx-xx-xxxx
O'Brien, Andrew J., xxx-xx-xxxx
O'Connell, John J., xxx-xx-xxxx
O'Connor, James L., xxx-xx-...
O'Connor, William G., xxx-xx-xxxx
Ogle, James T., xxx-xx-xxxx
Ogley, Gary A., xxx-xx-xxxx
O'Hara, David B., xxx-xx-...
O'Keefe, James G., xxx-xx-xxxx
Okimoto, Alexander, xxx-xx-xxxx
Oldham, Michael J., xxx-xx-...
O'Leary, Bartholomew, xxx-xx-...
Oliver, Edward L., xxx-xx-xxxx
Olson, Charles E., xxx-xx-xxxx
O'Neill, Timothy R., xxx-xx-xxxx
Orr, Ira R., xxx-xx-xxxx
Orvold, Theodore S., xxx-xx-xxxx
Oshel, Michael E., xxx-xx-xxxx
Oslin, Robert W., xxx-xx-xxxx
Otis, John A., xxx-xx-xxxx
Overcash, Clyde S., xxx-xx-xxxx
Owen, David W., xxx-xx-xxxx
Owens, John M., xxx-xx-xxxx
Pack, Richard A., xxx-xx-xx...
Paduano, Ralph J., xxx-xx-xxxx
Palmer, James E., xxx-xx-xxxx
Palmer, John A., xxx-xx-xx...
Pantalion, Charles, xxx-xx-xx...
Paramore, Ronald L., xxx-xx-xxxx
Pardew, James W., xxx-xx-xxxx
Parent, David S., xxx-xx-xxxx
Park, David J., xxx-xx-xxxx
Parker, Craiger C., xxx-xx-xxxx
Parkes, Michael A., xxx-xx-xxxx
Parris, Richard, xxx-xx-xxxx
Parrish, Robert D., xxx-xx-xxxx
Paschall, Charles H., xxx-xx-xxxx
Pasztor, John S., xxx-xx-xxxx
Patterson, David L., xxx-xx-xxxx
Patterson, Robert G., xxx-xx-xxxx
Patterson, Weldon C., xxx-xx-xxxx
Pearson, Billy H., xxx-xx-xxxx
Pedersen, Milton D., xxx-xx-xxxx
Peel, John L., xxx-xx-xxxx
Peery, George G., xxx-xx-xxxx
Penning, Michael N., xxx-xx-xxxx
Perez, Mario G., xxx-xx-xxxx
Perkins, Rudy C., xxx-xx-xxxx
Perry, Frederick C., xxx-xx-xxxx
Perry, Judson E., xxx-xx-xxxx
Perry, Ronnie L., xxx-xx-xxxx
Peterson, Jon M., xxx-xx-xxxx
Petzinger, Manfred, xxx-xx-xxxx
Pevey, Tommy R., xxx-xx-xxxx
Phillip, Joseph P., xxx-xx-xxxx
Phillips, Paul W., xxx-xx-xxxx
Phillips, Phil G., xxx-xx-xxxx
Phillips, Stephen N., xxx-xx-xxxx
Pier, William S., xxx-xx-xxxx
Pierson, Gary D., xxx-xx-xxxx
Pike, A. Nolan, III, xxx-xx-xxxx
Piker, Charles E., xxx-xx-xxxx
Pitts, Harold E., xxx-xx-xxxx
Pitts, James H., xxx-xx-xxxx
Pleasant, Justin K., xxx-xx-xxxx
Plumlee, Gordon K., xxx-xx-xxxx
Pollock, Frederick, xxx-xx-xxxx
Pomager, Richard A., xxx-xx-xxxx
Pomeroy, Charles J., xxx-xx-xxxx
Pond, Richard G., xxx-xx-xxxx
Poore, Randolph T., xxx-xx-xxxx
Porter, William R., xxx-xx-xxxx
Potter, Mark W., xxx-xx-xxxx
Poucher, James A., xxx-xx-xxxx
Powers, Barry E., xxx-xx-xxxx
Powers, George F., xxx-xx-xxxx
Powers, George W., xxx-xx-xxxx
Predmore, Keith E., xxx-xx-xxxx
Price, Dale R., xxx-xx-xxxx
Price, Jerry S., xxx-xx-xxxx
Prince, Roy A., xxx-xx-xxxx
Pritchett, James L., xxx-xx-xxxx
Probst, Francis J., xxx-xx-xxxx
Proctor, James H., xxx-xx-xxxx
Proctor, Stephen M., xxx-xx-xxxx
Proffitt, Robert W., xxx-xx-xxxx
Purcell, John P., xxx-xx-xxxx
Quinn, Dennis J., xxx-xx-xxxx
Quisenberry, James, xxx-xx-xxxx
Raab, Carl F., xxx-xx-xxxx
Rader, Wayne F., xxx-xx-xxxx
Radosevich, Wilbert, xxx-xx-xxxx
Raney, Charles D., xxx-xx-xxxx
Raschke, Phillip E., xxx-xx-xxxx
Ratchye, James C., xxx-xx-xxxx
Ratts, Michael D., xxx-xx-xxxx
Raudy, John H., xxx-xx-xxxx
Rawls, Jimmie D., xxx-xx-xxxx
Ray, Wilson, xxx-xx-xxxx
Reading, David K., xxx-xx-xxxx
Rechner, Hubert, xxx-xx-xxxx
Reed, Howard H., xxx-xx-xxxx
Reed, Nathan K., xxx-xx-xxxx
Reeder, William S., xxx-xx-xxxx
Reichert, David E., xxx-xx-xxxx
Reid, Theodore W., xxx-xx-xxxx
Reid, Walter H., xxx-xx-xxxx
Reinkober, Thomas E., xxx-xx-xxxx
Remson, Arthur S., xxx-xx-xxxx
Rennagel, William C., xxx-xx-xxxx
Reynolds, John W., xxx-xx-xxxx
Rhoads, Thomas H., xxx-xx-xx...
Rhome, Robert C., xxx-xx-xxxx
Ricca, John J., xxx-xx-xxxx
Riccinto, Patrick J., xxx-xx-xxxx
Rice, John M., xxx-xx-xxxx
Richards, Wynn G., xxx-xx-xxxx
Richardson, Harold, xxx-xx-xxxx
Richardson, Sterling, xxx-xx-xxxx
Rickman, Travis R., xxx-xx-xxxx
Riddle, Stephen S., xxx-xx-xxxx
Riley, Hubbard L., xxx-xx-xxxx
Riley, John E., xxx-xx-xxxx
Riley, Phillip D., xxx-xx-xxxx
Riley, Ronald G., xxx-xx-xxxx
Rimer, James R., xxx-xx-xxxx
Rinaldo, Richard J., xxx-xx-xxxx

Rinehart, Stephen C., xxx-xx-xxxx
Ritchey, James C., xxx-xx-xxxx
Ritter, John B., xxx-xx-xxxx
Rivers, Robert D., xxx-xx-xxxx
Riviello, Robert N., xxx-xx-xxxx
Rizzo, Samuel A., xxx-xx-xxxx
Robb, John F., xxx-xx-xxxx
Robblee, Paul A., xxx-xx-xxxx
Roberts, James A., xxx-xx-xxxx
Roberts, Jerry G., xxx-xx-xxxx
Roberts, Michael F., xxx-xx-xxxx
Robeson, William M., xxx-xx-xxxx
Robinson, David C., xxx-xx-xxxx
Robinson, David M., xxx-xx-xxxx
Robinson, Kenneth W., xxx-xx-xxxx
Robison, Cecil M., xxx-xx-xxxx
Robson, Richard R., xxx-xx-xxxx
Roddy, Michael A., xxx-xx-xxxx
Rodgers, Patrick J., xxx-xx-xxxx
Rodier, Michael W., xxx-xx-xxxx
Romano, Michael A., xxx-xx-xxxx
Romine, Philo M., xxx-xx-xxxx
Rooney, John M., xxx-xx-xxxx
Root, Paul M., xxx-xx-xxxx
Rose, Donald E., xxx-xx-xxxx
Roseborough, Morgan, xxx-xx-xxxx
Ross, Edward W., xxx-xx-xxxx
Rossow, Allen F., xxx-xx-xxxx
Rourke, Robert U., xxx-xx-xxxx
Ruderman, Gill H., xxx-xx-xxxx
Rudolph, Jack M., xxx-xx-xxxx
Ruff, Edwin R., xxx-xx-xxxx
Rush, Bobby G., xxx-xx-xxxx
Rutherford, Wilson, xxx-xx-xxxx
Ryland, Charles M., xxx-xx-xxxx
Sagar, Marvin E., xxx-xx-xxxx
Salt, Terrence C., xxx-xx-xxxx
Salter, Stephen M., xxx-xx-xxxx
Salyer, Howard C., xxx-xx-xxxx
Sambolich, Paul, xxx-xx-xxxx
Sander, Thomas F., xxx-xx-xxxx
Sanderson, David E., xxx-xx-xxxx
Sandin, Ramon A., xxx-xx-xxxx
Sands, Gerald A., xxx-xx-xxxx
Sarno, Albert R., xxx-xx-xxxx
Sas, Martin S., xxx-xx-xxxx
Sauer, Richard L., xxx-xx-xxxx
Sauls, Heyward C., xxx-xx-xxxx
Saunders, Mark B., xxx-xx-xxxx
Sawyer, Philip A., xxx-xx-xxxx
Saylor, Dennis L., xxx-xx-xxxx
Scales, Robert H., xxx-xx-xxxx
Schantz, John C., xxx-xx-xxxx
Schaumberg, Thomas, xxx-xx-xxxx
Schneider, David P., xxx-xx-xxxx
Schneider, Gerald L., xxx-xx-xxxx
Schneider, Jerry B., xxx-xx-xxxx
Schock, Thomas W., xxx-xx-xxxx
Schrader, Gregg M., xxx-xx-xxxx
Schrader, Robert F., xxx-xx-xxxx
Schroeder, Thomas M., xxx-xx-xxxx
Schuck, William J., xxx-xx-xxxx
Schulcz, Arthur A., xxx-xx-xxxx
Schulze, Richard F., xxx-xx-xxxx
Schwabe, Charles L., xxx-xx-xxxx
Schweppe, Howard B., xxx-xx-xxxx
Schwoerke, Roland J., xxx-xx-xxxx
Scott, Charles R., xxx-xx-xxxx
Scott, Huey B., xxx-xx-xxxx
Scribner, Charles R., xxx-xx-xxxx
Scureman, Mark A., xxx-xx-xxxx
Seger, Robert E., xxx-xx-xxxx
Seigle, Robert N., xxx-xx-xxxx
Selsor, James L., xxx-xx-xxxx
Sendak, Theodore T., xxx-xx-xxxx
Senninger, Theodore, xxx-xx-xxxx
Sever, Kenneth C., xxx-xx-xxxx
Severino, Angelo A., xxx-xx-xxxx
Sewell, James W., xxx-xx-xxxx
Seymour, John A., xxx-xx-xxxx
Shaffer, Gavin D., xxx-xx-xxxx
Shannon, Edward J., xxx-xx-xxxx
Shannon, James M., xxx-xx-xxxx
Sharp, Gregory L., xxx-xx-xxxx
Sharp, Marvin W., xxx-xx-xxxx
Shaver, William G., xxx-xx-xxxx
Shea, Jude E., xxx-xx-xxxx
Sheffey, John F., xxx-xx-xxxx
Sheldon, Douglas M., xxx-xx-xxxx
Shepard, Stephen E., xxx-xx-xxxx
Shepps, Robert J., xxx-xx-xxxx
Shipley, Bruce G., xxx-xx-xxxx
Shipp, Charles A., xxx-xx-xxxx
Shoemaker, Dudley C., xxx-xx-xxxx
Shook, John R., xxx-xx-xxxx
Shoults, William E., xxx-xx-xxxx
Shriner, Robert M., xxx-xx-xx...
Shryock, Robert W., xxx-xx-xxxx
Shtogren, Thomas A., xxx-xx-xxxx
Shugrue, William J., xxx-xx-xxxx
Shutty, Bernard J., xxx-xx-xxxx
Sickinger, Thomas L., xxx-xx-xxxx
Sikes, David A., xxx-xx-xxxx
Silkman, Billy D., xxx-xx-xxxx
Simek, Joseph R., xxx-xx-xxxx
Simmons, John R., xxx-xx-xxxx
Simms, James H., xxx-xx-xxxx
Simon, Henry F., xxx-xx-xxxx
Simpson, Edward Jr., xxx-xx-xxxx
Simpson, Edwin W., xxx-xx-xxxx
Simpson, Kenneth W., xxx-xx-xxxx
Sims, Benjamin A., xxx-xx-xxxx
Sims, Douglas A., xxx-xx-xxxx
Sims, Joe A. Jr., xxx-xx-xxxx
Sisti, Francis J., xxx-xx-xxxx
Silverling, Reuben H., xxx-xx-xxxx
Skidmore, Jack M., xxx-xx-xxxx
Skirvin, Glen D., xxx-xx-xxxx
Skripka, Frederick, xxx-xx-xxxx
Slater, Rufus E., xxx-xx-xxxx
Slater, Terry J., xxx-xx-xxxx
Smalls, Thomas E., xxx-xx-xxxx
Smeeks, Frank C., xxx-xx-xxxx
Smidt, Orville B., xxx-xx-xxxx
Smith, Charles M., xxx-xx-xxxx
Smith, Daniel M., xxx-xx-xxxx
Smith, Eddy, xxx-xx-xxxx
Smith, Edgar L., xxx-xx-xxxx
Smith, Gordon R., xxx-xx-xxxx
Smith, John A., xxx-xx-xxxx
Smith, John W., xxx-xx-xxxx
Smith John W., xxx-xx-xxxx
Smith, Larry G., xxx-xx-xxxx
Smith, Michael R., xxx-xx-xxxx
Smith, Richard W., xxx-xx-xxxx
Smith, Thomas A., xxx-xx-xxxx
Smith, Walter C., xxx-xx-xxxx
Snyder, Albert J., xxx-xx-xxxx
Sobecke, James B., xxx-xx-xxxx
Speer, Wilbur R., xxx-xx-xxxx
Spencer, Robert W., xxx-xx-xxxx
Spinetto, John D., xxx-xx-xxxx
Spoerry, Stephen J., xxx-xx-xxxx
Sporcic, Vincent L., xxx-xx-xxxx
Springer, Francis J., xxx-xx-xxxx
Squillace, Ralph C., xxx-xx-xxxx
Staber, Daniel E., xxx-xx-xxxx
Stacy, Aubrey B., xxx-xx-xxxx
Stafford, Edward P., xxx-xx-xxxx
Stamper, Clarence D., xxx-xx-xxxx
Stankovich, Robert, xxx-xx-xxxx
Stauffacher, Thomas, xxx-xx-xxxx
Steelman, Robert C., xxx-xx-xxxx
Stein, Harry A., xxx-xx-xxxx
Steiner, Charles R., xxx-xx-xxxx
Stepaniak, Frederick, xxx-xx-xxxx
Stephens, Jack R., xxx-xx-xxxx
Stephenson, Joel S., xxx-xx-xxxx
Stewart, Clyde F., xxx-xx-xxxx
Stewart, Gary M., xxx-xx-xxxx
Stewart, Thomas J., xxx-xx-xxxx
St. John, Richard L., xxx-xx-xxxx
Stobie, John P., xxx-xx-xxxx
Stokes, Richard O., xxx-xx-xxxx
Stolarcek, William, xxx-xx-xxxx
Stone, Carl E., xxx-xx-xxxx
Stone, Edwin S., xxx-xx-xxxx
Stoner, William L., xxx-xx-xxxx
Storrs, Rodric A., xxx-xx-xxxx
Stout, Carl F., xxx-xx-xxxx
Stowell, Walter O., xxx-xx-xxxx
Strain, John H., xxx-xx-xxxx
Strange, Theodore R., xxx-xx-xxxx
Strassburg, Thomas, xxx-xx-xxxx
Straub, Christopher, xxx-xx-xxxx
Stream, Joel, xxx-xx-xxxx
Stubbs, Fred J., xxx-xx-xxxx
Stuck, William W., xxx-xx-xxxx
Stull, Terry G., xxx-xx-xxxx
Sullivan, Cavin F., xxx-xx-xxxx
Sullivan, Michael R., xxx-xx-xxxx
Sullivan, Thomas J., xxx-xx-xxxx
Summerford, Ted W., xxx-xx-xxxx
Sutton, James C., xxx-xx-xxxx
Swain, Richard M., xxx-xx-xxxx
Swain, Thomas E., xxx-xx-xxxx
Sweeney, Robert T., xxx-xx-xxxx
Sweeney, Thomas W., xxx-xx-xxxx
Swisher, Ted A., xxx-xx-xxxx
Szabo, Bela A., xxx-xx-xxxx
Tannehill, George L., xxx-xx-xxxx
Tarpley, John J., xxx-xx-xxxx
Tarpley, Thomas J., xxx-xx-xxxx
Tauscher, Elwood R., xxx-xx-xxxx
Taylor, Carl T., xxx-xx-xxxx
Taylor, Daniel E., xxx-xx-xxxx
Taylor, David R., xxx-xx-xxxx
Taylor, Harry O., xxx-xx-xxxx
Taylor, John C., xxx-xx-xxxx
Taylor, Michael E., xxx-xx-xxxx
Taylor, Richard H., xxx-xx-xxxx
Templer, Thomas W., xxx-xx-xxxx
Tenis, Andrew, xxx-xx-xxxx
Thatcher, Leslie D., xxx-xx-xxxx
Theriault, Raymond, xxx-xx-xxxx
Theroux, Thomas R., xxx-xx-xxxx
Thimblin, Michael D., xxx-xx-xxxx
Thoden, Richard W., xxx-xx-xxxx
Thomas, Charles L., xxx-xx-xxxx
Thomas, Clifford M., xxx-xx-xxxx
Thomas, Edward R., xxx-xx-xxxx
Thomas, Evert S., xxx-xx-xxxx
Thomas, James A, xxx-xx-xxxx
Thomas, Michael A., xxx-xx-xxxx
Thomas, Nathaniel L., xxx-xx-xxxx
Thomason, Joel F., xxx-xx-xxxx
Thomason, Melvin F., xxx-xx-xxxx
Thompson, Conley C., xxx-xx-xxxx
Thompson, Grover F., xxx-xx-xxxx
Thompson, Robert R., xxx-xx-xxxx
Thompson, Roger G., xxx-xx-xxxx
Thornblom, Douglas, xxx-xx-xxxx
Thornton, Michael G., xxx-xx-xxxx
Thorpe, William C., xxx-xx-xxxx
Throckmorton, Edward, xxx-xx-xxxx
Tifft, Richard P., xxx-xx-xxxx
Tiller, William F., xxx-xx-xxxx
Tillman, George R., xxx-xx-xxxx
Timmes, Thomas A., xxx-xx-xxxx
Tison, Joesph T., xxx-xx-xxxx
Todd, Albert T., xxx-xx-xxxx
Todd, Terry L., xxx-xx-xxxx
Tonn, George W., xxx-xx-xxxx
Toohey, James P., xxx-xx-xxxx
Tooke, Michael S., xxx-xx-xxxx
Torres, Charles B., xxx-xx-xxxx
Tracy, Stephen A., xxx-xx-xxxx
Traubel, William E., xxx-xx-xxxx
Trout, Marvin D., xxx-xx-xxxx
Troxel, Timothy S., xxx-xx-xxxx
Trujillo, Arthur H., xxx-xx-xxxx
Tucker, Larry W., xxx-xx-xxxx
Tucker, Thomas A., xxx-xx-xxxx
Turbish, James W., xxx-xx-xxxx
Turnbull, James W., xxx-xx-xxxx
Turner, Courtney K., xxx-xx-xxxx
Underwood, James A., xxx-xx-xxxx
Upchurch, Robert H., xxx-xx-xxxx
Utley, Robert C., xxx-xx-xxxx
Utter, George B., xxx-xx-xxxx
Vail, Richard H., xxx-xx-xxxx
Vanalstyne, John A., xxx-xx-xxxx
Vance, Richard L., xxx-xx-xxxx
Vandel, Robert H., xxx-xx-xxxx
VanHelsland, Marshall, xxx-xx-xxxx
Vanprooyen, Jan A., xxx-xx-xxxx
Vansickle, James E., xxx-xx-xxxx
Vanzant, James W., xxx-xx-xxxx
Voelkel, Robert L., xxx-xx-xxxx
Vogt, Robert V., xxx-xx-xxxx
Vose, Leonard C., xxx-xx-xxxx
Vowell, William O., xxx-xx-xxxx
Wagner, Anthony L., xxx-xx-xxxx
Waity, Raymond T., xxx-xx-xxxx
Wald, Ralph L., xxx-xx-xxxx
Waldo, Daniel W., xxx-xx-xxxx
Walker, Darrell W., xxx-xx-xxxx
Wallace, George R., xxx-xx-xxxx
Wallace, Norman W., xxx-xx-xxxx
Waller, William D., xxx-xx-xxxx

Walls, Richard D., xxx-xx-xxxx
Wallschlaeger, Charles, xxx-xx-xxxx
Walsh, Richard M., xxx-xx-xxxx
Walters, Billy F., xxx-xx-xxxx
Walton, Willard Jr., xxx-xx-xxxx
Warburton, Albert E., xxx-xx-xxxx
Ward, Mack C., xxx-xx-xxxx
Ware, George A., xxx-xx-xxxx
Wark, Richard W., xxx-xx-xxxx
Warner, Bruce E., xxx-xx-xx...
Warren, Larry D., xxx-xx-xxxx
Warshawsky, Arnold, xxx-xx-xxxx
Washburn, Dennis A., xxx-xx-xxxx
Watkins, John M., xxx-xx-xxxx
Watkins, Peter F., xxx-xx-xxxx
Watson, Don R., xxx-xx-xxxx
Weathers, Brandon C., xxx-xx-xxxx
Webb, Charles H., xxx-xx-xxxx
Webb, Hershel B., xxx-xx-xxxx
Webster, George K., xxx-xx-xxxx
Weddle, Paul C., xxx-xx-xxxx
Weis, Gerhard W., xxx-xx-xxxx
Weis, Joseph R., xxx-xx-xxxx
Weise, David G., xxx-xx-xxxx
Weiskopf, James D., xxx-xx-xxxx
Welch, Albert C., xxx-xx-xxxx
Welch, James C., xxx-xx-xxxx
West, Oliver I., xxx-xx-xxxx
West, Robert M., xxx-xx-xxxx
Wheeler, James P., xxx-xx-xxxx
Wheeler, Jesse T., xxx-xx-xxxx
Wheeler, William L., xxx-xx-xxxx
Wheeless, Douglas C., xxx-xx-xxxx
Whisker, Dennis W., xxx-xx-xxxx
Whitaker, Gary D., xxx-xx-xxxx
White, Byron W., xxx-xx-xxxx
White, James L., xxx-xx-xxxx
White, Richard A., xxx-xx-xxxx
White, Ronnie R., xxx-xx-xx...
White, William K., xxx-xx-xxxx
Whitley, Kenny W., xxx-xx-xxxx
Whitling, David L., xxx-xx-xxxx
Whittier, Walter C., xxx-xx-xxxx
Whitton, Robert W., xxx-xx-xxxx
Wight, William J., xxx-xx-xxxx
Wild, John W., xxx-xx-xxxx
Wilkins, John C., xxx-xx-xxxx
Wilkinson, Robert A., xxx-xx-xxxx
Willer, Clinton W., xxx-xx-xxxx
Willhoite, Howard W., xxx-xx-xxxx
Williams, Carroll W., xxx-xx-xxxx
Williams, Charles J., xxx-xx-xxxx
Williams, David E., xxx-xx-xxxx
Williams, Duane E., xxx-xx-xxxx
Williams, Floyd, xxx-xx-xxxx
Williams, Herbert D., xxx-xx-xxxx
Williams, James L., xxx-xx-xxxx
Williams, John J., xxx-xx-xxxx
Williams, Lewis R., xxx-xx-xxxx
Williams, Marion G., xxx-xx-xxxx
Williams, Robert B., xxx-xx-xxxx
Williams, Robert P., xxx-xx-xxxx
Williams, Stephen A., xxx-xx-xxxx
Williamson, Cline H., xxx-xx-xxxx
Williamson, Donald, xxx-xx-xxxx
Williamson, Rex P., xxx-xx-xxxx
Willison, Gary S., xxx-xx-xxxx
Wilson, Bruce M., xxx-xx-xxxx
Wilson, Gerald R., xxx-xx-xxxx
Wilson, Harvey L., xxx-xx-xxxx
Wilson, Hogan M., xxx-xx-xxxx
Wilson, Woodrow O., xxx-xx-xxxx
Winter, Donald C., xxx-xx-xxxx
Winterling, Grayson, xxx-xx-xxxx
Wisdom, Jerry L., xxx-xx-xxxx
Wise, James C., xxx-xx-xxxx
Witczak, Chester W., xxx-xx-xxxx
Wood, Piers M., xxx-xx-xxxx
Woodard, James A., xxx-xx-xxxx
Woodruff, Robert F., xxx-xx-xx...
Woods, Gerry W., xxx-xx-xxxx
Woodward, Richard D., xxx-xx-xxxx
Workman, Earsel G., xxx-x...
Wray, George L., II, xxx-xx-xxxx
Wright, Cooper L., xxx-xx-xxxx
Wright, Donald A., xxx-xx-xx...
Wright, Edgar, III, xxx-xx-xxxx
Wright, James E., xxx-xx-xx...
Wright, James M., xxx-xx-xxxx
Wright, Nelson B., xxx-xx-xx...
Wright, Richard W., xxx-xx-xxxx
Wright, Robert D., xxx-xx-xxxx
Wright, Walter G., xxx-xx-xxxx
Wylie, Alexander C., xxx-xx-xxxx
Wyrosdick, James D., xxx-xx-xxxx
Yacovelli, Phillip, xxx-xx-xxxx
Yarger, Harry R., xxx-xx-xxxx
Yates, Clyde P., xxx-xx-xxxx
Yenrick, Philip C., xxx-xx-xxxx
Yim, Gordon T., xxx-xx-xxxx
Youmans, Tommy B., xxx-xx-xxxx
Young, Earl W., xxx-xx-xxxx
Zaehringer, Theodore, xxx-xx-xxxx
Zamory, David A., xxx-xx-xxxx
Zeiler, Richard H., xxx-xx-xxxx
Zepko, John J., xxx-xx-xxxx
Zierdt, John G., xxx-xx-xxxx
Zimmerman, Leroy, xxx-xx-xxxx
Zink, Gale R., xxx-xx-xxxx
Zoglman, Robert R., xxx-xx-xxxx
Zwirner, Adolf A., xxx-xx-xxxx

CHAPLAIN CORPS

To be major

Allen, John M., xxx-xx-xxxx
Berger, Robert F., xxx-xx-xxxx
Garrison, Raymond E., xxx-xx-xxxx
Goldsmith, Richard, xxx-xx-xxxx
Grace, James N., xxx-xx-xxxx
Stenbakken, Richard, xxx-xx-xxxx
Sullivan, Max D., xxx-xx-xxxx

DENTAL CORPS

To be major

Agar, John R., xxx-xx-xxxx
Backenstose, William, xxx-xx-xxxx
Baker, Kim J., xxx-xx-xxxx
Carbone, David O., xxx-xx-xxxx
Cressler, John W., xxx-xx-xxxx
Crumpler, Lyle E., xxx-xx-xxxx
Edge, Marion J., xxx-xx-xxxx
Hlista, Richard J., xxx-xx-xxxx
Hooks, Thomas W., xxx-xx-xxxx
Hughbanks, James C., xxx-xx-xxxx
Hunter, Ronald D., xxx-xx-xxxx
Johnson, Ralph G., xxx-xx-xxxx
Lemoine, David L., xxx-xx-xxxx
Marcoot, Ralph M., xxx-xx-xxxx
McQuade, Michael J., xxx-xx-xxxx
Nagy, William W., xxx-xx-xxxx
Osborne, William H., xxx-xx-xxxx
Rathofer, Steven A., xxx-xx-xxxx
Sharbo, Paul W., xxx-xx-xxxx
Sigala, Joseph L., xxx-xx-xxxx
Stalker, William H., xxx-xx-xxxx
Stefani, Dennis E., xxx-xx-xxxx
Swain, Gary R., xxx-xx-xxxx
Turner, Kenneth D., xxx-xx-xxxx
Wampole, Harry S., xxx-xx-xxxx

MEDICAL CORPS

To be major

Berliner, Daniel S., xxx-xx-xxxx
Cole, Gary B., xxx-xx-xxxx
Coppin, David F., xxx-xx-xxxx
Dalton, Bruce A., xxx-xx-xxxx
Davis, Geoffrey V., xxx-xx-xxxx
Dewitt, Ralph O., xxx-xx-xxxx
Doty, Richard D., xxx-xx-xxxx
Ewart, Thomas W., xxx-xx-xxxx
Fullerton, Leroy R., xxx-xx-xxxx
Grabow, Thomas W., xxx-xx-xxxx
Head, Harold D., xxx-xx-xxxx
Jenna, Russel W., Jr., xxx-xx-xxxx
Kinane, Thomas J., xxx-xx-xxxx
Manning, George S., xxx-xx-xxxx
Obyrne, Stuart A., xxx-xx-xxxx
Parker, John S., xxx-xx-xxxx
Peake, James B., xxx-xx-xxxx
Piskun, Walter S., xxx-xx-xxxx
Poling, Charles W., xxx-xx-xxxx
Rawlings, James S., xxx-xx-xxxx
Redmond, John, III, xxx-xx-xxxx
Rogers, Jack A., Jr., xxx-xx-xxxx
Salander, James M., xxx-xx-xxxx
Watson, Richard A., xxx-xx-xxxx
Wheeler, Leigh F., xxx-xx-xxxx
Wilson, Lynnford S., xxx-xx-xxxx
Wilson, Torrence M., xxx-xx-xxxx

MEDICAL SPECIALIST CORPS

To be major

Allemond, Pierre, xxx-xx-xxxx
Ammerman, Frederick, xxx-xx-xxxx
Anderson, Robert M., xxx-xx-xxxx
Aoki, Wayne C., xxx-xx-xxxx
Ashmore, Lee F., xxx-xx-xxxx
Badgett, Arthur L., xxx-xx-xxxx
Barrett, John A., xxx-xx-xxxx
Bell, William H., xxx-xx-xxxx
Beringer, George R., xxx-xx-xxxx
Beumler, Henry C., xxx-xx-xxxx
Blackwell, Russell, xxx-xx-xxxx
Bodenbender, David, xxx-xx-xxxx
Bogue, Ronald A., xxx-xx-xxxx
Bosetti, Larry G., xxx-xx-xxxx
Boyd, Willie H., xxx-xx-xxxx
Braendel, Douglas A., xxx-xx-xxxx
Brown, Samuel A., xxx-xx-xxxx
Bunch, James S., xxx-xx-xxxx
Church, Zaidos N., xxx-xx-xxxx
Clegg, Thomas A., xxx-xx-xxxx
Coleman, Richard L., xxx-xx-xxxx
Crum, John W., xxx-xx-xxxx
Damato, James J., xxx-xx-xxxx
Debree, William P., xxx-xx-xxxx
Delaney, Gerald L., xxx-xx-xxxx
Elizondo, Raymundo, xxx-xx-xxxx
Ferinde, John, xxx-xx-xxxx
Fields, Jerry L., xxx-xx-xxxx
Foust, Jerome V., xxx-xx-xxxx
Galenes, Alexander, xxx-xx-xxxx
Gaston, Gary W., xxx-xx-xxxx
Ginn, Richard V., xxx-xx-xxxx
Greene, Stonell B., xxx-xx-xxxx
Griffin, Bruce N., xxx-xx-xxxx
Gulley, Myra I., xxx-xx-xxxx
Hamilton, John, xxx-xx-xxxx
Hammond, Sterling D., xxx-xx-xxxx
Haugen, Lawrence A., xxx-xx-xxxx
Hawkins, Robert T., xxx-xx-xxxx
Hembree, Stephen C., xxx-xx-xxxx
Herndon, Michael E., xxx-xx-xxxx
Hiu, Patrick S., xxx-xx-xxxx
Hohmann, James G., xxx-xx-xxxx
Hohn, Dennis E., xxx-xx-xxxx
Hooker, Scottie T., xxx-xx-xxxx
Horrell, Ronald L., xxx-xx-xxxx
Howard, David, xxx-xx-xxxx
Hunt, William C., xxx-xx-xxxx
Inazu, William M., xxx-xx-xxxx
Jasper, William R., xxx-xx-xxxx
Jeffrey, Timothy B., xxx-xx-xxxx
Johnson, Barry J., xxx-xx-xxxx
Jordan, Charles F., xxx-xx-xxxx
Juchau, Simmeon V., xxx-xx-xxxx
Kaisershot, Gordon, xxx-xx-xxxx
Knisely, Benjamin M., xxx-xx-xxxx
Krupka, Thaddeus A., xxx-xx-xxxx
Langhorne, Webster, xxx-xx-xxxx
Leblanc, Robby J., xxx-xx-xxxx
Lyons, Joseph F., xxx-xx-xxxx
Madkins, Lawrence H., xxx-xx-xxxx
Marsteller, Clyde C., xxx-xx-xxxx
McAdams, Spurgeon A., xxx-xx-xxxx
McKinstry, Earl R., xxx-xx-xxxx
McLain, Frederick R., xxx-xx-xxxx
Miles, Ronald D., xxx-xx-xxxx
Miller, Dewey R., xxx-xx-xxxx
Moody, Hershell L., xxx-xx-xxxx
Moore, Clayton, H., xxx-xx-xxxx
Morris, Arnold E., xxx-xx-xxxx
Morris, Harold B., xxx-xx-xxxx
Odell, Thomas E., xxx-xx-xxxx
Olson, Roger, xxx-xx-xxxx
Ostrander, James H., xxx-xx-xxxx
Owen, John T., xxx-xx-xx...
Partin, Daniel H., xxx-xx-xxxx
Peters, Curtis A., xxx-xx-xxxx
Pozniak, Thomas B., xxx-xx-xxxx
Quinn, Frank X., xxx-xx-xxxx
Rodman, Terral L., xxx-xx-xxxx
Salko, Joseph E., xxx-xx-xxxx
Schulz, Jeffrey B., xxx-xx-xxxx
Slifer, William E., xxx-xx-xxxx
Smith, Clarence W., xxx-xx-xxxx
Steen, David B., xxx-xx-xxxx
Sullivan, John E., xxx-xx-xxxx
Swallow, Gary L., xxx-xx-xxxx
Taylor, James A., xxx-xx-xxxx

Thompson, Jerry F., xxx-xx-xxxx
Touchard, George H., xxx-xx-xxxx
Valdes, Victor M., xxx-xx-xxxx
Vatne, Clarence G., xxx-xx-xxxx
Ward, Larry G., xxx-xx-xxxx
Washington, Curtis, xxx-xx-xxxx
White, Julius C., xxx-xx-xxxx
Williams, James N., xxx-xx-xxxx
Williams, Michael D., xxx-xx-xxxx
Wortham, James T., xxx-xx-xxxx

ARMY MEDICAL SPECIALIST CORPS

To be major

Bell, Clyde H., xxx-xx-xxxx
Brown, Clarence D., xxx-xx-xxxx
Ford, Daniel T., xxx-xx-xxxx
Grabhorn, Juanita J., xxx-xx-xxxx
Jenkie, Ronald A., xxx-xx-xxxx
Kersey, Douglas A., xxx-...
Liu, George K., xxx-xx-xx...
Maize, Roy S., xxx-xx-xxxx
Pennell, Clifford R., xxx-xx-xxxx
Sater, Derrol H., xxx-xx-xxxx

VETERINARY CORPS

To be major

Alishouse, Harvel F., xxx-xx-...
Antosh, Thomas F., xxx-xx-xxxx
Carlisle, Eddie L., xxx-xx-xxxx
Catanzaro, Thomas E., xxx-xx-xxxx
Kastello, Michael D., xxx-xx-xxxx
Lewis, George E., xxx-xx-xxxx
Ridder, William E., xxx-xx-...
Vescovi, Ronald E., xxx-xx-xxxx
Zotter, Jon G., xxx-xx-xxxx

ARMY NURSE CORPS

To be major

Accardo, Wilbert J., xxx-xx-xxxx
Allanach, Bruce B., xxx-xx-xxxx
Arndt, Georgene E., xxx-xx-xxxx
Arnold, Joseph V., xxx-xx-xxxx
Arrowsmith, David R., xxx-xx-xxxx
Babson, Beverly R., xxx-xx-xxxx
Barsh, John E., xxx-xx-...
Baysinger, Douglas, xxx-xx-xxxx
Breeden, Linda J., xxx-xx-xxxx
Brillant, Eugene G., xxx-xx-xxxx
Brockschmidt, Frederick, xxx-xx-xxxx
Bryan, Gareth D., xxx-xx-xxxx
Bystran, Sharon F., xxx-xx-xxxx
Chadwick, Mary L., xxx-xx-xxxx
Clark, Dorothy J., xxx-xx-xxxx
Courcy, Ernest H., xxx-xx-xxxx
Cox, Janice M., xxx-xx-xxxx
Deloach, James H., xxx-xx-xxxx
Frelin, Alyce J., xxx-xx-xxxx
Gleeson, Roberta L., xxx-xx-xxxx
Guida, Robert A., xxx-xx-xxxx
Heston, James V., xxx-xx-xxxx
Hickman, Kathleen R., xxx-xx-xxxx
Hopkins, Roger N., xxx-xx-xxxx
Howard, Duane L., xxx-xx-xxxx
Hudock, John M., xxx-xx-xxxx
Hutcheson, Marguerite, xxx-xx-xxxx
Knepper, Glenn B., xxx-xx-xxxx
Kraemer, William J., xxx-xx-xxxx
Laur, Margaret H., xxx-xx-xxxx
Leavell, Ronald E., xxx-xx-xxxx
Lemieux, Elizabeth, xxx-xx-xxxx
Lenig, Richard C., xxx-xx-xxxx
Leonard, Lawrence C., xxx-xx-xxxx
Leonhard, John F., xxx-xx-xxxx
Long, Jerry D., xxx-xx-xxxx
Maloney, Joseph P., xxx-xx-xxxx
McCarthy, Mary M., xxx-xx-xxxx
McDonnell, Robert C., xxx-xx-xxxx
McEntire, Jackie J., xxx-xx-xxxx
Metcalf, Franklin L., xxx-xx-xxxx
Meyer, Robert A., xxx-xx-xxxx
Meyers, Edward M., xxx-xx-xxxx
Mika, Walter V., xxx-xx-xxxx
Minahan, Sue P., xxx-xx-xxxx
Misener, Terry R., xxx-xx-xxxx
Mitten, John N., xxx-xx-xxxx
Morales, Sandra S., xxx-xx-xxxx
O'Connor, Stephen J., xxx-xx-xxxx
Oliver, Randall L., xxx-xx-xxxx
Parr, Thomas E., xxx-xx-xxxx
Patnode, Louis G., xxx-xx-xxxx
Person, Rodney M., xxx-xx-xxxx
Pfaehler, Karl H., xxx-xx-xxxx
Phelps, Frederick O., xxx-xx-xxxx
Price, Barbara J., xxx-xx-xxxx
Riedman, John A., xxx-xx-xxxx
Riley, EllenE., xxx-xx-xxxx
Roscoe, Ronald R., xxx-xx-xxxx
Sanford, Dan M., xxx-xx-xxxx
Sapolis, Richard J., xxx-xx-xxxx
Schanding, Donald W., xxx-xx-xxxx
Seureau, Kathleen N., xxx-xx-xxxx
Sexton, Michael P., xxx-xx-xxxx
Seymour, Richard S., xxx-xx-xxxx
Shellabarger, Virginia, xxx-xx-xxxx
Showman, Lonnie J., xxx-xx-xxxx
Smith, Charles L., xxx-xx-xxxx
Spencer, Joanne M., xxx-xx-xxxx
Stamper, Roy R., xxx-xx-xxxx
Strieper, Sarah S., xxx-xx-xxxx
Swanson, Bruce E., xxx-xx-xxxx
Sylvester, Marilyn, xxx-xx-xxxx
Tiers, Sharon M., xxx-xx-xxxx
Urick,George M., xxx-xx-xxxx
Vail, James D., xxx-xx-xxxx
Welch, Christopher, xxx-xx-xxxx
Wimett, William J., xxx-xx-xxxx
Wimmer, Sidna P., xxx-xx-xxxx
Woldt, Gerald D., xxx-xx-xxxx
Wolf, Richard C., xxx-xx-xxxx

The following-named officer for promotion in the Regular Army, under the provisions of title 10, United States Code, sections 3284 and 3298:

ARMY PROMOTION LIST

To be first lieutenant

Martin, Peter H., xxx-xx-xxxx

ARMY PROMOTION LIST

To be captain

King, Jeffrey L., xxx-xx-xxxx
Schwing, Fred K., xxx-xx-xxxx

The following-named officers for promotion in the Army of the United States, under the provisions of title 10, United States Code, section 3442 and 3447:

DENTAL CORPS

To be lieutenant colonel

Baumgartner, John C., xxx-xx-xxxx
Beebe, John E., xxx-xx-xxxx
Madden, Robert J., xxx-xx-xxxx
Stevenson, Michael E., xxx-xx-xxxx

IN THE NAVY

The following-named midshipman (Naval Academy) to be appointed a permanent ensign in the line of the U.S. Navy, subject to the qualifications therefor as provided by law:

Andrew W. Acevedo

The following-named (Naval Reserve Officers Training Corps candidates) to be appointed ensigns in the line or staff corps of the U.S. Navy, subject to the qualifications therefor as provided by law:

Amy S. Comstock
David G. McRae
Robert N. Nixon

The following-named Navy enlisted scientific education program candidates to be permanent ensigns in the line or staff corps of the U.S. Navy, subject to the qualifications therefor as provided by law:

Armstrong, James D.	Brozzo, Michael R.
Arnold, Ronald R.	Burnfield, Daniel L.
Bainbridge, Richard L.	Cabe, William C.
Baldwin, Craig W.	Caldwell, Billy A.
Ballard, Stephen D.	Carter, Lawrence R.
Banks, Albert J.	Ceci, David M.
Barber, Frederick L.	Chappell, David C.
Beckley, James M.	Cheeks, Lee A.
Blake, Donald S.	Childs, Robert D.
Borer, Chris J.	Christiano, Brian A.
Bouma, John C.	Coleman, Leland E.
Bowen, John D.	Coleman, Leland L.
Bowling, Douglas F.	Correllus, William A.
Boyer, Phillip O.	Critch, Ronald W.
Brewster, Edward Y.	Cronan, John L.
Bridges, Stephen M.	Demuth, Donald E.
Brown, Michael S.	Dotson, Robert W.
Drown, Douglas R.	O'Donnell, Henry E.
Duncan, Armanda V.	Oliver, Wayne S.
Estabrook, Murry W.	Persyn, John M.
Evans, Leonard F.	Porter, Scott W.
Fleming, Gary W.	Posey, Robert L.
Flynn, John T.	Poteat, Gary N.
Forbes, Wilfred J.	Pratt, Douglas A.
Franklin, Gene C.	Ptetl, Robert T.
Gibbs, Robert B.	Purdy, Darrel W.
Gilmore, Thomas N.	Rains, Terry D.
Goble, Dale L.	Rattz, Donald E.
Goode, Gregory L.	Reiff, Thomas V.
Crafton, Thomas R.	Robles, Marcelino
Hamman, Thomas R.	Rodante, Robert S.
Harris, Brian K.	Rombough, Lance W.
Hatzenbuehler, Mark	Rosenau, Chris A.
Hawes, Stephen L.	Rubin, James B.
Headley, Edward W.	Schimizze, Richard R.
Heinbaugh, Richard A.	Scott, Gary L.
Hess, Timothy N.	Seidel, Walter A.
Hill, James R.	Semrite, Alexander J.
Hoffman, Randall L.	Setzer, Christopher J.
Holley, Earl T.	Shropshire, Caroll L.
Hooper, Daniel P.	Silver, Mark I.
Hopkins, Charles L.	Simpson, Robert F.
Howard, Dean E.	Smith, Mark B.
Hoyt, Werner F.	Spears, Thomas M.
Hurley, James J.	Steele, James J.
Ingram, Vernon D.	Stever, Daniel K.
Johnson, James M.	Swetnane, Michael S.
Langford, Leonard L.	Thomas, Michael S.
Lashbrook, David L.	Tillotson, Daniel D.
Lea, Timothy D.	Tisdale, Charles W.
Ledesma, Alfred	Troan, James W.
Lee, Stanley K. C.	Vanbracklin, Kermit
Lester, Donald J.	Voyles, Steven R.
Long, Roland E.	Walker, Jimmy D.
Longest, Jerry M.	Weeden, Dana K.
Lozano, Carlos	Wentland, Cynthia
Lybarger, Charles D.	White, Keven M.
McGowan, Gerald K.	Wilhelm, Robert H.
McSwain, William R.	Williams, Mary C.
Maker, Jerome J.	Williams, Michael D.
Malmberg, Roy D.	Wilstrom, Kenneth A.
Manos, Thomas F.	Wissenbach, Lewes E.
Martello, Charles	Wolber, Raymond W.
Martinig, Richard	Wolfe, Robert C.
Miller, Robert S.	Wood, Charles L.
Miller, Theodore A.	Wood, Michael E.
Molyneux, Harry F.	Workman, Chester J.
Morlang, Gary M.	Wortherly, Clemon R.
Mortenson, Rodney D.	Wright, Steven W.
Moss, Daniel S.	Wright, Walter J.
Mulcady, John M.	Wrigley, Samuel R.
Munyon, Thomas J.	Yuna, Joseph D.
Oakes, Montford E.	Zeiler, John E.

The following-named temporary chief warrant officers to be appointed permanent chief warrant officers, in the line or staff corps of the U.S. Navy, subject to the qualifications therefor as provided by law:

James D. Abshear	Michael R. Finn
Robert E. Allen	Clarence B. Glover, Jr.
Wilfred J. Bean	Gilbert M. Gonzales
David D. Buckley	Billy P. Hrbacek
Allison L. Carson, Jr.	John S. Kelley
George J. Casey	James M. Lewis
James V. Emme	Gary W. Reash
Gary L. Farwell	Charles R. Warner

The following-named (U.S. Navy officers) to be appointed temporary commanders in the Medical Corps in the Reserve of the U.S. Navy, subject to the qualifications therefor as provided by law:

John J. Geren
Jon J. Hanlon
Bernard P. Novak

The following-named (ex-U.S. Navy officers) to be appointed temporary commanders in the Medical Corps in the Reserve of the U.S. Navy, subject to the qualifications therefor as provided by law:

*Michael W. Kistler
*Jack S. Resnick
*John P. Sands, Jr.

*Appointment sent out Ad Interim (during the recess of the Senate). Senate recessed on 28 June 1979–8 July 1979.

The following-named (ex-U.S. Air Force officer) to be appointed a temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to the qualifications therefor as provided by law:

*Stephen R. Stouder

The following-named (civilian college graduates) to be appointed temporary commanders in the Medical Corps in the Reserve of the U.S. Navy, subject to the qualifications therefor as provided by law:

Nejat H. Akbiyik
*William A. Sheremata

The following-named (U.S. Navy officer) to be appointed a temporary commander in the Dental Corps in the Reserve of the U.S. Navy, subject to the qualifications therefor as provided by law:

Gayle A. Owens

The following-named (U.S. Navy officer) to be appointed a temporary commander, in the line, in the U.S. Navy, subject to the qualifications therefor as provided by law:

David J. Friel

IN THE MARINE CORPS

The following-named Naval Reserve Officers Training Corps graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, pursuant to title 10, U.S. Code, section 2107, subject to the qualifications therefor as provided by law:

Aichelmann, Frank M.
Andrews, Richard H.
Austin, Stanley M.
Barber, Gary W.
Barnes, Gregory W.
Barrow, Robert H.
Bartels, William L.
Bassett, William G.
Beaty, Timothy J.
Beekman, Patrick L.
Beeton, Clifford F.
Benford, Robert C.
Bennett, John S.
Berg, David W.
Blair, Kevin L.
Bohn, Michael S.
Bracken, Stephen T.
Bradley, Loretta G.
Brent, Rober C.
Brinn, Chauncey J.
Brogan, Michael M.
Brooker, Michael F.
Brown, Jerome W.
Brozozowksi, Mark M.
Bryant, John J.
Calhoun, Powell T., II
Capitano, Richard G.
Carper, Robert W., Jr.
Chace, Stephen D.
Conn, Daniel J.
Corscadden, Robert A.
Cross, Lyle M.
Curley, James M.
Cusick, Robert P.
Dalton, Pat F., III
Daniels, Robert J.
Daugherty, George L.
David, John W.
Davis, Claude H., III
Dean, Michael J.
Deatherage, Raymond F.
Dedeaux, Waldon A.
Decker, Michael H.
Defazio, George W.
Delaney, William F.
Dickerson, Curtis R.
Diehl, Curtis W.
Digregorio, Frank J.
DiSilva, Debra A.
Doll, James L.
Edmonds, Alan K.
Ellison, Christopher D.
Elwing, David W.
Ennis, Timothy K.
Eoff, David M.
Eskew, Mitchell A.
Fitzgerald, C. Scott
Fitzgerald, Robert A.
Flick, Edmond J.
Fulcher, Mark A.
Gearhart, Robert A.
Geerlings, Norma S.
Gelles, Thomas N.
Gibney, John R.
Gibson, Charles R.
Giorgio, John, Jr.
Golebiowski, Joseph, Jr.
Gossard, Ronald S.
Gray, William K.
Grecco, David J.
Gregory, Thomas E.
Grillo, Christopher
Guzauskas, Susan L.
Hall, Terry L.
Harben, Richard L.
Harding, William W.
Harris, William E.
Hartman, Mary R.
Hartway, Gordon E.
Hastings, Calvin E.
Haynes, Charles T.
Healey, Regina M.
Helmly, Reed L.
Hinman, Craig N.
Hoflen, Kent G.
Horton, David B.
Huete, Timothy H.
Huskey, Gregory A.
Jackson, Timothy J.
Jeffries, James H.
Johnson, Joanne
Jones, Frank A., Jr.
Kane, Paul J.
Keffer, Paul N.
Kelly, Donald W.
Kelly, Thomas R.
Kjell, Nils E.
Kleinfelter, Peter J.
Knauff, Kathy L.
Koppenhaver, James
Lacrosse, John M.
Lake, Brian D.
Lee, Mickey F.
Leech, Frank J.
Leinenkugel, Richard J.
Letts, Steven J.
Luigard, Timothy E.
Lukeman, James W.
Lynes, Jerome M.
Lynn, David B.
Mahnke, Peter A.
Manthe, Brian
Manuel, Larry K.
Martin, Jonathan B.
Masterpool, Michael M.
McAfee, David P.
McCown, James E. III
McLaughlin, Daniel J.
McNeive, James F.
Mortensen, Joseph A.
Moseley, William J.
Munch, Joseph C.
Muse, Mittie C.
Nellis, Stephen M.
Neuwirth, Mark E.
Nitkowski, Suzanne B.
Nixon, David B.
Noblit, Mark L.
Noxon, Robert B.
O'Donnell, Michael R.
Oles, Gary R.
O'Neil, Michael S.
Orawczk, Walter H.
Pearson, Warren L.
Peck, David T.
Platel, Craig A.
Pleasant, Timothy W.
Powell, Curtis J.
Pravati, Lucian M.
Psillas, Christopher F.
Putnam, Adin P.
Rains, Cal II
Renegar, Edwin S.
Richardson, Byron G.
Riley, James E.
Rinaman, Timothy W.
Ritonia, Michael J.
Roberson, David L.
Rood, John A.
Rooney, Joseph J.
Rugar, Mark J.
Sapp, Donald W.
Scott, Francis P.
Shumay, Michael A.
Sitler, David F.
Skinner, Mike T.
Smith, Charles D.
Smith, David E.
Smith, Matthew
Sommerhof, William S.
Sorfleet, William D.
Stebbins, Lee A.
Stinnette, Jesse W.
Stork, Harlan A.
Stroman, Mark H.
Switay, Kenneth M.
Talmon, Kent R.
Tanks, Bobby H.
Treacy, Jonathan T.
Vaughn, Daniel L.
Wakefield, Bruce A.
Walchessen, Nora S.
Wasdin, Ricky S.
Wassermann, Helene S.
Wheeler, Mark E.
Wheeler, Robert F.
White, David L.
White, Patrick J.
Whittle, Frederick J.
Wholley, James R.
Wilson, Jimmy L.
Wolf, Frances B.
Young, Frank A.
Zolman, Richard L.

*Appointment sent out Ad Interim (during the recess of the Senate). Senate recessed on 28 June 1979–8 July 1979.

The following-named Marine Corps enlisted commissioning education program graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, pursuant to title 10, U.S. Code, section 5583, subject to the qualifications therefor as provided by law:

Averitt, Bruce A.
Duckworth, Frank H.
Krug, Daryl V.
Mason, Christy C.
Zirkelbach, Kurt V.

HOUSE OF REPRESENTATIVES—*Wednesday, September 5, 1979*

The House met at 12 o'clock noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

I will extol Thee, my God and King, and bless Thy name for ever and ever. Every day I will bless Thee, and praise Thy name for ever and ever. Great is the Lord, and greatly to be praised, and His greatness is unsearchable.—Psalms 145: 1–3.

O Lord, as we praise Your name, so bless our coming together this day, and cause Your grace to be with those who labor here for the welfare of all people. May Your providence guide our Nation and give the vision for the path of justice and mercy.

When we are selfish and look only to our own needs, give us forgiveness and a new beginning, when we speak the truth and are faithful to our responsibility, then confirm and encourage in the right.

Bless all Your people, Lord, and may Your Spirit daily strengthen us. 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 PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Chirdon, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On August 2, 1979:

H.R. 2729. An act to authorize appropriations for activities for the National Science Foundation for fiscal year 1980, and for other purposes.

On August 3, 1979:

H.J. Res. 373. Joint resolution recognizing the anniversaries of the Warsaw uprising and the Polish resistance to the invasion of Poland during World War II.

On August 6, 1979:

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.

On August 8, 1979:

H.R. 1786. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes.

On August 13, 1979:

H.R. 896. An act for the relief of Joseph J. Andrews;

H.R. 899. An act for the relief of Mr. and Mrs. Aaron Wayne Ogburn;

H.R. 932. An act for the relief of Doris Mauri Coonrad;

H.R. 1158. An act for the relief of James C. Wilkinson;

H.R. 4476. An act to extend certain programs under the Higher Education Act of 1965 for 1 year, and for other purposes;

H J Res. 19. Joint resolution to provide for the designation of a week as "National Lupus Week"; and

H J Res 209 Joint resolution designating the week of October 14, 1979, as "National Diabetes Week."

On August 14, 1979:

H.R. 2807. An act to amend the Bankruptcy Act to provide for the nondischargeability of certain student loan debts guaranteed or insured by the United States;

H.R. 3324. An act to authorize appropriations for fiscal year 1980 for international development and economic assistance pro-