Republican Policy Committee

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Chairman

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William L. Armstrong, *Chairman*

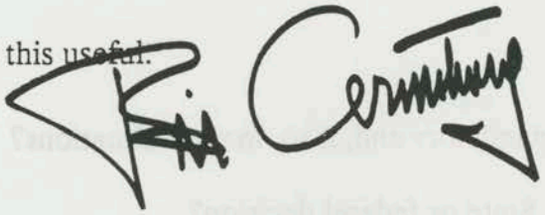
Thinking Points

Before we can figure out if we have the right answers, we need to make sure we are asking the right questions.

Questions about jobs; economic and social well-being; education; health; peace and war...to list a few...are on anybody's list of "things to worry about."

If for no other reason than to help us reflect on these issues and the questions they raise, I asked the Policy Committee staff to jot down some points for consideration. This is not a comprehensive list...just a starting point for additional discussions.

I hope you find this useful.



EDUCATION

The national effort to improve education, launched under Republican leadership in the Congress and the Executive Branch a few years ago, continues to advance. As Secretary Bill Bennett has made clear, we already know "what works": parental involvement; family choice in schooling; dedicated teachers; strong principal who leads; emphasis on basics; high expectations for students; a learning ethic that pervades the institution.

This has become the pattern for successful schools all over the country, although in some states it is still resisted by interest groups which oppose any fundamental change in education.

Education is primarily a State and local responsibility, but it is important to assess what the federal government can do to further the reform movement in our schools.

What federal programs -- and what Republican policies -- can promote "what works" in education? Which federal activities -- or proposals from our opponents -- hamper or discourage the grassroots reform movement?

AIDS

Legislation to increase significantly funding for AIDS research, treatment, and education is likely to come before the Senate soon. It may be followed by legislation concerning testing and counselling. This subject raises a host of questions, with which the Congress is only beginning to grapple:

TESTING:

Should AIDS testing ever be mandatory and, if so, in what situations?

Should mandatory testing be a State or federal decision?

Who should be notified if a person tests positive for AIDS? Spouses, sexual partners, State public health authorities, emergency/rescue workers, prison officials, parents of minors, morticians, nursing/hospital staff, school officials?

Should there be a federal standard for confidentiality regarding AIDS, or should this be left to State confidentiality laws?

LEGAL PROTECTIONS:

Should AIDS patients be given special legal protection against discrimination in schooling, housing, employment, and so forth?

Is this a federal or State issue?

Should persons with this disease be treated differently from those with other communicable illnesses?

The Supreme Court's decision of last March in the Arline case extended the non-discrimination provisions of the Rehabilitation Act of 1973 to persons with contagious diseases. There is considerable confusion as to the impact this decision will have on the ability of public and private institutions to deal with AIDS contagion. What legal constraints, if any, should there be in this regard?

EDUCATION:

What is the proper role of the federal government in informing the American people about AIDS?

In virtually all cases, AIDS is a disease related to behavior. What are the prospects for altering behavior related to drugs and sex through public information?

With the exception of transfusion cases, AIDS remains generally confined to relatively narrow, identifiable segments of the populace. Should AIDS information be targeted upon high-risk categories or aimed at the general public?

OUTLOOK:

Will the AIDS epidemic lead to fundamental changes in American society? If so, should government foster or inhibit those changes?

AIDS already afflicts some minorities disproportionately, largely because of intravenous drug abuse. If this pattern increases, as expected, how will AIDS affect racial relations in the U.S.?

AIDS has widely infected intravenous drug users in many urban areas. What are the long-range implications for drug abuse policy, law enforcement, and urban policy?

TRADE

The trade deficit is still very high by historical standards. We know that the fundamental reason for the large trade deficit is that the U.S. economy has grown faster than those of our trading partners -- even Japan. However, the trade deficit is a very political issue, and we would all like it to decline. Unfortunately, many of

the ways at our disposal to reduce the trade deficit ultimately involve the suppressing of economic growth here. How do we solve the political problem of the trade deficit? How do we discuss the idea that the trade deficit exists because we have grown faster than other countries? How do we address the economic issue of the trade deficit without "shooting ourselves in the foot" with protectionism?

MANDATED BENEFITS

The Democrats are pushing a host of new labor laws this year, including mandatory health care, higher minimum wage, parental leave, "double-breasting," plant closings, and on-the-job safety. (Interestingly, these are all union-supported and AFL-CIO executive Howard Samuel says of the Senate: "We control the committees and the agenda on the floor"--*Time Magazine, June 22, 1987, page 48*). All of these bills rely on the old-fashioned notion that there is a limited amount of work available for Americans, and therefore a limited number of jobs. How do we discuss these issues in such a way as to make it clear that we are concerned with increasing jobs both now and in the future? How do we address these pro-union issues without looking as though we're anti-labor? How do we make it clear that, in a time when we are concerned about the competitiveness of American industry, all of these bills would be detrimental to U.S. competitiveness?

RESTRUCTURING AMERICAN BUSINESS

What will corporate America look like in 5 years? In the year 2000? Will it be strong, innovative, and free -- creating opportunities, wealth, and national strength in a dynamic world economy -- or will it be wrapped in a web of regulation, cowering behind a wall of protectionism?

Democrats propose an economic restructuring of the country and central planning is again in vogue. Democrats want to require employers to do what the Federal government cannot afford. Some Democrats are running for President on a platform whose chief plank is protectionism. Other Democrats want to systematically restructure the American corporation.

Takeovers, mergers, duties of directors, antitrust policy, plant closings, and dozens of related matters have attracted the attention of Congressional Democrats.

Republicans support necessary reforms, but we won't back policies whereby no corporation can move, merge or quit without getting a nod from Congress.

Will the Federal government be an umpire, an overseer, or a nanny to the national economy? The answer may determine the economic and social stability of the nation.

DEFICITS

Although the federal budget deficit is coming down, it is doing so too slowly and is still too high. Most people know that there are wrong ways to reduce the deficit, and foremost among those ways is to raise taxes. As we've seen with painful clarity over the years, raising taxes only fuels further spending and increases the deficit. How do we succeed in reducing the buget deficit, and how do we do it without resorting to higher taxes?

ECONOMIC WELL-BEING AND SECURITY

Most people agree with the Republican tenet that free-market capitalism is the best way to generate wealth and economic well-being in our society. Yet, because the future is always uncertain, people are quite naturally concerned about economic security. The Democrats play on this natural sense of insecurity and entice voters to approve social safety net programs that benefit Democratic special interests. How can we address the issue of economic security in ways that are consistent with our convictions about individual freedom? How can we promote economic security in ways that do not rely upon the heavy hand of the federal government, or that do not merely redistribute wealth from one group to another?

JUDGES

Long after the 100th Congress is gone, the judges confirmed by this Senate will still have a tremendous impact on the law. There is justifiable fear that the current chairman of the Judiciary Committee is delaying confirmations with the hope that, beginning in 1989, he himself will be sending up the nominations.

In the 100th Congress, the Senate has confirmed 3 circuit court judges, 8 district court judges, and 3 claims court judges. Still pending are:

- 4 nominations to circuit courts;
- 11 nominations to district courts;
- 2 nominations to the claims court;
- 6 nominations for U.S. attorney;
- 8 nominations for U.S. marshall; and
- 5 nominations to positions in the Department of Justice.

Some of these still-pending nominations were sent up in January.

What can Republican Senators do to ensure that judicial and executive openings that are now open, or that become open during the next 18 months, will be filled?

CRIME AND ITS VICTIMS

On June 15 by a vote of 5-to-4, the Supreme Court held that Maryland's use of a victim impact statement at the sentencing phase of a capital murder trial violated the defendant's Eighth Amendment rights. Booth v. Maryland, no. 86- 502. If nothing else, Booth demonstrates that the nascent victims rights movement is still in its infancy.

And tragically, the number of victims swells every day, every hour. In the next hour in America there will be:

- 2 murders;
- 15 rapes;
- 113 robberies;
- 144 auto thefts;
- 514 assaults;

- 600 burglaries;
- 900 household thefts; and
- 1800 personal thefts.

Americans are deeply troubled by our levels of crime, delinquency, and drug abuse. Republicans are often seen as the party of "law and order" (even when that phrase was an epithet).

Although criminal justice is primarily a State and local responsibility, isn't there an anti-crime agenda for the Republicans of the 100th Congress?

CIVIL RIGHTS

The "Grove City" bill, S. 557, will raise the obvious questions about nondiscrimination among recipients of federal financial assistance, and it will also raise questions about religious autonomy, the meaning of equality, abortion, and the protection to be afforded to persons with communicable diseases.

The Equal Rights Amendment will return, and with it will return questions about combat duty and the draft, privacy, abortion, and much more.

On March 25, the Supreme Court held that both private organizations and governments can pursue affirmative action plans even in the absence of evidence of past discrimination or identifiable persons harmed by discrimination. Johnson v. Santa Clara Co., no. 85-1129. The decision is said to be within the spirit of Title VII of the Civil Rights Act of 1964. Perhaps; but it is well beyond the letter of the statute, and although the case has been praised by those who approve of this new flexibility for private employers it also permits governments to breach their duty to treat their citizens equally.

MORALITY IN GOVERNMENT

A series of highly publicized incidents has provoked widespread debate over the ethical foundations of contemporary American life: Wall Street scandals, raging corruption among city officials in New York and Washington, D.C., the investigation (and in some cases, the indictment) of certain Members of Congress, the PTL

blow-up, and, most recently, the sudden destruction of a presidential campaign by media exposure of a candidate's conduct.

Some speculate that these matters, and possibly others awaiting us in the year ahead, will heighten public concern about the ethical foundations of government and the character of those who aspire to run it. Others insist that questions of personal morality have nothing to do with public policy.

This leads to some of the thorniest questions in the political arena:

To what extent is a candidate's private conduct -- whether in family matters, business dealings, or other non-governmental affairs -- an appropriate subject for judgment by the electorate?

What is the role of moral considerations in public policy? Is it possible for public officials to segregate their official decisions from their own ethical beliefs?

Is it desirable that they do so? In all subjects, or only some?

What is the responsibility of an elected official when his or her considerations of conscience conflict with the opinions of a majority of the constituents?

For most of its history, the establishment clause of the First Amendment to the Constitution meant that government must treat all denominations alike. That is, it could not prefer one religion to another, give privileges to one church and deny them to another, or subsidize a particular faith at the expense of others.

Over the last 40 years, however, the Supreme Court has fundamentally altered the meaning of the establishment clause to require a separation of the state from all religion. Government cannot prefer religion to non-religion. This has made the United States virtually unique in the non-Communist world.

There is a growing recognition that, at the root of many of the problems confronting public policymakers, there is a moral or ethical failing. Drug abuse is a case in point. Pornography, abortion, child and spousal abuse, teen pregnancy, desertion and non-support by absent fathers, street crime and white-collar crime, abandonment of the elderly -- these and other ills suggest a crisis of values in contemporary society.

Can these problems be dealt with in a purely secular framework?

Can we apply moral considerations to some issues -- racial justice, for example, or relief of poverty -- without accepting their validity in other areas?

Is it possible for government to foster ethical -- or religious -- restraints against undesirable behavior? Is it proper for government to attempt to do so?

How can the Repubican Party stand for traditional values and foster an ethical framework for public decision-making without appearing to be intolerant or captive to any special interest?

THE REAGAN DOCTRINE

In the 1980s, for the first time, the majority of guerrilla movements in the Third World are fighting not to establish communism -- but to overthrow it and restore free govenment. These include:

- Afghanistan, where one million people have been killed and one quarter of the population has fled, while Muslim insurgents fight doggedly against over 100,000 Soviet combat troops;
- Angola, where tens of thousands of Cuban and other foreign communist troops oppose popular resistance led by Jonas Savimbi's UNITA;
- Mozambique, where a communist regime, inexplicably supported by the United States and Britain along with the communist world, totters on the edge of collapse as RENAMO guerrillas battle Zimbabwean troops up to the edge of Maputo;
- Cambodia, where anti-communist forces oppose not only the Soviet and Vietnamese controlled Heng Samrin regime but the PRC-supported Khmer Rouge, which when in power after 1975 slaughtered an estimated 2 million people;
- Nicaragua, where in the last eight years we have seen the Soviets seize a beachhead on the North American continent, while local insurgents fight to dislodge them and restore democracy -- while Congress turns the aid spigots on and off;
- ...and elswhere: Ethiopia, Vietnam, Laos.

For Republicans, the question is: How do we address ourselves to the fundamental yearning for freedom that underlies these conflicts? How do we construct a policy that meets American values and protects American interest?

DEFENSE AND ARMS CONTROL

When the American people elected President Reagan and a Republican Senate in 1980, there was a broad consensus that defense needs had been starved and that the balance had to be redressed -- especially in the face of a massive Soviet arms buildup. Now we find ourselves in the position of having to fight just to maintain current defense allocations, even though the problems that existed in 1980 have only partly been remedied.

At the same time, we find ourselves in a period of improved relations with the Soviet Union under Mr. Gorbachev's "glasnost" leadership style, encouraging a spirit of perhaps unjustified optimism reminiscent of the "detente" of the 1970s. And today, as then, the centerpiece of the changed political circumstance is likely to be an arms control agreement, probably beginning with Intermediate-range Nuclear Forces (INF).

This poses several questions for Republicans:

How do we meet our obligations to preserve the safety of the American people -- not only stopping unwarranted defense cuts but making SDI a reality -- during a period when "feel-good" optimism toward US/Soviet relations dulls a healthy appreciation of the threat posed by the Soviets?

How will we address a possible arms control agreement? An agreement on INF will likely hinge on several key issues -- verification, short-range weapons, balance of conventional forces, among others. What is our position? Will we be faced with a stampede to ratify any agreement, even a flawed one?

In short, what is the Republican vision of how peace and freedom can be secured?

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SURVEY OF LEGISLATIVE ISSUES

June 19, 1987

ACTION SO FAR

So far this session, the Senate has passed the following major items of legislation:

* Clean Water Act - This $20 billion lake and river cleanup bill was passed by both the House and Senate in January and later vetoed by the President, who called it a budget buster. However, both Houses overrode the veto by overwhelming votes (86-14 in the Senate and 401-26 in the House) and the bill became law.

* Highway Bill - This $87.5 billion highway construction, safety and mass transit bill passed both Houses of Congress in March. Once again the President objected to the spending levels and the general lack of fiscal discipline. Although the Senate sustained the veto (65-35) on April 1, it reversed itself the next day by overriding the veto (67-33).

* FSLIC Recapitalization - The Senate-passed banking bill provides for a $7.5 billion recapitalization of the Federal Savings and Loan Insurance Corporation (FSLIC) over two years and closes the "nonbank bank loophole." In contrast, the House-passed bill provides for a $5 billion recapitalization of FSLIC but does not address the "nonbank bank" issue. The House had hoped that the Senate would drop its controversial provisions to restrict banks and financial institutions that act like banks, but finally agreed to go to conference with the Senate. The Administration objects to the Senate's banking provisions and wants a $15 billion, 5-year rescue plan instead.

* Housing Bill - The Senate-passed bill authorizes $7.5 billion for a wide variety of housing programs through FY 1989. Just last week the House passed their version, authorizing a total of $15.98 billion. The next step is a Senate-House conference to resolve the differences.

* Homeless Bill - While the Senate-passed bill would provide $380.7 million for the homeless for FY 1987 and $569 million for FY 1988; the House-passed version gives $500 million for FY 1987. Conferees have agreed on $442.7 million for FY 1987 and $617 million for FY 1988.

* Budget Resolution - Although the Senate passed its version largely on a party-line vote of 56-42 on May 6 and the House finished on April 9, the negotiations had been at an impasse since then over defense and taxes. Conferees reached an agreement yesterday, however; it provides for a one trillion dollar budget and resolves the tax problem by calling for a whopping increase of $64 billion over three years, starting with $19.3 billion in new taxes next year alone.

* Defense Authorization - So far, three attempts to close debate on the motion to proceed to this bill have failed (the last attempt on May 20 failed by 59-39). The main controversial issue is the Levin-Nunn amendment that would confine SDI research and development to the "narrow" interpretation of the ABM Treaty and in effect allows Congress to block accelerated SDI development. There has been no further Senate floor action on the bill. The House passed a bill authorizing $289 billion after three weeks of debate.

* Supplemental - It took the Senate four weeks to pass this $9.4 billion bill; it stalled in the Senate because it exceeded spending limits in the budget resolution and added about $2.6 billion to the FY 1987 budget deficit. The House version contains two arms control amendments that prompted a veto threat. The bill provides $6.7 billion for the Commodity Credit Corportion and, because of the stalemate over the bill, the CCC has ceased issuing farm payments. It is uncertain whether the Senate and House can resolve their differences on the bill, which is currently in conference.

* Campaign Financing - This is the legislation that has held the Senate in thrall for over three weeks. S. 2 imposes campaign spending limits and establishes a system of taxpayer financing for Senate elections financed by doubling the tax "check-off" system already in place for presidential elections.

A LONG, HOT SUMMER AHEAD....

Budget Conference Report
Homeless Conference Report
Trade Bill
DoD Authorization
Debt Limit Bill
Budget Process Reform
Reconciliation
FSLIC Conference Report
Appropriation Bills
AIDS Legislation
Price Anderson Legislation
Foreign Aid Bill
Farm Credit Legislation
State Department Authorization
Grove City Legislation
Minimum Wage
Occupational Disease Notification
Catastrophic Health Bill
Double Breasting
Supplemental Appropriations Conference Report

SURVEY OF MAJOR ISSUES
by
Committee

AGRICULTURE, NUTRITION AND FORESTRY COMMITTEE

Farm policy is sure to be at center stage during the rest of the 100th Congress, but no one knows whether it will take the form of "fine-tuning" or a major overhaul of the 1985 Farm Act. One radical plan, pushed by Sen. Tom Harkin (D-Iowa), even calls for mandatory production controls, with the federal government basically telling farmers what to plant.

Not all the plans on the congressional drawing board are so drastic, but most of them start out with the issue of money. Farm programs were expected to cost $52 billion over the next three years, but the latest Administration estimate is up to a staggering $72 billion. To help contain costs, President Reagan's budget tried to stanch the budget hemorrhage by proposing spending reductions of $5 billion over the next three years; this plan would:

* Reduce target prices by 10% a year instead of the planned 5%;
* Revamp the sugar support system;
* Cap total federal payments at $50,000 per farm instead of $250,000; and
* "Decouple" subsidy payments from production requirements.

Another issue at the top of the list is the debt problem that plagues many farmers. Although forecasters expect modest improvements for farm exports and net farm income, farm debt generally may continue to increase throughout the year. If conditions fail to improve, the Farm Credit System will most likely need an infusion of cash from Congress this year. This farm credit bailout is expected to cost at least $6 billion. In June, the Administration announced its support for a $5 billion federal subsidy. Look for efforts to create a secondary market for farm mortgages similar to that for home mortgages and student loans. Also, the controversial "whole-herd-buyout" program, which was put in the 1985 Farm Act to reduce milk production, expires by October 1.

BANKING COMMITTEE

One of the top priorities for the Committee continues to be the $7.5 billion refinancing of the Federal Savings and Loan Insurance Corporation (FSLIC), the fund that guarantees deposits at federally insured savings and loans. This refinancing legislation has been passed by both Houses and the conferees may meet next week.

In addition to FSLIC, the Senate version closes the "nonbank bank" loophole which has the effect of allowing limited financial institutions to avoid federal prohibitions on interstate banking by providing either checking accounts or commercial loans, but not both. Also, the Senate bill imposes a moratorium on expanded bank powers, blocking until March 1, 1988, the ability of banks to sell securities, insurance, or real estate.

The Committee will likely turn to legislation that has been around now for a few years that would limit the amount of time banks can hold their customers' checks. House-passed check-holding legislation died in the last Congress. Also being dusted off is a bill on credit card interest rates; it would mandate uniform disclosure of interest rates paid by most savings and loans, banks, and credit card companies. Like the check-holding issue, legislation that included this provision died in the last Congress.

Direct loan authority for the Export-Import Bank runs out this year; critics will oppose its extension as an unwarranted subsidy to big business.

BUDGET COMMITTEE

As always, the budget timetable is complex this year. Also, Congress does not often meet its self-imposed schedule, but this is what it looks like:

April 1	Senate Budget Committee reports concurrent resolution on the budget
April 15	Congress is supposed to complete action on concurrent budget resolution; for FY88, action should be completed when the conference report is disposed of next week.
June 10	House Appropriations Committee reports last annual appropriation bill
June 15	Congress is supposed to complete action on reconciliation legislation; this year, reconciliation may run on into the autumn and become fused with the debt ceiling and budget process reform
June 30	House completes action on annual appropriations bills
July 17	"Drop dead date," this year's probable deadline for raising debt ceiling
July 28	This year's deadline for committees to report their reconciliation progress to the Budget Committee
August 15	OMB and CBO estimate deficit for upcoming fiscal year
Sept/Oct.	Congressional efforts to meet Gramm-Rudman target if August 15 estimate exceeds deficit limit
Oct. 5	OMB and CBO issue revised reports on congressional action to meet target.

COMMERCE COMMITTEE

The Committee has several important irons in the fire. One of the most important is product liability, which has been carried over form the last Congress and which died in the Senate after a brief filibuster by opponents. It would require federal standards governing product liability lawsuits, in an attempt to curb expensive lawsuits.

We may also see an attempt to shift supervision of the Bell Telephone System breakup from the federal courts to the Federal Communications Commission (FCC). This was supported by the Administration toward the end of last session by they now are holding fast, pending a Justice Department recommendation.

Keep an eye on expiring authorizations in this area...items that may be controversial in their own right or which might be used as the legislative vehicle for resolving related controversies. Examples: DOT authority to make grants from the Airport and Airway Trust Fund for airport improvement; scientific research at the National Science Foundation; administration of the Communications Act of 1934, which regulates broadcasting and telephones; and funding for NASA and the Corporation for Public Broadcasting.

Thus far, the Senate has passed a three-year authorization of the Federal Trade Commission and the Fairness in Broadcasting Act. In addition, the Committee has reported a bill to establish drug and alcohol testing programs for employees in safety-sensitive positions in the aviation, rail, and motor carrier industries (S. 1041).

DEFENSE/FOREIGN POLICY
(Armed Services, Foreign Relations and Intelligence Committees)

The Armed Services Committee has reported the Department of Defense Authorization Bill but Senate floor action stalled over the extremely controversial Levin-Nunn amendment limiting activities under the ABM treaty to the so-called "narrow" interpretation of its scope. Future action is uncertain at this time. The Democratic leadership of the Armed Services Committee has threatened to have majority staff meet with their counterparts on the House committee and report an agreed text to the two Appropriations Committees for funding purposes.

The Foreign Assistance Authorization has been reported by the Foreign Relations Committee, but floor action is uncertain. The bill contains a provision to restore indirect U.S. funding for forced abortion in the People's Republic of China.

There is likely to be a measure introduced in the Senate to suspend the Most Favored Nation status for Romania, and next week we will probably see a sense of the Senate resolution on the situation in Panama, including a provision calling for armed forces chief General Noriega to step down until an inquiry is completed.

ENERGY AND NATURAL RESOURCES COMMITTEE

With OPEC trying to regain control of world oil output, concern is rising that oil price hikes are coming and that the U.S. is vulnerable to another round of price-gouging by the cartel. The Committee is likely to touch on this topic in a number of ways. First, a 1986 budget-cutting law requires the President to say what level of imports would constitute a national security risk, and legislation may result from this finding. Second, energy trade issues, such as coal and oil import tariffs, may be proposed. And finally, expect continued controversy about how fast we should be filling up the Strategic Petroleum Reserve with oil to meet a national emergency.

Congressional action is expected on the Price-Anderson Act that expires on August 1 and provides for self-insurance of the nuclear industry. The

Committee has completed action on a bill that only deals with the Department of Energy nuclear contractors.

Another big issue before the Committee is whether or not part of the Arctic National Wildlife Refuge (ANWR) is opened to oil and gas leasing. While the development side says the oil is essential for domestic and national security purposes, the anti-development side argues that the environmental impacts are unacceptable.

Other possible action: Clean Air Act amendments (clean coal and acid rain); International Energy Agency (IEA) antitrust exemption; and high-level nuclear waste legislation.

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

Clean air and acid rain issues remain on the agenda. Several clean air bills have been introduced already, including ones by Senators Stafford, Mitchell and Proxmire/Simpson. In addition to reducing sulfur dioxide emissions, the proposals call for tightened limits on nitrogen oxides, hydrocarbons, and particulates because of concern not only with acid rain but also with ozone depletion.

There will likely be a move to enact major legislation setting up a whole new environmental regulatory regime, this time to protect the nation's ground water. Senator Moynihan has introduced legislation (S. 20) to authorize $75 million over three years for States to undertake ground water assessment and to provide $50 million over five years to assist States in setting standards and operating protection programs.

The following expire this year and will require reauthorization: the Endangered Species Act, the Nuclear Regulatory Commission and the Toxic Substances Control Act.

FINANCE COMMITTEE

After Congress passes legislation as voluminous and complex as last year's tax reform bill, it often follows up with a "technical corrections bill." However, a resolution correcting almost 300 "technical errors" did not make it out of Congress last year before the President signed the 1986 tax bill. A correction resolution has been introduced in the Senate and in the House. Many in Washington are keeping a sharp watch on this item, to see whether it will only be technical or whether it will include important tax law changes that may roll back some of last year's hard-won tax reform gains.

Several excise taxes are due to expire in 1987, including the tax that finances airport improvements. Other expiring taxes considered prime opportunities for revenue-raising attempts are the telephone excise tax and the temporary component of the federal unemployment tax. Tax hikers might also look this year at other taxes set to expire soon, such as the gasoline tax and highway construction taxes.

Another big ticket item is trade legislation. The House has already passed its omnibus trade package to which is attached the controversial Gephart provision. The Senate is expected to begin floor debate on its omnibus trade measure Tuesday afternoon. Both bills focus on "international competitiveness."

It is also likely that the Senate will have a textile bill before it again this year. H.R. 1562, last year's bill, or some variant of it that imposes mandatory import quotas, will be used to acquire enough congressional support to override a guaranteed presidential veto.

JUDICIARY COMMITTEE

During the 100th Congress, this Committee will be the battleground where the legacy of the Reagan Administration will be determined. During the last quarter of the Reagan Presidency, one of the most important issues of the day will be whether he will be allowed to put his stamp on the federal bench. The majority-side Democrats have created a four-man "screening panel" to review judicial nominations before they are taken up by the full Committee. Senator Leahy chairs the group; Senators Simon, Metzenbaum, and Heflin round out the panel. If an opening should occur on the Supreme Court, the pyrotechnics will be especially camera-worthy.

Crime may once again be on the Committee's agenda. Specifically, there may be another attempt at an omnibus criminal code reform bill. The control of narcotics will continue to be a legislative priority, and we may see another attempt at creating a "drug czar." Drug issues may receive an airing when Congress considers reauthorizing two programs important in the federal government's war on drugs: Customs' and Justice's Assets Forfeiture Funds.

The Equal Rights Amendment has been reintroduced as S.J. Res. 1; it could well be favorably reported and there is also a chance that a balanced budget amendment will move through the Committee. Fair housing proposals are also likely to receive some attention.

Trade, normally within the jurisdiction of the Finance and Commerce Committees, will make an appearance at Judiciary, where a process patents bill has been reported. Such a bill would allow the holder of a U.S. patent to enjoin the importing and distribution of a product manufactured overseas by illegal use of the patented process. Civil damages also will be available. Other approaches to trade also can be anticipated. For example, the Committee will likely approve a bill to declare foreign dumping a violation of antitrust laws, and to provide an enforcement device.

Look for the Judiciary Committee to turn its attention to business practices in coming months. Hearings can be expected on such things as corporate mergers, insider trading, high yield bonds ("junk bonds"), and similar matters. Senator Metzenbaum already has introduced a bill to repeal the McCarran-Ferguson Act, which exempts insurance businesses from federal antitrust regulation. Vertical integration within the oil industry and exclusive marketing agreements for beer distributors will continue to attract attention.

SOCIAL ISSUES
(Labor and Human Resources, Finance, Banking, and other Committees)

This is the policy area that may well be the most active during the 100th Congress. Federal legislators are already at work, putting together a long list of proposals that will affect a broad range of regulatory initiatives; many of these measures will change decision-making in the private sector. Here are some of the proposals you should keep an eye on:

* Plant closing legislation would penalize or forbid closing or relocation of industrial facilities without federal permission;
* Minimum wage increase would inhibit job creation by raising entry-level salaries;
* New NSHA notification procedures would limit the agency's cooperation with industry in favor of a more adversarial relationship;
* Parental leave requirement (following the Swedish model, which assumes virtually all women hold jobs outside the home) would require employers to hold jobs open for those who take leave for birth or other dependent care;
* Restrictions on polygraph use--as well as limits on drug testing --would narrow grounds on which employers can hire and fire;
* A "Double-Breasting" bill, like that of the last Congress, would greatly strengthen the role of unions in construction and possibly other industries (a similar bill passed the House this week);
Pension plan asset reversion would turn over employee retirement funds to union management;
*Comparable worth proposals will explore ways other than market demand to set the relative value of various professions;
*Continuation of the temporary 2% unemployment tax surcharge (originally intended to repay loans to the trust fund) to fund increased unemployment compensation and even an extension of those benefits for a longer period. This reverses reforms of 1981 which shortened the eligibility period as a work incentive; and
* A major expansion of the Trade Adjustment Act that could extend coverage to workers indirectly affected by foreign competition and possibly apply same benefits to workers dislocated for other reasons.

Expect a blizzard of activity on the health front, too. Three important block grants are due to be reauthorized: Preventive Medicine, Health Services, and Alcohol and Drug Abuse. In this context, a broad range of health issues will be raised, in particular the questions of access to health care and whether we should back away from some of the drug treatment provisions in the Anti Drug Abuse Act of 1986.

* A major AIDS bill has been approved by the Committee. It significantly increases federal spending (by $900 million in new spending) on AIDS research, treatment and education. Other AIDS issues may include:

Whether insurance companies can adjust premiums for AIDS risk
Security of blood and organ supply
Mandatory testing
Non-discrimination

Access to health care will be a major issue, and here is the shopping list circulating in Washington:

Catastrophic health insurance under Medicare (reported by Finance 20 to 0)
Increase in Medicare premiums
Expansion of catastrophic to include long-term nursing home care and to cover those not already protected by Medicare.
IRAs for health care
Coverage of homeless under Medicaid or other programs, possibly in connection with expansion of mental health services
Reauthorization of National Health Service Corps
Mandatory formation of State insurance pools for coverage of persons without private health insurance.

Meanwhile, the pharmaceutical industry is bracing itself for a congressional blitz that may include these topics:

Requiring Senate confirmation for FDA Commissioner
Legislative tinkering with FDA's review process, including a proposal to make drug companies pay a "user fee" for the review process that regulates them
Restrictions on the sweetener Aspartame, and on color additives
Emphasis on "white collar crime" in the industry, including an attack on drug diversion (reselling samples)

And then there is this grab-bag of issues, any of which may pop up suddenly on the Senate's agenda:

Generic animal drugs
Funding for research and development of "orphan drugs"
Funding for the vaccine compensation program enacted last year
Organ transplants
Restricting smoking in public places
Funding levels and specific direction of biomedical research
Revival of federal role in health planning
Malpractice and medical liability costs
Allowing the use of powerful opiates by the terminally ill

Family issues will once again be one the Senate's agenda. Extension of Title X (family planning) faces several controversial issues: parental notification/consent, income limit for teen eligibility, co-siting with abortion clinics, use of HHS money for school-based clinics.

Reauthorization of the child abuse program will raise issue of Baby Doe and infanticide. Look for an extension of the bipartisan language in the last year's bill, which required State child abuse agencies to take action against the withholding of life-saving medical care from handicapped newborns.

On the related issue of abortion, we are sure to see a rehash of the annual fight over wording of funding restrictions in various appropriations bills. President Reagan has proposed a Human Life Bill; the tax exempt status of abortion providers may be challenged; a debate is certain over the "Grove City"

bill and whether it will liberalize abortion policies; there will be a review of the current cut-off of U.S. funds from the U.N. family planning program because of forced abortion in China; and legislation is expected to clarify that no tax exemption can be claimed for the live birth of an aborted child.

Expiring authorizations to keep an eye on: Community Development Block Grant, Vocational Rehabilitation Act, programs under the Older Americans Act and grants to States for the developmentally disabled.

WELFARE REFORM

UNITED STATES SENATE
REPUBLICAN POLICY COMMITTEE

William L. Armstrong, *Chairman*

Washington, D.C.
June 1987

-- FOREWORD --

For two decades, welfare has been a worsening scandal. For a broad range of public assistance programs, State and federal expenditures during that time have amounted to trillions of dollars. Total costs currently run to more than $150 billion a year.

Those numbers are staggering, but they are not the worst of it. The money could be justified if we were winning the "war on poverty." But although welfare spending has lifted millions out of want by assuring them a higher standard of living, it has not addressed the root causes of poverty.

During the course of a year, about 11 million persons are dependent upon a check under Aid to Families with Dependent Children. About 20 million use food stamps, and millions more participate in other feeding programs. More than 4 million depend upon direct federal subsidies to pay their rent, and millions more live in public housing. More than 23 million Americans have free health care under Medicaid. All this may reduce poverty statistically, but it does not help individuals to become independent or families to become self-sufficient.

That is one reason why welfare reform will be an important part of the business of the 100th Congress. Extensive hearings have been held in the Senate, and a House Committee is considering comprehensive legislation. President Reagan has proposed a dramatically new approach to the subject, giving the States unprecedented authority to launch demonstration projects involving scores of separate, and often overlapping, federal programs. Indeed, in many of the States, bold experiments are already underway.

As welfare plans advance through the legislative process, the Senate Republican Policy Committee will provide a detailed analysis of their provisions. At this stage, however, an overview of the subject should be useful.

That is the reason for this preliminary paper, prepared at my request by Dr. William Gribbin of the Policy Committee staff. Its purpose is to pose the basic questions involved in welfare reform, not necessarily to give them definitive answers. It does not advance a legislative package of its own but should better equip readers to evaluate for themselves the various plans under discussion now and in the future.

The paper includes a chronology of welfare policy in the broadest sense, including not only legislative actions but also judicial decisions and key publications that have shaped the public perception of poverty issues. This account is sure to be particularly relevant, inasmuch as the central elements of the welfare debate have persisted for more than two decades. As these matters are now discussed anew in Congress, the media, and in the States, it is useful to put them into the context of the way welfare has been handled, or mishandled, over the last quarter century.

I hope this survey will offer a constructive basis for evaluating many of the specific policy choices the Congress will face in the months ahead. For despite all the publicity surrounding welfare reform thus far, this issue has only begun to draw attention, spark controversy, and demand decisions from us all.

William L. Armstrong, *Chairman*,
U.S. Senate Republican Policy Committee
Washington, D.C.
June 1987

CONTENTS

WELFARE REFORM

Introduction

Official Washington is poised to reform welfare -- again. This enterprise has been periodically undertaken within Congress and the executive branch through six Administrations, without noticeable success thus far. Indeed, in many respects, the situation has become more formidable than ever.

- There are 59 major federal welfare programs, and 40 more federal programs to assist low-income persons in various ways. These are in addition to numerous State and local efforts which do not receive federal funds.

- Those 59 programs accounted for more than $132 billion in federal and State revenue in fiscal 1985 (the last year for which we have solid numbers for costs, participation, and other data). Additional spending on low-income assistance of various kinds boosted the total to more than $159 billion.

- More than 52 million Americans, nearly 20% of the population, receive benefits from some welfare program in any given year -- a participation rate far larger than any in the past.

- In constant dollars, welfare spending grew 625% between 1960 and 1985.

- In constant dollars, the average annual growth rate for welfare spending was 7.6% from 1960 to 1981, and 1% since 1981.

Most of that spending is concentrated within five key programs: Aid to Families with Dependent Children, Supplemental Security Income, Medicaid, Food Stamps, and Housing Assistance. Together they accounted for more than $86 billion in fiscal 1985:

- AFDC pays monthly benefits totalling about $15 billion annually to nearly 4 million families consisting of almost 11 million persons.

- SSI provides about $10 billion to more than 4 million aged, blind, or disabled persons.

- Medicaid -- free comprehensive health care for the poor, including everything from major surgery to eyeglasses and prescriptions -- has been the fastest growing welfare program. It covers recipients of AFDC and SSI, as well as other groups of low-income persons, partly at State option, at a cost of more than $41 billion.

- The Food Stamp program provides benefits to 20 million persons every month, at an annual cost of almost $12 billion. Other feeding programs, particularly school lunches at $3.4 billion, push nutrition assistance over $20 billion a year.

- Housing Assistance expends about $6.9 billion annually to subsidize rent for more than four million low-income households, with another $3.4 billion channeled through Public Housing for the same purpose.

Massive spending on this level inevitably has far-reaching effects, not all of them obvious in the short term. On the positive side, many households have been lifted out of poverty, assured of a decent life, sometimes given new hope. Those are worthy goals, but they are not the same thing as reducing dependency. Despite the dizzying amounts we have spent year after year, a welfare culture continues to dominate the lives of millions of persons. Some would say it threatens the fabric of society itself.

The realization of that threat, the increasing awareness that the problem we face is not so much poverty as it is a dependent way of life, has given fresh impetus to welfare reform. Dramatic television

and newspaper exposés in the spring of 1986, as well as controversial scholarly research in recent years, have drawn public attention to problems deeper than income levels. It is as if the nation suddenly took a new look at welfare, was shocked by what it saw, and found new resolve to tackle old ills.

The primary focus of this interest is AFDC, which is what most persons understand as welfare. This view appears less narrow if we remember that AFDC recipients are categorically eligible for food stamps, Medicaid, and numerous other benefits. More than other programs, AFDC represents, not just the transfer of income by government, but dependency:

- Most persons on AFDC remain on the rolls less than two years. But at any point in time, half of the AFDC caseload are in a long-term spell in the program.
- About one-third of all spells on AFDC are followed by another period of welfare dependency.
- An individual may intermittently receive public assistance, going on and off the rolls as family or household income fluctuates. Thus, the duration of a particular spell on welfare may not be particularly significant.
- Three-fourths of all stays on AFDC began with the creation of a female-headed household. (45% because of absence, divorce, separation, or death of male partner; 30% when an unmarried woman becomes a head of household with child)

Though dependency is a formidable social ill, there are good reasons to be hopeful about the prospects for welfare reform. For some things are fundamentally different in the current approach to the problem. The most important difference is that, this time around, most of the action is in the States. Under both Republican and Democratic governors and legislatures, all sorts of experiments are underway. Acronyms are flying thick and fast, as they used to do in Washington during the New Deal or the "Great Society" years. Despite their many variations, GAIN in California, ET in Massachusetts, CHANCE in Illinois, REACH in New Jersey, and the proposed FIP in Washington State are dramatic evidence of a new willingness to tackle social problems on the State and local levels.

This is a remarkable reversal of past patterns, in which, by doctrinaire definition, welfare reform meant federalization. That approach brought two decades of policy frustration -- and lost two more generations of children to the welfare culture. Even though it has not been disavowed in the Congress, it has been overtaken by events in the States, where, contrary to official Washington's assumptions, real progress is being made in reducing poverty by reducing dependency, rather than by raising revenue.

There is another major difference between the current interest in welfare and that of the 1960s and 1970s. It is the least measurable and most important kind of difference, a conceptual contrast. In those earlier decades, the problem was defined as poverty, and that definition demanded an economic solution: income transfer. Today, the problem is more likely to be thought of as dependency, and that requires less emphasis upon money and more upon values. Even our language -- "culture of poverty," "underclass," "behavioral dependency," "dysfunctional conduct," "character" -- reveals the new orientation of welfare policy.

It is, in fact, an old orientation that had been discarded during the 1960s. It had been the traditional focus of public assistance systems: to help meet immediate needs while pressuring for alterations in those deficiencies -- unemployment, illiteracy, illegitimacy, illness, non-support -- which tended to perpetuate need. This approach treated welfare recipients, not as interchangeable parts of class-action suits, but as individuals with the same personal and civic responsibilities as everyone else. Its goal was not the better maintenance of those on welfare but their transition, whenever possible, to the private economy.

After a detour of two decades, the welfare debate has turned back toward those roots. Social scientists are emphasizing the role of personal conduct in perpetuating or escaping from dependency. Pundits have rediscovered the merits of work as an alternative to poverty. All of which fits well with the public's traditional view of welfare, which might be summarized this way:

- Short-term aid, with the expectation of its eventual termination, for those whose normal independence has been disrupted by factors beyond their control.

- Long-term assistance for persons unable to support themselves or to secure support from their families.

- Targeted aid to meet special needs, such as housing, nutrition, medical care, for individuals at risk in one or another area.

Various programs have had these different emphases because people have been poor for different reasons. That truism is often ignored in policy debates. For some, particularly among the elderly or the handicapped, poverty may indeed be nothing more than a lack of money; and its remedy can be a straightforward transfer of cash. For others, poverty is the symptom of interlocking social pathologies from teen pregnancy and addiction to poor grooming and disdain for education. For some, welfare can be a bridge across misfortunes to the solid ground of self-reliance. For others, it can become a way of life.

Matters become even more complicated when we consider those programs of public assistance designed to alleviate a particular need, perhaps among persons who do not fit an income definition of poverty. This is especially true of nutrition programs, health care, and some housing subsidies. In the abstract, it seems logical to cash out those programs, giving recipients dollars instead. But that brings us back to the reason in-kind programs were created in the first place: because many low-income persons need something more targeted than cash to improve their situation. If federal nutrition programs, for example, were cashed out, would poor children eat as well as they do now? Would the body politic tolerate hunger among toddlers and schoolchildren on the premise that their parents have already received their nutrition assistance in the form of cash? More likely, new feeding programs would be created, to parallel in kind the food subsidy in cash.

All of which is to say only that welfare issues are as complicated as human nature. The welfare system is often described as a maze, but there usually was some rationale for the creation of each twist and turn. Whether those convolutions are still valid is open to debate. Whether we have something better with which to replace them is an even more important question.

Until it is satisfactorily answered, there is reason to be skeptical. For in official Washington -- and in the think tanks, foundations, and research corporations it supports -- welfare reform has generally meant:

- Greater federal responsibility for welfare costs.

- Higher levels of benefits.

- A nationally set standard for benefits, with or without regional variations.

- Extension of dependency to intact families.

- Cashing out various in-kind assistance programs (except those which, like public housing and legal services, have developed their own powerful employment constituencies).

- Universal eligibility determined by income, rather than categorical eligibility according to age, disability, childhood dependency, etc.

As a corollary, income disregards are framed in terms of a percentage earned, rather than a flat amount; and unemployment is defined in terms of income rather than hours worked.

In short, it has meant income redistribution. That, rather than the traditional goals of public assistance programs, has been the governing motive in most welfare overhauls of the last two decades. From Lyndon Johnson's Income Maintenance Commission to Richard Nixon's Family Assistance Plan, from the Income Supplementation Plan rejected by Gerald Ford to Jimmy Carter's Better Jobs and

Income plan rejected by the Congress, welfare reforms have boiled down to the same essentials: more persons getting higher levels of aid; decision-making farther removed from local communities; and an extension of dependency into intact families and the working poor.

That is also a fair summary of H.R. 1720, the package of recycled welfare proposals currently under consideration in the House of Representatives. Its key provisions -- higher AFDC benefits with a national minimum and yearly raises, expansion of welfare to intact families through AFDC-U (payments to households with an unemployed breadwinner), extensive assistance to prepare participants for eventual work, crippling limitations on the ability of program managers to require work, a percentage (rather than flat figure) income disregard, a larger income disregard for child care, mandatory continuation of Medicaid eligibility for 9 months after AFDC ends, expanded federal responsibility for costs -- place it squarely in the tradition of inside-the-beltway welfare politics.

Its proposed national minimum benefit, a constant in most welfare equations, deserves special attention. For it leads inevitably to the formation of a unified welfare constituency whose future would be tied, not to an array of state and federal programs, but to a single legislated number. With the exception of Social Security, such a precise focal point for interest-group pressure exists nowhere in federal politics. Its creation in the welfare system would have the potential to effect an awesome change in electoral affairs, which may account for its persistent popularity in certain quarters.

H.R. 1720 is only the most prominent of several comprehensive plans for changing welfare. Most of them differ from that bill in details, not in overall approach. The American Public Welfare Association, for example, has called for higher benefits annually increased, compulsory AFDC-U for all the States, training and education aid, a percentage income disregard, an additional year of Medicaid coverage, and more federal money. A liberal coalition organized by the Food Research and Action Center has called for higher payments, universal AFDC-U, education and training, continuation of health and other benefits after work is found, and broader federal support. The National Conference on Social Welfare, through its Committee on Federalism and National Purpose, has added to the same basic package the transfer to the States of certain federal programs for community development, social services, and infrastructure support. In addition, this proposal would expand Medicaid eligibility among children and increase the federal share of its costs.

An important variation on these standard themes is the "Policy Position on Welfare Prevention" of the National Governors' Association, adopted in its meeting of February 24, 1987. Its stated purpose is "to turn what is now primarily a payments system with a minor work component into a system that is first and foremost a jobs system, backed up by an income assistance component." To this end, the governors propose a much-heralded "contract" between government and the individual participant. In that contract, the responsibility of the welfare recipient is to "prepare for and seek, accept, and retain a job." In other words, the recipient "must participate in an education, job training, or placement program and accept a suitable job when it is offered," while government will "provide education, job training, and/or job placement services to all employable recipients."

In this case, a work requirement seems to mean new social services leading, it is hoped, to "suitable" jobs. To say the least, that leaves a few loopholes for those who prefer not to work. It is unfair, however, to single out the governors' plan in this regard; for as another section of this paper explains, in the current welfare debate "work" is seldom what it seems. It is proper, however, to note that the gubernatorial package, while predictably calling for more federal spending to implement its recommendations, also calls for federal legislation to force upon the States both higher AFDC levels and AFDC-U. In other words, the governors are asking Washington to make them do certain things they will not or cannot do in their own bailiwicks, half of which decline to implement AFDC-U.

Ironically, while the governors have been repudiating the role of the States in social policy, the Reagan Administration has based its approach to welfare reform on that foundation. That is but one aspect of a great divide between all of the plans we have reviewed and the President's own proposal. Rather than attempting to prescribe a single, nationally standardized pattern for public assistance, the Reagan plan offers a stark alternative: giving the States unprecedented leeway to experiment with virtually any kind of welfare reform. Specifically, the President's Low-Income Opportunity Improvement Act (H.R. 1288 and S. 610) would:

- Upon request by a State, permit the waiver of most federal laws and regulations pertaining to any federally-funded anti-poverty program that has a means test or a distribution formula based upon the size of the low-income population. This extends the parameters of welfare reform far beyond their usual limits to take a radically comprehensive approach to income transfers and dependency.

- Require that any State experiment must adequately cover needs of the participants, protect their civil rights under applicable laws, and include sound evaluations of the project.

- Assure continuance of federal funding at the same level as if the State experiment were not in place.

- Permit States to retain any savings from their experiments to benefit needy participants.

- Establish an Interagency Low-Income Opportunity Board within the executive branch to approve State demonstration projects and assess their progress.

The specific policy goals guiding the Board's certification and evaluation of State demonstration projects restate the principles that guided Governor Reagan's welfare reforms in California two decades ago. They are likely to be central to the outcome of welfare reform in the 100th Congress and are worth reviewing here:

1. Insure that public assistance is an adequate supplement for other resources in meeting essential needs.
2. Focus public assistance resources on efforts to reduce future dependency on public assistance.
3. Individualize determinations of need for public assistance, and make those determinations, to the extent possible, through local decisions.
4. Provide public assistance only to those in need and only to the extent of that need.
5. Make work more rewarding than welfare.
6. Require that those who are able to work do so for their public assistance benefits.
7. Encourage the formation and maintenance of economically self-reliant families.
8. Require public assistance recipients to take greater responsibility for managing their resources, and encourage community-based administration of public assistance.
9. Create opportunities for self-reliance through education and enterprise.
10. Reduce the future costs of public assistance by reducing the need for it.

It remains to be seen whether the welfare changes now under consideration by the Congress will conform to or contravene those principles. The early returns, as they say, are discouraging. The bill advancing in the House is highly partisan, and the Administration's acerbic criticism of H.R. 1720 foreshadows conflict, rather than compromise, in the legislative process. At the same time, the Administration's determination to secure some sort of waiver authority for State demonstation projects enables its congressional opponents, in effect, to name their price.

Hence, it is possible -- some would say likely -- that the outcome of the current welfare debate may be a legislative centaur, half of it decentralizing and experimenting with the system, the other half nationalizing and expanding it. Stranger creatures have been born out of policy logjams on Capitol Hill. In anticipation of such surprises, we should consider the major issues which, this year as in the past, comprise the real ground of argument over welfare.

But first, a look backward is in order.

Welfare Chronology

or

How Things Got This Messed Up In The First Place

The current welfare system did not just happen. It was created, bit by disjointed bit. It is the result of action (or inaction) by States, the Congress, successive Administrations of both parties, and an intrusive judiciary. It is equally the creation of the recipients themselves, reacting to opportunities, incentives, or penalties. One might say that it is a peculiarly American system, unique in both its generosity and its haphazardness, in its extraordinary tolerance for dependency and its subordination of policy to politics.

Although official Washington, across the political spectrum, intends to "reform" welfare during the current 100th Congress, government has a short memory, and a highly selective one. Many of those, officials and staffers alike, involved in the welfare debate of 1987 have little knowledge of what has gone before: the mistakes made earlier, the new ideas recycled into replicated failure, the painful lessons that were never quite learned.

If the past is indeed prologue, then the current wave of interest in welfare reform will in time subside, leaving behind the somewhat rearranged flotsam of public assistance programs. Like it or not, that has been the pattern of the past. So it is prudent to approach this issue with an awareness that many others have been around the track before us, always ending up at the same starting line.

This is not a prediction of failure but a prescription for caution. It doesn't mean welfare can't be reformed this time around. It does indicate that the effort should be approached with a certain humility. For the more we know about the pitfalls which have frustrated previous attempts to improve programs of public assistance, the better we can sidestep similar dangers now. We must identify yesterday's blunders, not to place blame, but to avoid their repetition.

Repetition, indeed, has been an important aspect of the politics of welfare. For more than two decades, the fundamental questions have changed little. One bold plan after another has amounted to little more than putting new ribbons on the same old hat.

Our first step, then, should be a review of how welfare got where it is today. That should give us a better idea of where today's various legislative proposals would take us.

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CHRONOLOGY

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1789-1935:

- Federal role in public assistance limited to emergency relief (earthquakes, floods, etc.), Indian reservation programs, aid under the Freedmen's Bureau during Reconstruction, and so forth.

1935:

- Title IV of the Social Security Act establishes ADC: Aid to Dependent Children. Federal government begins paying for a portion of state programs for orphans and other dependent children. Emphasis is upon self-reliance by aiding only those who cannot provide for themselves.

1950:

- ADC becomes AFDC: Aid to Families with Dependent Children, now making payments to parents as well as children.
- Social Security Amendments begin payments to disabled persons.

1958:

- Mathematica, Inc., set up by Princeton professors doing data analysis for federal government.

1961:

- States are permitted to extend AFDC to families with unemployed breadwinner (AFDC-U).

1962:

- Federal government begins to pay portion of AFDC-U for jobless fathers.
- Michael Harrington's The Other America radicalizes poverty issue, lays foundation for "War on Poverty."
- Milton Friedman's Capitalism and Freedom proposes a negative income tax.
- TRIM (Transfer Income Model) developed at Urban Institute for analysis of welfare proposals. Renamed MATH by Mathematica staff hired away from Urban Institute. This becomes the analytical basis under both Republican and Democratic administrations for evaluating and estimating costs of welfare plans, new programs, and innovations. Critics charge that TRIM/MATH consistently understates costs, overstates savings, and produces results consistent with support for a national income guarantee.

1964:

- Poverty line developed to measure income adequate for basic necessities.
- Food Stamps begin as a nutrition, rather than an income transfer, program after controversial television special on "Hunger in America." Key to program is its "purchase requirement," under which all but the poorest recipients have to use some of their income in order to buy a larger value of food stamps. Because the stamps could be used only for food, the purchase requirement guaranteed that this assistance would actually supplement, rather than supplant, a recipient's current spending for groceries.
- Eligibility standards for food stamps, set by regulation rather than by legislation, broaden participation. Numerous income disregards are created to lower applicants' income artificially and raise benefits.
- Economic Opportunity Act launches "War on Poverty" with Office of Economic Opportunity (OEO) and other agencies and programs. Emphasis on community action through new federally funded organizations, often outside the mainstream of established mediating institutions such as churches and civic groups.

1965:

- Supreme Court applies "substantive due process" to State regulation of marriage and family life. In *Griswold* v. *Connecticut*, the Court strikes down law forbidding use of contraceptives. Justice Black dissents, "The use by federal courts of [substantive due process] to veto federal or state laws simply takes away from Congress and States the power to make laws based upon their own judgment of fairness and wisdom and transfers that power to this Court for ultimate determination." Decision sets stage for judicial review of welfare programs on substantive due process grounds.

- Medicaid starts by (l) combining in a new Title XIX of the Social Security Act all medical assistance programs affecting the indigent aged, dependent children, blind and disabled, and (2) extending the Kerr-Mills medical aid program for the needy aged to all those in the other programs.

1967:

- Supreme Court in *Loving* v. *Virginia* strikes down law against interracial marriage, not on narrow grounds of equal protection, but on broad assertion that the right to marry is "a basic civil right of man." This approach, in tandem with the Court's earlier decision in *Griswold*, limits the ability of the State to regulate any aspect of marriage, remarriage after divorce, cohabitation, or legitimacy -- central matters in welfare debates over the following two decades.

- President Johnson appoints commission to study welfare reform.

- Despite warnings that it would increase welfare rolls and worsen dependency, Congress establishes 30-and-a-third "earnings disregard" for AFDC. First $30 earned, and one-third of every dollar earned thereafter, are not counted in determining AFDC eligibility and benefit levels. (This is in addition to a disregard for work-related expenses.)

- Work Incentive Program (WIN) requires employable AFDC recipients over 16 to register for training or work.

1968:

- Supreme Court in *King* v. *Smith* strikes down Alabama law denying AFDC eligibility to households which include "substitute fathers," i.e., adult males unrelated to the mother by blood or marriage. Decision makes cohabitation more profitable than marriage in most States.

- Johnson Administration prompts the creation of Urban Institute. With federal seed money, it becomes major contractor with departments and agencies for liberal analyses of domestic programs and proposals. Within a decade, more than 85% of its income comes from federal government.

1969:

- President Johnson's Income Maintenance Commission proposes a negative income tax.

- New Jersey Income Maintenance Experiment launched as test of guaranteed income at cost of $7.8 million, 70% to Mathematica and University of Wisconsin, 30% to recipients. Charges of rigging when early announcement of findings is contradicted by final report of decline in employment.

- President Nixon proposes Family Assistance Plan (FAP): federally guaranteed income to all needy families with children, wage supplements to working poor. Nixon promises tough work requirement. House quickly passes it, 243 to 155.

1970:

- FAP stalls in Senate, filibustered at end of session by those seeking more liberal version than Senate Finance Committee had reported.
- National Conference of Commissioners on Uniform State Laws drafts Uniform Marriage and Divorce Act of 1970, weakening status of marriage and making divorce easier. This becomes basis for modernized divorce laws, without regard for economic consequences to women and children involved.

1971:

- President Nixon renews FAP as H.R. 1. Governor Reagan testifies against it, condemns income guarantee, calls for state discretion, insists "the greatest single problem in welfare today is the breakdown of family responsibility."
- Supreme Court strikes down a State requirement that indigent persons seeking a divorce pay court costs as condition for obtaining it. *Boddie* v. *Connecticut* transforms right to marry into right to divorce without expense.
- SIME-DIME (Seattle and Denver Income Maintenance Experiments) launched to test guaranteed income on 4,800 poor families in those cities.
- Exceptions added to WIN program exempt from registration persons working at least 30 hours weekly, caring for the disabled, mothers of children under 6, and the ill or incapacitated.

1972:

- Supreme Court in *Eisenstadt* v. *Baird* extends contraception rights (from the *Griswold* case) to unmarried persons. The Court's rationale for so doing -- "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision to bear or beget a child" -- lays the foundation not only for its subsequent rulings on abortion but also for decisions concerning welfare and the family.
- George McGovern proposes a $1,000 universal dole ("Demogrant").
- FAP fails in Congress.
- Social Security Amendments create Supplemental Security Income (SSI), absorbing State aid for aged, blind, and disabled into centralized program with totally federal funding and administration.
- Supreme Court ruling in *Weber* v. *Aetna Casualty and Surety Company*, that workmen's compensation benefits cannot be limited to legitimate children, sets stage for barring any government preference for legitimacy.

1973:

- Supreme Court in *New Jersey Welfare Rights Organization* v. *Cahill* forbids State preference for marriage over cohabitation in welfare programs.
- *USDA* v. *Moreno* invalidates a provision of the food stamp program basing household eligibility upon ties of blood, marriage or adoption (the traditional definition of a family). The Supreme Court upholds lower court finding that government "cannot in the name of morality infringe upon the rights to privacy and freedom of association in the home."

1974:

- HEW Secretary Weinberger presents President Ford with Income Supplementation Plan (ISP), adding 20 million to welfare rolls, along the lines of FAP. Ford rejects the proposal.
- New Title XX of Social Security Act establishes federal funding of Social Services in the States: day care, foster care, adoption, family planning, home and congregate meals, legal services, etc.
- WIC program (Women, Infants, and Children) begins as pilot program to supplement nutrition for pregnant and parenting mothers and children.

1975:

- USDA proposes higher purchase requirement for food stamp participation, to control program costs. Congress prohibits change; only 46 Members side with Administration.
- Earned Income Tax Credit (EITC) begun to reward work by low-income persons through a refundable credit that supplements earnings.
- Curtis-Duncan bill adapts Reagan's California welfare reforms to national programs. No action by Congress.
- Buckley-Michel bill proposes reform of food stamp program to head off projected escalation.

1976:

- Senate rejects food stamp reforms. With November elections near, House Leadership refuses to bring food stamp bill to floor. Ford Administration's regulatory reform of program stalls in court.

1977:

- In *Moore* v. *City of East Cleveland*, the Supreme Court wields substantive due process to invalidate municipal zoning ordinance based on traditional family. Citing its earlier decisions in *Roe* and *Griswold*, the Court found this effort by a black community to strengthen family life "senseless and arbitrary." "The Constitution prevents [government] from standardizing its children -- and its adults -- by forcing all to live in certain narrowly defined family patterns."
- Carter Administration withdraws President Ford's food stamp reform regulations. Congress launches major expansion of program in Title XIII of the Omnibus Farm Bill. Liberalization of program is camouflaged by a cap on future spending. One critical change -- elimination of the purchase requirement -- radically transforms the program from nutrition assistance to income transfer. Without it, food stamp allotments become indistinguishable from cash. Together with other changes in the program, this sets the stage for its dramatic growth and fiscal problems in future years.
- Low-Income Home Energy Assistance Program (LIHEAP) begun as temporary emergency measure to help poor pay fuel bills.
- President Carter proposes Better Jobs and Income (BJI). Plan would nationalize welfare, cash out food stamps, combine major income programs but not housing, expand eligibility, guarantee public sector jobs, expand EITC, guarantee lower State welfare costs. Special committee created in House to handle subject. Plan collapses under criticism from all quarters.
- Republican alternative, introduced by Rep. Bob Michel, incorporates administrative improvements from Reagan reforms in California, nuts and bolts approach to tightening up system, and block grant program to restore State responsibility. No action taken.

1978:

- Democratic alternative, introduced by Senator Daniel Moynihan, offers relief to high-AFDC States through expansion of federal share. But Senate kills $500 million bailout for those States in Revenue Act (H.R. 13511).

- SIME-DIME results made public, abruptly change course of welfare debate by revealing (1) higher breakup rates among two-parent households guaranteed assistance and (2) reduction of work effort among participants.

- Martin Anderson's *Welfare* argues that radical welfare change along liberal lines is impossible because the goal of national income guarantee and expanded dependency cannot be reconciled with public's view of welfare.

1979:

- Supreme Court in *Zablocki* v. *Redhail* strikes down Wisconsin law requiring persons under court order for child support to show, as a condition for obtaining another marriage license, that remarriage would not prevent them from continuing to support their children. Right to marry is given precedence over responsibility to spouse and children of former marriage.

- Donald Lambro exposes Washington's welfare policy network in Policy Review article on the consulting industry.

- As predicted by opponents of the 1977 food stamp changes, the program runs out of control. President Carter asks for abolition of cap on yearly spending ($6.16 billion for FY 1979). Instead, Congress appropriates additional $620 million.

1980:

- Another food stamp crisis, as program exceeds cap of $6.19 billion for FY 1980. Congress votes additional $3 billion and raises cap for FY 1981 to $9.7 billion.

- LIHEAP made permanent. Energy assistance payments are made an income disregard for determining food stamp benefits.

1981:

- Budget crisis. Faced with the consequences of its last two decades of legislation, Congress enacts the Omnibus Budget Reconciliation Act. Among its provisions, it:

  - allows, but does not require, States to institute "community work experience" for AFDC.

  - limits $30-and-a-third income disregard to first four months of work.

  - sets $75 monthly limit on income disregard for job-related expenses. (Does not include up to $160 monthly per child for day care expenses.)

  - sets a gross income cap -- 150% of State standard of need -- for participation in AFDC.

  - excludes households with resources, excluding home and auto, of more than $1,000.

  - expands ability of States to make vendor payments directly to landlords or utility companies rather than to AFDC recipients.

  - requires States to reduce error rate in AFDC payments.

– strengthens state child support systems by expanding their ability to attach resources of absent parent.

1982:

- President Reagan's "New Federalism" proposes federal takeover of all Medicaid costs in return for State takeover of AFDC and food stamps. Opposed even inside the Administration, it is not taken seriously by Congress.

1983:

- In A Growing Crisis: Disadvantaged Women and Their Children, U. S. Commission on Civil Rights reports that increases in marital disruption and illegitimacy "are responsible for essentially all of the growth in poverty since 1970...and that they show no signs of abating as the unwed birth and divorce rates continue to climb rapidly."

1984:

- Charles Murray's Losing Ground: American Social Policy, 1950-1980 argues that the welfare system perpetuates dependency, suggests elimination of benefits to force self-support.

- Deficit Reduction Act of 1984 reverses many of the 1981 AFDC reforms:

  – $30-and-a-third income disregard extended from 4 months to 12.

  – Income disregard for part-time work expenses elevated to full-time level of $75 monthly (in addition to continuing child care income disregard up to $160 per child monthly).

  – Gross income limit raised to 185% of state standard of need.

  – Allows continuing Medicaid coverage -- up to 9 months, with another 6 at state option -- for persons who lost AFDC eligibility because of the limits on the $30-and-a-third income disregard.

- Earned Income Tax Credit expanded from $500 maximum to $550, phased out at $11,000 rather than $10,000.

1985:

- Lenore Weitzman's The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America promotes revisionist thinking about the role of no-fault divorce laws in increasing poverty and dependency.

- Lowell Gallaway and Richard Vedder link the growth in welfare programs to behavioral changes that have created a structural sub-class detached from both the economy and social norms. In "Suffer the Little Children: The True Casualties of the War on Poverty," Gallaway and Vedder attribute increases in child poverty to high benefit levels and, through a poverty-welfare curve, contend that expansions of public assistance actually worsen poverty.

1986:

- Tax Reform Act of 1986 expands Earned Income Tax Credit for working poor to 14% of first $5,714 earned. Maximum credit is $800, phasing out for incomes between $9,000 and $17,000. Change becomes effective January 1, 1988, with credit indexed to reflect all inflation since August, 1984.

- Threatened with a veto, the House removes from the 1986 reconciliation bill the requirement that all States establish AFDC-U.

- CBS special on "The Vanishing Family," Leon Dash's articles in the Washington Post, Nicholas Lemann's articles on the Chicago ghetto in The Atlantic, and Lawrence Mead's Beyond Entitlement: The Social Obligations of Citizenship focus national attention on the welfare culture of the underclass and what Mead calls "dysfunctional dependency."

- Mickey Kaus' article in The New Republic, "The Work Ethic State," pans "workfare" systems in Massachusetts and California, proposes instead payment for labor on government projects. Argues that "Only work works."

1987:

- President Reagan proposes Low-Income Opportunity Improvement Act (H.R. 1288, S. 610) giving States broad leeway to experiment with welfare reforms.

- Twenty scholars issue "A Community of Self-Reliance: The New Consensus on Family and Welfare," focusing on "behavioral dependency" rooted in personal conduct as source of current welfare problems.

- House leadership endorses legislation to compel States to expand AFDC to intact families, impose national minimum benefit, increase income disregards, increase federal share of funding, and provide education and training benefits for participants. The bill's sponsors refuse to allow State demonstration projects to experiment with local welfare reforms. In April, the bill (H.R. 1720), denounced by the Reagan Administration as "counter to everything we have learned about the nature of our welfare system," is reported out of subcommittee by a party-line vote.

The Basic Questions

Even if some decline to learn from the past, we are not all doomed to repeat it on their account. Charles Murray has observed that "social policy toward the poor is the last redoubt of the elite wisdom of the 1960s." (The Public Interest, 84, Summer 1986) But the times, they are a'changing. New questions about welfare and work, poverty and dependency, the family and social norms, are challenging the status quo of the last two decades.

In most areas of public policy, the questions asked are more important than the answers given. On the subject of welfare, for example, official Washington is afloat in answers; but there is a curious aversion to the inquiries that should be the starting point for any overhaul of public assistance. It is as if a doctor were to write prescriptions without explicitly deciding upon a diagnosis. Just as that would be risky to the patients, so too can thoughtless changes in welfare laws be dangerous to those whose lives they touch.

In the first place, then, we should ask a few questions. Those who profess to be welfare reformers may provide enlightening responses, or they may decline to answer. Either way, the public policy debate should profit from the asking.

What do we mean by welfare?

This threshhold question is usually finessed, and its neglect has led to serious policy mischief.

The narrowest view is that welfare means only cash assistance to persons who have in no way earned the income. The broadest view includes almost any transfer of purchasing power, in cash or in kind. Between those extremes are endless variations. For example, all would agree that AFDC and SSI benefits are welfare. Very few would consider Social Security benefits that way, even if they vastly exceed what could have been derived from the wise investment of one's Social Security payroll deductions. Veterans pensions are considered an earned benefit, but there are welfare activists who insist that AFDC payments are equally earned by virtue of motherhood.

The subject of in-kind benefits is equally thorny. Free housing is clearly a welfare benefit. So is free food, purchased with food stamps or obtained through commodity distribution; but reduced-price meals, in schools or elsewhere, are not usually considered in the same category, perhaps because there is partial payment for them, perhaps because they benefit so many persons who cannot imagine themselves "on welfare." Medicaid is universally understood to be welfare. But what about education aid targeted at poor students? Pell Grants for college, for example, or Chapter I grants to school districts with low-income households? What about work efforts like the Summer Youth Employment Program, the Job Corps, or -- even more sensitive politically -- the Foster Grandparent and Senior Companion Programs? These are not ordinarily seen as welfare, and probably for good reason. Recipients of these benefits do something in return for them, even if it's only sitting in a classroom. More important, the individuals participating in various job programs, more or less by definition, appear to be avoiding dependency. They do not fit the public's profile of persons on welfare.

A broad view of welfare, needless to say, leads to a very high estimate of what we spend on public assistance. This facile way with numbers has fostered one of the most endearing notions in the welfare debate: If we took the amount of money spent on "welfare" and distributed it directly to the poor, everyone would be affluent and poverty would go away. That notion has been one of the major ideological underpinnings of guaranteed income plans.

By the same token, a broad definition of welfare leads to the conclusion that much of public assistance is misdirected, that a large percentage goes to persons significantly above the poverty line. But that might include programs under the Older Americans Act, vocational rehabilitation services, and

guaranteed student loans, for just a few examples. Many Americans who are opposed to the misallocation of welfare might be surprised to find themselves counted as part of the problem.

A narrow definition of welfare, on the other hand, can be used to understate dependency and to minimize the extent to which government transfers income. Moreover, by carefully limiting the definition of welfare, one can predetermine the outcome of any welfare reform by focusing attention on certain programs while diversion it away from others. Thus HEW Secretary Joseph Califano counselled President Carter not to include housing subsidies in his welfare package of 1977, just as this year's crop of welfare plans, excluding the Administration's, do not address the public housing question.

These theoretical matters boil down to concrete legislative problems. The Reagan Administration's current welfare plan, for example, proposes that States be given broad latitude to experiment with some 99 programs, many of which fall outside popular definitions of welfare. But Congressional advocates of those separate programs are unlikely to entrust them to State experimentation.

Indeed, those whose primary interest is to increase the governmental redistribution of income can be expected to try to keep the policy focus as narrow as possible, preferably limiting it to AFDC, as if the poor subsisted entirely on their monthly benefit check. That's a good way of understating the income of the poor, the income transfers already in place, and the standard of living subsidized by all sorts of in-kind programs. It helps to explain the resistance in some quarters of the Congress to including in welfare reform more than a few of the scores of programs President Reagan has proposed to make eligible for State demonstration projects. Indeed, the House Democratic Leadership seems to have rejected those projects entirely.

Even without deliberate ideological distortion of this kind, there can be a wide range of opinion as to what is and is not welfare. Some will insist that the School Breakfast Program is welfare but the Special Milk Program is not. Some will call Community Health Centers welfare but consider veterans health care an earned benefit even if it is not service-connected. The funding of Head Start may be welfare spending to those who think quite differently of the budget of the Legal Services Corporation. The Earned Income Tax Credit may be viewed as either welfare or a work-incentive alternative to it.

This, then, is the first question we should ask of any welfare reformer: What are you trying to reform? What is the specific rationale for including certain programs and excluding others? What, after all, do you mean by welfare?

What do we mean by poverty?

More precisely, how can poverty be measured? Since 1964, it has been tied to a "poverty line" determined by the federal government. Persons on all sides of the welfare debate have used that concept, usually without wondering how it came about or what its validity might be. It was, of course, simply invented. Working from a 1955 survey of food consumption, statisticians estimated how much money a family would require to meet its basic needs. This amount, adjusted for family size and age, is annually updated for inflation according to the increase in the Consumer Price Index. For 1987, the Bureau of the Census sets the poverty line at $5,574 for an individual; $7,133 for two persons; $8,738 for three; and $11,200 for a family of four.

This is the calculation that lies behind every report on the number, or percentage, of Americans in poverty. It is what headlines express in shorthand when they announce that poverty has risen or fallen. Unfortunately, the concept is like a blunted razor, so flawed as to be worthless for either social science or public policy.

Its worst shortcoming is that it does not include in-kind income or the income security from various public programs. It does not include nutrition or housing aid, for instance, or medical care or health insurance coverage. It thereby drastically understates both the direct purchasing power of low-income households and their overall standard of living. When the poverty line was invented in 1964, in-kind benefits accounted for 35 percent of welfare. Now they represent about 76 percent. Not to include them in determining poverty levels is to paint only a small part of the welfare picture.

The poverty line also fails to consider the value of assets. A household with meager income might own a potentially valuable parcel of land. An individual with little direct income may own a home. An unemployed person may have accumulated considerable assets before losing a job. All their situations are greatly different from those of others who have no resources, but the official poverty line makes no distinctions among them.

In addition, the income surveys which determine how many Americans are below the poverty line are quite properly voluntary. Many Americans, and not only the poor, are reluctant to give an unknown census-taker detailed information concerning their earnings, gifts, windfalls, savings, and so forth. As a result, much income goes unreported, especially in low-income households. This in turn inflates the number of persons below the poverty line, which is a faulty notion to begin with.

As if this were not complicated enough, from program to program, measurements of need are further muddled by income disregards, that is, purchasing power which, by law or regulation, is not to be counted in determining eligibility or benefit levels. So when welfare experts speak of a person's income, they may mean only cash, cash and some in kind benefits, cash and all in kind benefits and services, or for that matter, only a portion of the recipient's money.

The best known income disregard was legislated by Congress in 1967. It provided that the first $30 earned by AFDC recipients -- and one third of every dollar earned thereafter -- would not be counted as income in determining their eligibility and benefits. The purpose, of course, was to give persons on welfare an incentive to work their way off, without unduly penalizing them for their industry. The operational reality, on the other hand, was to expand the number of AFDC eligibles and to keep many of them on the rolls for longer periods.

Congress limited the $30-and-a-third disregard in 1981 but then expanded it in 1984. In determining AFDC eligibility and benefit levels under current law, the following income is now disregarded:

- For the first four months, the first $30 earned and one-third of every dollar earned thereafter; $75 monthly for work-related expenses; and up to $160 monthly per child for day care.
- For the next eight months, the same disregards without the one-third of subsequent dollars earned.
- Thereafter indefinitely, the $75 for work-related expenses and the child care disregard.

In the 1970s, the food stamp program was riddled with income disregards bureaucratically developed to broaden participation, and even today payments under the Low Income Home Energy Assistance Program are not counted as income in the food stamp program. In this and other assistance programs, certain blocks of cash appear and disappear at will, like the Cheshire Cat, not because of fraudulent intent by welfare recipients, but because of income disregards devised for them in Washington.

The current AFDC disregards would be significantly broadened under the provisions of H.R. 1720. That is why it is advisable to pin down welfare reformers of any kind, asking them what they mean by poverty and what they mean by income. Their answers, far from being obvious, may be among the most important data in the welfare debate during the 100th Congress.

What do we mean by work?

Like youngsters discovering anew a favorite toy of a preceding generation, today's welfare reformers are enthusiastic about work requirements. There is great expectation that the 100th Congress will enact legislation somehow relating AFDC benefits, if not other forms of public assistance, to actual or potential involvement by the recipients in the labor force. This is the one aspect of welfare on which most agree. But the broadly based support for work requirements seems to depend upon the vagueness of that term. The more it is defined or explained, the less consensus it enjoys, and for good reason.

"Workfare" is, of course, an old idea. Whether its time has come remains to be seen; for the concept is so expansive that it can mean much more, or much less, than we imagine. "Making people work for their welfare checks" can mean:

- Registration for work.
- Participation in job searches.
- Optional job training.
- Required training.
- Opportunities for education.
- Specific work assignments.
- Conditioning benefits upon successful performance of tasks.
- Loss of benefits for refusing a job which, allowing for work expenses and child care, will provide more money than welfare.
- Loss of benefits if any job is refused.
- Payment of benefits only after assigned work has been done.

The more precise we try to be about any workfare program, the more difficult it is to implement. We assume, for example, that the work component of welfare reform cannot be entirely voluntary (although some proposed "work requirements" are absolutely voluntary). But what is to be its element of compulsion? A partial reduction in AFDC benefits? Or ineligibility for any assistance? Expulsion from public housing? Denial of Medicaid? We are dealing, after all, with persons -- mostly women -- who are the parents of children. Compulsion based on denial of benefits to an AFDC mother affects her offspring as well.

But let us suppose that ways will be found to compel public assistance recipients to participate. Must they show up for a job or, perhaps more realistically, job training? If the latter, then instead of imposing a responsibility, we are offering another benefit. (And along with it, in many proposals, comes child care.) The more attractive these benefits are made, in order to entice AFDC recipients to use them, the more attractive AFDC itself becomes to new enrollees.

Let us suppose that the work/training requirement actually results in the placement of participants in jobs. This does not automatically mean the end to dependency. Which auxiliary benefits will be continued: child care, Medicaid? Just as with any other employees, there is no guarantee that participants will stay in the job. Any who do not wish to work can find endless ways to botch up, disrupt, goof off, or get fired -- at least in the private sector. What then? Deny reentry to the welfare rolls? Ignore the needs of dependent children because their parent opts out of employment?

This is, admittedly, a worst case scenario. It is, however, at least as realistic as the best case version on which most of the current welfare reform plans depend. Their optimistic scenario assumes that most AFDC recipients -- including the mothers of small children -- want to work, and that may be true in the sense that most would like to have gainful employment and personal independence. It is something quite different, however, to say most of them want to follow a rigorous daily regimen, put their children in day care to take a near-minimum wage job, do unpleasant chores, and invest years progressing toward middle class endeavors. In other words, start out on the bottom rung of the opportunity ladder.

But that is what a work requirement boils down to. If it doesn't, then its alternate meaning should be candidly explained at the outset of welfare reform. Under the provisions of H.R. 1720, for instance, a welfare recipient could be assigned only to jobs that pay the current wage scale for that position. In other words, a Davis-Bacon provision. This seems designed not only to limit the placement of those

who have participated in AFDC work training, but even more to protect the security of unionized public employment. Fewer welfare trainees would be moved into jobs, and no employees of State or local government would be in danger of losing theirs.

Social scientists have observed among many dependent persons sincere but utterly unrealistic expectations about work and career advancement. Marginally literate high school students, for example, aspire to glamorous careers in law or medicine or fashion, without the slightest awareness of what it takes to fulfill such hopes. Policy planners, in Congress or in think tanks, can be equally unrealistic about their hopes for the poor. In both cases, among welfare recipients and welfare reformers alike, the antidote for wishful thinking is to require a step by step, indeed, day by day, explanation of precisely how we are to move from the status quo to our intended goals.

That is the great test of any workfare plan, including those that have already been launched in several States. It would be premature to think they have passed it; but those varied experiments will, within a few years, have measurable effects, for good or ill. The public in those States will be able to assess the results of one or another approach to work and welfare, and other States will be able to emulate or to avoid these examples. Details of the several plans can be altered, or whole programs can be scrapped as unsatisfactory. Child care can be increased or eliminated; training can be extended or cut back; the maternal exemption from work can be widened or narrowed; the definition of an acceptable job can be honed on the wheel of operational experience.

The same cannot be said of any federal program for work -- or work training, work education, work search, work counseling and encouragement, or whatever else is larded into the package. A national system is necessarily rigid and slow to change. Failure would be no reason for its discontinuance, for failure has seldom been sufficient reason to end a congressionally mandated enterprise. Worst of all, the uniformity of a national program would impose one theoretical approach before we have a chance to find out what is working in State experiments.

Whether conducted at the State or federal level, however, efforts to move welfare recipients into the productive economy must begin with the definitional question that many legislators, understandably, would rather avoid: Exactly what do you mean by work?

Which work incentives work?

Although there is virtual unanimity about the merits of labor -- everyone agrees that welfare programs should provide incentives to work and disincentives to indolence -- there is great confusion as to which are which. For example, the legislation currently under consideration in the House of Representatives would give AFDC recipients extensive education, training, and support services as an incentive and transition to work. Its critics, however, warn that this approach would backfire by inducing more persons to go onto the welfare rolls in order to receive these new benefits.

The disagreement is of long standing. During the 1960s and 1970s, the loss or reduction of public assistance was considered a deterrent to work. Proponents of this view argued that, the more enterprising welfare recipients were, the more they were penalized by lower benefits. To improve this situation, the Congress in 1967 enacted the $30-and-a-third earned income disregard (limited by Congress in 1981, then broadened by Congress in 1984). For the same reason, certain amounts of earned income are disregarded as work-related expenses and child care costs. Perhaps more important in terms of benefits received, Medicaid eligibility is now maintained for many persons who work their way off welfare (specifically, those who lose AFDC because of limits on the $30-and-a-third income disregard).

All this means keeping people on public assistance after they exceed its original eligibility standards, which were supposed to ensure that resources are focused on the truly needy. It also can mean an unjustifiable double standard: some working persons, who have never been eligible for welfare because of their modest earnings, receive no benefits at all, while others at the same earned income level, who have worked their way off welfare, retain significant benefits to give them incentive for continued effort. The only way to correct the inequity is to expand eligibility to those who had hitherto remained independent of public assistance, which brings us back to where we started from, but with more persons on the dole.

Quite a different approach is advocated by those who think the real work disincentive in welfare is not the loss of benefits as incomes rise, but the granting of benefits in the first place. Since the late 1960s, income maintenance experiments have consistently demonstrated the same phenomenon: a reduction in work effort by those who are guaranteed an income; and the higher the guarantee, the greater the reduction in labor.

This led many to conclude that the best work incentive -- and the only way to remove the disincentive inherent in current programs -- is withdrawing benefits from able-bodied persons. Rather than coaxing recipients into the work force with the promise of continued benefits, they would be propelled into the work force by the threat of losing benefits and having nothing.

At the heart of this disagreement lay a semantic problem. In the 1960s, welfare specialists -- and those who popularized their jargon -- began to speak of "tax rates" on the poor. But the term did not mean taxes in the traditional sense. It referred to reductions in benefits as a recipient's income rises. Thus, policy analysts claimed that an AFDC mother was hit with a 50% tax rate when she lost half her welfare check because of her outside earnings. Poor people, we were told, were sometimes "taxed" at a rate of 100% -- because, as they worked their way off welfare, their benefits dropped to the point of ineligibility. Indeed, poor people faced tax rates of more than 100% because, with the loss of AFDC, they would probably lose Medicaid, the practical value of which could be much greater than their total earned income.

This curious extension of the concept of "tax rates" implicitly equated welfare benefits with the earned income of those who work for a living. It equated giving less welfare with taxing away a larger chunk of someone's paycheck. It suggested that government has no more right to reduce welfare than to raise taxes. Or conversely and more ominously, it meant that government has as much right to increase taxes as it does to cut public assistance. Everyone's income -- whether from labor, investment, or welfare -- has the same moral standing.

In that light, there is little justification for any "tax rate" on the poor; and as long as the debate over work incentives and disincentives was couched in those terms, the outcome was predictable. Over the last year, however, the terms of the debate have radically changed. There is a new emphasis upon the responsibilities of welfare recipients, especially the obligation, rather than the option, to work. This approach undercuts any argument based on "tax rates."

It leaves untouched, however, the Earned Income Tax Credit. Begun in 1975 to help the working poor, this credit is refundable. Which is to say that it is a modest negative income tax, paying out money on a declining scale as income rises. It thereby supplements earnings after the fact of work rather than supplanting them before work is undertaken. (Currently capped at $550, phasing out at $11,000 income, the EITC will rise to a maximum $800 as of January, 1988, phasing out for incomes between $9,000 and $17,000.)

The EITC is a politically popular provision of the tax code, not because so many households receive it (about 5.8 million, although that figure will jump upward in 1988), but because its benefits are linked to work already undertaken. Not surprisingly, expansion of the EITC has been a hallmark of welfare proposals over the last decade, from President Carter's Better Jobs and Income plan to the Tax Reform Act of 1986.

Some may argue that the EITC is not directly relevant to today's welfare/work debate inasmuch as it applies to persons who are not likely to be part of the welfare culture. It helps only those who are already striving to improve their situation. That is exactly the point. For the nub of our current problem is how to motivate others to follow that example. The first, and perhaps most difficult, step in that process is deciding which work incentives work.

What is causing dependency?

Over the last quarter century, the American people have spent hundreds of billions of dollars to "fight poverty," that is, both to soften its impact and to help persons escape from it. In both respects, we have had a little success. There has been less success, however, in stemming the tide of persons coming into dependency. Indeed, until recently, the issue was not even formulated that way.

This may be the most amazing aspect of social policy during the last two decades: we tried to pull people out of the welfare morass without ascertaining why so many more people kept appearing there.

We might think of dependency as a lake in which countless swimmers are floundering. To help them, some on shore throw out life preservers and water wings (in other words, distribute income). Others shout instructions for swimming (in the manner of self-help projects). Others try to lower the overall level of the lake, so that everyone will have a better chance of standing on solid ground. (That is, they stimulate economic growth to give all greater opportunities). All three approaches have merit. Most of those in the lake are at least kept afloat; some struggle to shore; some find they can touch bottom and walk to safety. But through it all, more and more people get trapped in the water. There seems to be an endless supply of victims in need of succor.

At some point, those on dry land will have to ascertain how people are getting into the lake in the first place; and then they must find ways to deter them from entering it. Otherwise, the energy and resources of the community will be exhausted in a perpetual rescue mission that never seems to improve the overall situation.

That metaphor sums up our national experience with welfare since the start of the "War on Poverty." No matter how many billions are spent to alleviate need, the American people are told they must do more. They have tried every imaginable approach -- cash, commodities, social services, job training, public sector jobs, private sector job subsidies, education, work incentives -- with some success. But the lake keeps filling up with people.

To translate this into numbers, about 1.8 million persons statistically escaped poverty in 1984. About 640,000 more followed in 1985. Counting only cash benefits, the percentage of people who are poor declined from 15.3 in 1983 to 14.4 in 1984 and 14.0 in 1985. Counting non-cash income as well, the number of the poor falls another 4 or 5 percentage points. Clearly, the rescue efforts do have beneficial effects.

But poverty is not the same as dependency, and being above the poverty line is not the same as being self-supporting. More than 10.5 million individuals -- more than 3.6 million households -- receive Aid to Families of Dependent Children. The income level of those households is an important consideration in public policy, but the fact that it depends largely upon government aid is far more important. Poverty, after all, is only the symptom of the real problem, which remains dependency.

Setting aside disability and old age, dependency has become largely a matter of women and children: family fragments left adrift in the whirlpools of the sexual revolution. As the U.S. Commission on Civil Rights put it in a landmark report, A Growing Crisis: Disadvantaged Women and Their Children, the disruption of marriage by divorce or abandonment and the extraordinary increase in illegitimacy "are responsible for essentially all of the growth in poverty since 1970...." In other words, single motherhood is the main route by which additional persons are winding up in the welfare lake.

Any way the cards are cut, the same statistics come up. Between 1960 and 1985, poverty among children in two-parent households fell by almost 50 percent. Poverty is now rare among married-couple families; more than 93 percent of them are not poor. Intact minority families have incomes close to the national average. No wonder that a recent report by twenty welfare experts, "A Community of Self-Reliance: The New Consensus on Family and Welfare," identified a key determinant in escaping poverty: getting and staying married.

On the other hand, 46 percent of the 7 million youngsters on AFDC were born out of wedlock. Illegitimacy as a percentage of all births has increased 450 percent in 30 years. The percentage of children living in female-headed families has more than doubled since 1960. Although only one-fifth of America's children are in single-parent families, they comprise over one-half of the children in poverty. This pattern guarantees a steady stream of newcomers to the welfare lake.

There are about 8.7 million mothers raising children on their own, a 300 percent increase since 1970. About 53 percent of them receive no money from the fathers, whether because of inability to locate him, failure to establish paternity, or his refusal or inability to pay. This is not just a

phenomenon of the underclass. After Lenore Weitzman's study of California's no-fault divorce law (which became the model for those of many other states), there can be no doubt that marriage breakdown is a major factor causing "the impoverishment of middle-class women and children."

Altogether, these factors have resulted in the "new poverty," a dependency that is rooted, not in lack of economic opportunity or discrimination, not in infirmity or sudden misfortune, but in family structure.

That is why our accompanying chronology of welfare includes the series of Supreme Court decisions which, in the name of "substantive due process," have virtually wiped out the customary authority of the States to set and enforce standards of family life. This subject is generally ignored in discussions of welfare. It is as if, for purposes of public assistance programs, the judicial branch of government did not exist.

On the contrary, the federal judiciary has, over the last two decades, played a major role in fashioning the socio-economic disaster welfare has become. Case by case, the Supreme Court dismantled the long-standing legal status of marriage and the family. Case by case, the Court made clear that the States could not show preference for traditional living arrangements, could not penalize non-traditional ones, could in fact do almost nothing to inhibit the formation of family fragments. On a related track, the Court unilaterally effected the sexual emancipation of youth. Its decisions on this point -- eliminating parental consent for a minor's abortion (*Danforth* v. *Planned Parenthood* 1976), overturning parental notification for the procedure (*Bellotti* v. *Baird* 1979), establishing a right to contraceptives for children under the age of 16 (*Carey* v. *Population Services International* 1977) -- were a cultural putsch generally not understood at the time by households in which adults believed it couldn't happen here.

This was a one-two punch to America's social norms. On the one hand, public authority could no longer shore up the values that had tended to keep families together and to minimize dependency among women and children. On the other hand, parental authority could no longer enforce morality on a personal or household level. In practical terms, this meant lifting restraints against illegitimacy, divorce, desertion and other forms of behavior which, in the past, had been confined by both law and custom.

Today, in the aftermath of the sexual revolution, the downside of that approach has become painfully clear. We see the public consequences of what were thought to be private choices. Indeed, the taxed public literally pays the price for the private -- and, according to the Supreme Court, the constitutionally protected -- behavior of others. It is difficult, therefore, to envision significant progress in reducing dependency without reversing what the Court has wrought through its application of substantive due process to domestic policy. But courts can change their minds or be changed by other branches of government. That prospect is worth considering as we search for ways to limit the number of women and children who, in future years, will need to be rescued from the rising waters of welfare.

Welfare and the family

This brings us to the most perilous ground in the welfare reform arena. Family structure was an important factor in the welfare debates of the 1960s and 1970s, but it has become a central issue -- perhaps the overriding one -- in current policy considerations.

Two decades ago, it was widely argued that welfare broke up families by denying assistance to intact households. According to this theory, a low-income father would abandon his spouse and children to make them eligible for AFDC. It was never clear whether the departing breadwinner cared so little for his offspring that he would casually walk out on them or cared so much for them that he would heroically foresake his home so his youngsters could have a better life. Either way, it seemed like logical behavior, if one places financial considerations above all else.

In fact, this view reflected little more than the failure of affluent social scientists to understand that poor fathers are as likely as rich ones to be devoted to their families. It was a class libel, and it persists today among many persons with the best of intentions. One would like to think that a recent GAO

survey of scholarly studies ("Welfare: Issues to Consider in Assessing Proposals for Reform" GAO/HRD-87-51 BR) would lay the matter to rest. But it is difficult for many well meaning reformers to give up their preconceptions about how poor people act. And so, the Congress is again hearing impassioned appeals to force the States to extend AFDC to intact families, so that their breadwinners will not leave home to win welfare for their children.

The absence of fathers, wed or unwed, is indeed the problem; but they do not disappear because of the denial of AFDC to intact families. We are dealing with two separate problems: the breakup of families and the formation of family fragments. In the former case, divorce or desertion can leave mother and children in need. In the latter, illegitimacy often dooms a woman and her offspring to extended dependency within the welfare culture. In both cases, the availability of welfare -- and its level of benefits -- play a role.

Many analysts of welfare -- as diverse as Paul Johnson, Tom Bethel, George Gilder, and David Swoap -- have argued that the mere availability of public assistance is a solvent upon marital ties. Just knowing that the aid is there if it is needed makes a wife less dependent upon the survival of the marriage. The fact that the state stands ready to provide for his family makes a husband far less important in his role as breadwinner. When we know a strong safety net is under us, we are more likely to take chances; and the more secure our protection against falling too far, the more risky our behavior may be.

More recent econometric analyses like those of Lowell Gallaway and Richard Vedder for the Joint Economic Committee of the Congress (Poverty, Income Distribution, The Family and Public Policy, December 1986) have pointed toward the same conclusion: a strong statistical correlation between the level of public assistance and the divorce rate. That is why there is serious concern that any increase in welfare benefits will worsen the problem it is meant to help solve: that higher payments will foster more family breakup, leaving more women and children in dependency.

The role of public assistance in creating family fragments -- households crippled socially and economically by illegitimacy and the culture that sustains it -- is more graphic. Here there is no doubt of welfare's anti-family impact. It is only a matter of which words we choose to express it. Some critics of the public assistance system say that it, in effect, "bribes" young women to get pregnant and set up their own dependent homes. Disputing that popular assertion, other researchers have sought to show that illegitimacy rates among the poor are independent of variations in AFDC levels, as if that statistical discrepancy meant there was no relationship between the two. The best, though probably not the last, word on this subject was had by Charles Murray ("No, Welfare Isn't Really the Problem," The Public Interest, 84, Summer 1986). Exposing the superficiality of arguments to the contrary, Murray plainly showed the way welfare enables (rather than directly bribes) single women to have babies. Gallaway and Vedder supplement this view by contending that higher AFDC benefits, "by generally reducing the financial consequences of sexual activity," are positively related to higher rates of both abortion and illegitimacy.

Even among advocates of more generous welfare payments, there is some concern that the various forms of public assistance, especially free housing of her own, make single motherhood too appealing, or insufficiently distasteful, to teenagers of the underclass. One proposal would require an unwed AFDC mother to live with her own parents until age 18 or even older, thereby removing the housing incentive for illegitimacy. This is a peripheral reform, of course, but it demonstrates new awareness of the way welfare facilitates the formation of family fragments.

That phenomenon is at the heart of today's welfare system, for almost half (46%) of the children on AFDC are born out of wedlock. That single datum haunts all plans for welfare reform and makes clear the magnitude of the challenge they face in reducing dependency.

* * * * *

There are other familial considerations about welfare beyond the question of its incentives for the formation of fragmented households. One of them relates to the most popular part of the current welfare debate: work requirements. Elsewhere this paper deals with the imprecision of that term, but

for our purposes here it does not matter whether it means anything from forced labor to high school equivalency courses. Whatever it means, it is supposed to show our new determination to move people toward self-sufficiency. Commendable as that is, it can also be viewed as a surrender: an acquiescence by public policy in the continuation of social pathologies with which we have decided to live rather than an attempt to change them.

It should be said bluntly that an AFDC work requirement means putting mothers to work and putting children in child care. That is the price of leading their households to self-sufficiency. It may be one which we should readily accept, but not without candidly considering all its consequences. In the first place, working mothers need child care, though not necessarily of the institutional kind. AFDC already includes a monthly income disregard of as much as $160 per child to pay for such services. Most current welfare plans would add a mix of federal and State funding for child care.

But good child care can be expensive; and the younger the children, the more costly is the supervision (because infants and toddlers need more intense supervision, often with a staff/child ratio of 1:1 or 1:2). So the sooner after childbirth AFDC mothers enter the work force, the more expensive their child care will be, if it is available at all. The Governors' policy paper on welfare refers to "affordable, quality child care." That may be a contradiction in terms.

The expense of child care is less important, however, than its inability to compensate for familial disruption. We can expect the desired movement of many AFDC mothers into the labor force to reinforce the pattern, in areas of chronic dependency, in which women hold the jobs and males are superfluous in the lives of children. That pattern is the taproot of today's welfare problem, and much else besides; it can only be enlarged when large numbers of AFDC mothers become employed. Yes, it will be good for their offspring to have at least one close relative on a payroll, so that they can learn first-hand about the world of work. Yes, something must be done to break habits of hopeless drift on the part of AFDC recipients. Yes, it is only fair that, at a time when a large proportion of mothers hold at least part-time jobs, their poor counterparts should not have a free ride. And emphatically yes, many mothers on their own can set admirable examples for their children and raise them to be well-adjusted, productive adults without the involvement of a father.

But we should not romanticize those situations. In neighborhoods where routine paternal presence is rare, we will not erode the culture of poverty simply by getting mothers employed. Youngsters raised in fatherless households are not likely to be substantially less delinquent, less truant, less backward in class, less inclined to dysfunctional behavior just because their mothers find jobs. Matriarchy with a work requirement is matriarchy still, and we should not expect its deleterious effects, documented through several generations of welfare studies, to fade away.

* * * * *

Child poverty must be a special familial consideration for welfare reformers. It steadily declined from 1959 (26.9%) to 1969 (13.8%) but then began an upward swing, hitting 19.5% in 1981 and remaining above 20% ever since. This has become the scandalous core of the welfare problem.

Even though we might expect child poverty rates to run somewhat ahead of the overall rate, simply because of the youngsters' dependency, the differential between the two rates has been actually growing since 1969. In the decade prior to that date, the differential between the child poverty rate and the general poverty rate had declined year by year, inching downward from 4.5 in 1959 to its lowpoint of 1.7 in 1969. Thereafter, however, the differential between the two rates moved upward. In prosperous times and in recessions alike, apparently disconnected from mere economic factors, poverty became more and more a problem of children. By 1974, the child poverty rate was 3.9 percentage points higher than the overall rate. In 1979, it was 4.3 points higher. In 1984, it was 6.6 points higher.

Curiously, this was not a national phenomenon. On the contrary, it was concentrated in those States which pay the highest AFDC benefits. In low-AFDC States, on the other hand, child poverty actually declined between the 1969 and 1979 decennial censuses. The correlation is astounding, for it turns topsy-turvy the prevailing policy assumptions of the last quarter century. It means that increasing welfare benefits to "help poor children" may be like sprucing up slum housing with new lead paint. In the short run, things appear better; over the long run, we compound a human tragedy.

Since Gallaway and Vedder first publicized the State-by-State child poverty trends in 1985, official Washington has generally looked the other way, though their findings were included in two major congressional reports and mentioned in the Administration's 1986 white paper on the family. But the matter is too important to be wished away, as the following tables, from a minority report on "Safety Net Programs" by the House Select Committee on Children, Youth, and Families, make clear:

Percentage Change in Poverty Rate, 1969–79, in States With the Highest AFDC Payment Standards

Rank	State *	1979 Payment Standard For a 4-Person Family	% Change in Poverty Rate
1	Vermont	$524	+20.9
2	California	487	+19.7
3	Washington	483	+17.3
4	New York	476	+49.6
5	Michigan	470	+41.5
6	Wisconsin	458	+16.9
7	Minnesota	454	+7.3
8	Connecticut	446	+46.2
9	Iowa	419	+13.9
10	New Hampshire	392	+19.0
11	North Dakota	389	-10.1
11	Utah	389	+.9
11	Rhode Island	389	+16.2
14	New Jersey	386	+53.2
15	Massachusetts	379	+48.9

Percentage Change in Poverty Rate, 1969–79, in 15 States With the Lowest AFDC Payment Standards

Rank	State *	1979 Payment Standard For a 4-Person Family	% Change in Poverty Rate
1	Texas	$140	−13.8
2	Tennessee	148	−16.3
2	Alabama	148	−19.5
4	Georgia	170	−12.4
5	Louisiana	187	−21.7
6	Arkansas	188	−25.2
7	North Carolina	210	−26.8
8	South Carolina	229	−26.8
9	Florida	230	−3.6
10	Kentucky	235	−13.3
11	Arizona	239	−7.8
12	New Mexico	242	−17.2
13	West Virginia	249	−23.9
14	Mississippi	252	−26.4
15	Missouri	270	−2.0

* Hawaii and Alaska not included because of extremely high cost of living.

As the seven Republican Members of that Committee summed it up, "All but one state with high payment standards saw an increase in child poverty rates during that period. In contrast, all of the low-payment states experienced declines in child poverty rates. The average change among high-payment states was a 24% increase; the average change among low-payment states was a 16.8% decrease." Whether the high AFDC payments "bribe" women to give birth to poor children or merely "enable" them to do so is beside the point, which is that some remedies for child poverty seem instead to spread the contagion. We may not yet understand precisely the socio-cultural processes by which this happens; but henceforth, true compassion for the poor cannot be measured in AFDC dollars. Indeed, as the State-by-State data on child poverty suggest, that generosity may be a measure of their future misery.

Conclusion

Where We Go From Here

We began this paper with the observation that welfare is a terribly complex issue, and perhaps it appears even more complicated now than when we began. But to emphasize the difficulties of a project is not to say it can't be accomplished. On the contrary, the more realistically we approach such an enterprise, the better our prospect for some success. The raising of hard questions at the outset is the best way to avoid harder surprises later on.

That has been the purpose of this review: not to discourage comprehensive welfare reform but to lay a surer foundation for undertaking it. Real reforms, the kind that benefit the entire community of taxpayers and recipients alike, require a consensus to innovate and dare. The first step in building that consensus and consolidating it against later erosion is to reach a general understanding of the few basic elements we have surveyed here: the definitions of welfare, income, and work; the meanings of poverty and dependency, and the differences between the two; the extent to which work and family cohesion are advanced or retarded by public assistance.

The chronology of welfare shows the way those essentials in the debate have persisted through the last quarter century. If reformers keep an eye to that past, they will be able so to legislate and administer programs for the needy that, a quarter century hence, there will be no need for yet another paper such as this, laying out the options for welfare reform. It is an enterprise well worth the effort.

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THE CONSTITUTION OF THE UNITED STATES OF AMERICA

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WITH SUPPLEMENTARY MATERIAL

Prepared by the U.S. Senate Republican Policy Committee
William L. Armstrong, *Chairman*

Washington, D.C.
1987

United States Senate

WASHINGTON, D.C. 20510

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We are about to begin an unusual birthday party. It will start in 1987 and carry on into the waning hours of this century.

The party, of course, is our 200th birthday celebration of the U.S. Constitution. It begins September 17, 1987, the 200th anniversary of the adoption of the Constitution in the Philadelphia Convention. The celebration continues into 1988 to mark the 200th anniversary of the ratification of the Constitution; into 1989 to mark the inauguration of our first President under the Constitution; and on to 1991 to mark the 200th anniversary of the Bill of Rights.

In 1989 the Senate will celebrate the 200th anniversary of its first meeting under the Constitution. In anticipation of these events, this edition of the Constitution and supplementary material was prepared by the Senate Republican Policy Committee.

We encourage all Americans to read through these pages and reflect on the remarkable document that has guided us for 200 years.

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CONTENTS

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The Constitutional Convention of 1787

From the shipyards of Portsmouth, New Hampshire to the Plantations of Savannah, Georgia, the thirteen former colonies of the British Crown were now free and independent States. Linked together loosely by the Articles of Confederation, the States were more like sovereign nations than anything else. They regarded their militias as national armies, and nine States even had their own navies. They issued their own paper money, and several States had sent ministers abroad to attempt to borrow money. Virginia insisted on separately ratifying the 1783 treaty with Great Britain that officially ended the Revolutionary War. Congress under the Articles was not so much a legislative body as a diplomatic assembly -- something like today's United Nations. Still, the Articles of Confederation provided the foundation of the Constitution and the framework for the Constitutional Convention of 1787.

The American Confederation

The Articles of Confederation were proposed in 1777, and adopted within two years by every State but Maryland. Ratification required the concurrence of every State, however, and Maryland did not sign until March, 1781, after being nudged by the French. (The French refused the State's request for help in driving the British navy out of the Chesapeake Bay because Maryland had not adopted the Articles.) In October of 1781, the British surrendered at Yorktown.

Almost the entire war had been waged under a gentlemen's agreement. General Washington complained that Congress could "merely recommend and leave it to the States afterwards to do as they please, which . . . is in many cases to do nothing at all." The Articles of Confederation were an improvement over the gentlemen's agreement, but not by much. The States retained their "sovereignty, freedom, and independence, and every power, jurisdiction, and right" that was not "expressly delegated to the United States, in Congress assembled." Among those powers not delegated were the powers to tax, to raise troops, and to regulate commerce.

The Articles of Confederation were inadequate, particularly for the conduct of the war, and Congress knew it. It took Congress less than a week after the adoption of the Articles to appoint a committee to determine how it could obtain "full and explicit powers for effectually carrying into execution in the several States all acts . . . passed agreeably to the Articles of Confederation." The States recognized the defects of the Articles, too. As early as 1782 the New York Legislature called for a general constitutional convention.

Frustrated by several failed attempts to acquire an independent source of revenue and tired of begging the States for money, Congress itself was ready for a convention by early 1787. The anarchy in Massachusetts, culminating in Shays' Rebellion, had just been quelled, but there remained a justifiable fear that riot and disorder would spread. A stronger central government would dispel this fear. Some States, notably Virginia, had already selected delegates for a constitutional convention.

On February 21, 1787, citing "experience [which] hath evinced that there are defects in the present Confederation," Congress called a convention "for the sole and express purpose of revising the Articles of Confederation" to "render [them] adequate to the exigencies of Government & the preservation of the Union." The convention was called to suggest amendments; actual amendment of the Articles of Confederation required the consent of Congress and ratification by every State legislature.

Awaiting a Quorum

The convention was scheduled to begin on the second Monday in May, the 14th, at the State House in Philadelphia. The State House (now known as Independence Hall) looks out on Chestnut Street, just six blocks from the Delaware River. But on the appointed day, only Virginia and Pennsylvania were represented.

Greeted by some of his former officers and the city's light cavalry, Washington had arrived from Mount Vernon the day before. The bells were rung and people lined the streets for a glimpse of his horse and carriage. James Madison had come directly from Congress in New York City and had been in Philadelphia for ten days. Virginia's delegation also included George Mason, author of the Virginia Declaration of Rights (which Jefferson drew upon for the Declaration of Independence), and Edmund Randolph, Governor of the Commonwealth.

Pennsylvania had sent Robert Morris, the ingenious gentleman who had financed the war and signed both the Declaration of Independence and the Articles of Confederation. James Wilson and Gouverneur Morris, two distinguished lawyers and patriots with a long history of public service, were also Pennsylvania delegates. The President of Pennsylvania, Benjamin Franklin, was the host. This former printer, now in his 82nd year and chief executive of the State, was a world-renowned scientist and diplomat.

By Friday, an assortment of delegates had arrived, including the South Carolina and New York delegations. South Carolina had sent John Rutledge, its most influential lawyer and politician, and the bright, young Charles Pinckney, who was serving with Madison in Congress. Alexander Hamilton, Washington's former aide and an ardent nationalist, came from New York.

In Paris, the American Ambassador to France, Thomas Jefferson, cultivated his eager interest in the proceedings through a correspondence with several members. Jefferson's admiration for the delegates was unconfined: He wrote to John Adams, another keen observer who was the ambassador in London, that the Convention "is really an assembly of demigods."

Members of the Virginia delegation met daily to work on their plan for national union. Their product -- soon to be introduced at the Convention by Governor Randolph -- was a group effort, but the theory and outline were Madison's.

Madison and Mason had rooms at the Indian Queen tavern, on Fourth Street just a block from the State House, and the Virginians may have met there. George Mason, accustomed to his handsome plantation house, was content with his lodgings, but came "to grow heartily tired of the etiquette and nonsense so fashionable in this city" of 30,000 inhabitants, the largest in the United States.

While they awaited a working majority, delegates met daily at the State House. There was little anxiety over the absentees, for travel was always slow and uncertain, and the roads were rutted and muddy from the spring rains. It had taken General Washington five days to travel from northern Virginia, and a trip from New England could take three times that long. On the other hand, no one knew how many delegates were on their way. Some twenty delegates had simply refused to serve. One of the more famous, Patrick Henry of Virginia, succinctly explained his refusal. "I smelt a rat," he said.

Perhaps in one of these daily gatherings, when the conversation had turned to proposals for half-hearted half measures, Washington uttered his famous admonition: "If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair. The event is in the hand of God."

The Convention Opens

On Friday, May 25, with quorums present from New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, and South Carolina, the Convention finally got under way. It may have been the greatest political assembly the world has ever known, but its sessions were modest. No more than eleven States ever voted. Rhode Island never sent delegates, and by the time New Hampshire arrived in late July, New York's quorum had already gone home. Fifty-five delegates attended the Convention at one time or another, but on any given day only about half that number were likely to be in attendance.

Washington and Madison

Washington was elected President of the Convention by unanimous vote. A dozen years earlier, in the same room, he had been chosen Commander-in-Chief of the revolutionary forces. Franklin was to have nominated Washington, but the rain and the gout kept Franklin at home. Washington thanked the delegates for the honor they had bestowed upon him, and asked their indulgence for any errors he might commit because of his inexperience. With but one exception, he did not address the Convention again until its last day.

Washington was essential. Shortly after the Convention, Gouverneur Morris wrote, "I have observed that [Washington's] name on the new Constitution has been of infinite service. Indeed, I am convinced that if [Washington] had not attended the Convention, and the same paper had been handed out to the world, it would have met with a colder reception, with fewer and weaker advocates, and with more and more strenuous opponents." There have been many similar observations, both then and now, and their truth seems universally accepted. The more farsighted delegates had understood Washington's importance even before the Convention. Madison and Randolph, for example, had pleaded with the reluctant General to go to Philadelphia. One observer wrote of Washington that, "he is certainly a very good character -- but the common people don't know how to admire without adoring him." And it was true. Washington was revered.

James Madison chose a chair in front of the President so that he could hear all that passed, and from that seat he managed the Constitution. Madison took the lead in every important debate and was the principal draftsman of the Virginia Plan, which was the blueprint for the Constitution. He also kept extensive notes of the proceedings and is responsible for most of what we know about the Convention. Another delegate described Madison as a "blend of the profound politician with the scholar" who "always comes forward the best informed man of any point in debate."

The Rule of Secrecy

Three of the Convention's rules are notable: First, a quorum could consist of just seven States, and a majority of a quorum could decide any question. This rule seems unexceptionable now, but it was considerably more liberal than the rule in Congress at the time where all major questions required the assent of nine States. Second, each State, whether large or small, had one vote, the same as in Congress. This important decision, made informally before the Convention began, probably

kept the small States from leaving the Convention. Third, the proceedings were to be secret. In our day, when press releases are plentiful and leaks are routine, it is somewhat difficult to account for the Convention's rule (which was scrupulously obeyed).

Years later, Madison declared that no Constitution would have been possible without the rule of secrecy. "Opinions were so various and at first so crude," said Madison, "that it was necessary they should be long debated before any uniform system of opinion could be formed. Meantime, the minds of the members were changing and much was to be gained by a yielding and accommodating spirit. Had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion, no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth and was open to argument."

Shortly after the Convention got under way, a delegate lost some of his official papers which were found by another delegate and given to Washington. He waited until the day's debates were ended, then rose to admonish the members.

"Gentlemen," he said, "I am sorry to find that some one Member of this Body, has been so neglectful of the secrets of the Convention as to drop in the State House a copy of their proceedings, which by accident was picked up and delivered to me this Morning. I must entreat Gentlemen to be more careful, least our transactions get into the News Papers, and disturb the public repose by premature speculations. I know not whose Paper it is, but there it is" -- and he threw the papers on his desk -- "let him who owns it take it."

Washington then bowed, picked up his hat, and "quitted the room with dignity so severe that every Person seemed alarmed."

William Pierce, a delegate from Georgia who recorded this anecdote, was extremely alarmed to discover his own papers were gone. He stepped quickly to the table to inspect the lost papers and was relieved to discover they were in another's handwriting. When he returned to his room at the Indian Queen, he discovered his own papers in the pocket of another coat.

Not surprisingly, no person ever claimed the lost papers.

The Virginia Plan

Governor Edmund Randolph of Virginia opened the main business of the Convention on Tuesday, May 29, by detailing the defects in the present system of government and exhorting the delegates "not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the United States to pass away unimproved." Since Virginia had taken the lead in obtaining a convention, the Virginia delegates supposed that the Convention would expect some plan from them and Randolph introduced fifteen resolutions, the "Virginia Plan." In less than 100 working days, this plan would be forged into the Constitution of the United States.

The Virginia Plan provided for a national legislature of two branches, the first to be elected by the people and the second to be elected by the first. The States were not to be represented equally, as they were under the Articles, but according to population or property. The national legislature was to "legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation." The legislature also was to be given power to veto "all laws passed by the several States,

contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof." A national executive and a national judiciary were also part of the plan.

The next day, and for the next dozen meetings, the Convention resolved itself into a Committee of the Whole House, a parliamentary practice that allows a legislative body to work informally and expeditiously. (The United States House of Representatives regularly uses this procedure today.) When sitting in committee, Washington surrendered the chair and Nathaniel Gorham of Massachusetts presided. This day, Wednesday, May 30, the Convention agreed overwhelmingly to the radical proposition that "a national government ought to be established consisting of a supreme legislative, executive, and judiciary." Of that vote, Madison said there was less objection to the general merits of the idea "than on the force and extent of the particular terms 'national' & 'supreme'." Roger Sherman from Connecticut, having been seated just that morning and not having caught the fever for reform, cast the only dissenting vote.

The delegates worked until mid-June on the great issues of the Virginia Plan: Would the national legislature be bicameral? How would the legislature be chosen, and what would be its powers? Would it be supreme? How long would the executive serve? Would he have the veto? What powers would judges have, and who would appoint them? How would the new plan be ratified?

The New Jersey Plan

On Friday, June 15, William Paterson of New Jersey laid before the Convention a plan to revise, correct and enlarge the Articles of Confederation without throwing them out. His "New Jersey Plan" was the first organized reaction to the Virginia Plan which Paterson and others believed was radical, against their charter, and wrong.

Paterson's plan did provide Congress with additional powers, such as the power to tax imports, but Congress's new powers could not be exercised without the consent of a certain number of States. (Paterson did not specify how many.) The New Jersey Plan was sympathetically received by delegates who were alarmed at the prospect of a national government and by many small-state delegates who feared their States would be swallowed up in any union with the large States.

The small States had always been apprehensive of their larger, more populous, and often wealthier, neighbors. Even in the Second Continental Congress the small States had initially opposed a wartime confederation because they feared that the large States would exploit the war to their own advantage.

The New Jersey and Virginia Plans were debated for three days. The New Jersey Plan was promoted not so much on its substance as on its practicality and modesty. To begin with, said John Lansing of New York, the Virginia Plan is illegitimate because this Convention is authorized only to propose amendments to the Articles of Confederation. Further, the people are not likely to approve changes as sweeping as the Virginia Plan proposes.

"When the salvation of the Republic is at stake," Governor Randolph replied heatedly, "it would be treason to our trust not to propose what we found necessary."

"With regard to the sentiments of the people," James Wilson added, "it is difficult to know precisely what they are. Those of the particular circle in which one moves are commonly mistaken for the general voice."

On Monday, June 18, Alexander Hamilton spoke at length on his own plan for a truly national union. Neither of the plans under discussion were adequate, he said. Paterson's meek suggestions were wholly incapable of solving the people's problems, and the Virginia Plan was "pork still with a little change of the sauce." Hamilton's plan was politely received, but ignored. "The Gentleman from New York has been praised by everybody," noted one delegate, "he has been supported by none."

On June 19, the Virginia Plan survived Paterson's test by a vote of 7-to-3, with Maryland divided. Two weeks earlier the Convention might have followed Paterson, but the delegates had been tutored by the federalists for a fortnight now, and they were persuaded to abandon the confederation and pursue the Virginia Plan.

A Plea for Divine Guidance

On June 27, the Convention began the great debate on the most fundamental points, the composition and selection of the two branches of the legislature. The subject had been discussed before, but never resolved. Both sides seemed unmovable: The small States were determined to maintain their equality in the national assembly and the large States insisted on proportional representation. "The fate of America," wrote Gouverneur Morris, "was suspended by a hair."

It was hot and the room was stifling because the windows were kept shut to help ensure secrecy. Luther Martin of Maryland chose this moment to deliver a rambling, though sometimes impassioned, two-day discourse on government that seems to have disgusted nearly everyone. After the first day, Robert Yates of New York wrote, "As his arguments were too diffuse, and in many instances desultory, it was not possible to trace him through the whole." There was no improvement on the second day, for Madison made a similar comment at the conclusion of Martin's address.

Martin was the strongest opponent of the Constitution in Convention. He was dead set against it, and he was sure Maryland would be, too. Martin told a fellow Maryland delegate that he'd be hanged if Maryland ever agreed to the Constitution. "I advise you to stay in Philadelphia," came the reply, "lest you should be hanged."

Martin's speech so discouraged the Convention that Franklin was inspired to seek divine guidance:

"In this situation of this Assembly," Franklin told the Convention, "groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the Contest with Great Britain, when we were sensible of danger we had daily prayer in this room for the divine protection. --Our prayers, Sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a Superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? Or do we imagine that we no longer need his assistance? I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth -- that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? . . . ."

Franklin then moved that a clergyman be found to offer morning prayers. The motion was seconded, but Hamilton and others were apprehensive. Legend says that Hamilton opposed the idea because the Convention should not take foreign aid. When someone pointed out that the Convention had no funds to employ a clergyman, the Convention adjourned without a vote on Franklin's motion.

Impasse, and the Great Compromise

On June 29, by a vote of 6-to-4, with one State divided, the Convention agreed that representation in the first house of the legislature would not be according to the rule of the Articles of Confederation "but according to some equitable ratio." Oliver Ellsworth of Connecticut then moved that in the second house each State would be represented equally. "I confess," he said, "that the effect of this motion is to make the general government partly federal and partly national. This will secure tranquility, and still make it efficient; and it will meet the objections of the larger States."

On Monday morning, July 2, the crucial question was put to the Convention, shall each State have an equal vote in the second house? The question failed on a tie vote. The Convention was at a standstill.

In an effort to break the impasse, one member from each State was appointed to a committee to find a compromise. In order for the committee to meet, and to allow the delegates to celebrate the anniversary of their independence, the Convention adjourned until the 5th.

The delegates celebrated Independence Day in grand, Philadelphia style. Early on the morning of the Fourth, the militia drilled on the city common. The artillery fired the salute of the United States, i.e., three times thirteen rounds. (It was also customary to drink thirteen toasts on patriotic occasions, but that custom was observed later in the day.) The officers of the militia then marched to the State House for a meeting of the Society of the Cincinnati, a prominent organization of Revolutionary War officers. (Washington was their General President.) From there, the celebrants proceeded with accompanying martial music and ringing of church bells to the Reformed Calvinist Church where they heard an address on, "The Advantages Which Have Resulted to Mankind from the Independence of America." That evening, Washington dined with the Cincinnati at Epple's Tavern on Race Street.

Back in Convention on the 5th, Elbridge Gerry of Massachusetts presented the committee report. It proposed that the first branch of the legislature should have one representative for every 40,000 inhabitants and the power to originate all bills for raising or appropriating money, and that the second branch should provide each State with an equal vote but not have power to amend those measures that must originate in the first house. This compromise was suggested in committee by Franklin, the diplomat.

Large-state delegates promptly criticized the report because the plan for equal representation in the second house was inequitable. For ten days the debate raged. Was the plan fair? How many members would each State have? (A question twice referred to a special committee.) Who would determine population, and when? Would slaves be counted?

Then, on the morning of July 16, the Convention agreed to equal representation in the second branch. This was the Great Compromise of the Convention. It was the watershed of federalism, and of American constitutionalism, and it passed by the narrowest margin possible: Connecticut, New Jersey,

Delaware, Maryland, and North Carolina voted for it. Pennsylvania, Virginia, South Carolina, and Georgia voted against it. Massachusetts, a large State that often voted with Pennsylvania and Virginia, was divided. New York had left the Convention. Had the Great Compromise not been adopted, the small States might have left, too.

For the next ten days the Convention hammered out details of the Virginia Plan. About one-half of this time was spent considering the executive, but many hours were also spent on the judiciary and the mode of ratification. The Convention agreed that each State would be represented by two Senators who would each have one vote, and that the legislative acts of the United States and any treaty would "be the supreme law of the respective States . . . and the Judiciaries of the several States shall be bound thereby." This latter provision eventually became the Supremacy Clause, sometimes called the linchpin of the Constitution.

The Committee of Detail

On July 26 the Convention referred the Virginia Plan, as amply amended, the Paterson Plan, and a Pinckney Plan to a Committee of Detail to be arranged and standardized. The committee comprised Rutledge of South Carolina, Randolph of Virginia, Gorham of Massachusetts, Ellsworth of Connecticut, and Wilson of Pennsylvania. So that the committee could complete its work, the Convention adjourned until August 6.

During the recess, Washington visited his camp at Valley Forge where, a decade before, he had kept an army through a bleak, bitterly cold winter. Washington also fished, reporting some success with perch but none with trout.

When the Convention reconvened, Rutledge gave the committee report. Surprisingly, it drew heavily on the Articles of Confederation for both organization and language. The committee had given names to the new units of government: The legislature was now "Congress"; the first house was the "House of Representatives" and the second, the "Senate"; the "Supreme Tribunal" was now the "Supreme Court"; and the executive was the "President of the United States of America". There was a preamble which began, "We the people of the States of New Hampshire, Massachusetts, Connecticut, ..." etc. The broad resolutions of the Convention were now drawn in detail.

Slavery, and a King

Now their work began again. The Convention started through the committee's report, point by point, and they continued for five weeks. These were the weeks when the Constitution was perfected and concluded. All of the major points were settled, but two were particularly difficult: regulating commerce (particularly, the importing of slaves and the taxing of exports) and electing the President. Both problems were solved with the help of committees specially appointed to reach a compromise.

The governance of imports and exports was vital to the States, and the debate was particularly sharp. Agriculture was divided from manufacturing; importers from exporters; the South from the North. If Congress was given power to exclude slaves, the Southern States would not agree to the Constitution. If Congress was empowered to regulate or tax exports, northern interests would dissent.

The debate was primarily commercial, not moral, but on August 22 George Mason launched a scorching moral attack on the "infernal traffic" of slavery which

"brings the judgment of heaven on a Country." In prophetic voice he added, "As nations cannot be rewarded or punished in the next world they must in this. By an inevitable chain of causes & effects Providence punishes national sins, by national calamities."

The Convention finally determined that Congress would be forbidden to prohibit the importing of slaves until the year 1808 and forbidden to tax or levy duties on exports. This compromise was second only to the Great Compromise in securing a constitution.

On the last day of August, all parts of the constitution not yet finished were referred to a committee. The method of choosing the President remained a difficult point, and the committee recommended a unique system of electors. The electoral compromise has been confusing and controversial for 200 years -- and within 20 years it had been changed by the Twelfth Amendment -- but it solved one of the last sticking points of the Convention.

At about this same time, there were frequent rumors about the Convention's work, particularly with respect to an alleged monarchy. The Convention seems to have authorized its members to quash these rumors, for similarly worded rebuttals appeared in the press and private correspondence. On August 22, 1787, for example, the *Pennsylvania Journal* reported, "We are informed, that many letters have been written to the members of the federal Convention from different quarters, respecting the reports idly circulating, that it is intended to establish a monarchical government, to send for the [second son of George III], etc. -- to which it has been uniformly answered, 'tho' we cannot, affirmatively, tell you what we are doing, we can, negatively, tell you what we are not doing -- we never once thought of a king.'"

James Madison's father may have been responsible for suggesting this backhanded explanation. On August 1, he wrote his son to suggest a scheme for evading the rule of secrecy. "If you cannot tell us what you are doing, you might at least give us some information of what you are not doing. This would afford us a clue for political conjecture, and perhaps be sufficient to satisfy present impatience."

Committee of Style

The document was now nearly ready. It needed only to be honed and polished. William Samuel Johnson of Connecticut, Hamilton, Gouverneur Morris, Madison, and Rufus King of Massachusetts were appointed to a Committee of Style. The chief responsibility of the final draft fell to Morris, and it was from his pen that the Constitution came. Madison said of Morris, "A better choice could not have been made."

Gouverneur Morris spoke more than any other delegate at the Convention, although one of his colleagues thought him "fickle and inconstant, -- never pursuing one train of thinking." He was brilliant and witty and arrogant, and with his wooden leg he created quite a sensation in Philadelphia society. He was popular with the ladies, and it was whispered that he had lost his leg in a leap from a balcony to escape an angry husband. More likely, the leg was lost in a carriage accident.

According to Morris's own exuberant version of the story, immediately after the accident a friend rushed to his bedside to console him. The loss of the leg would have a good effect on Morris, the friend assured him, for it would reduce the impulses toward "the pleasures and dissipations of life, into which young men

are too apt to be led." "My good sir," Morris was said to have replied, "you argue the matter so handsomely, and point out so clearly the advantages of being without legs, that I am almost tempted to part with the other."

On Wednesday, September 12, the Committee of Style made its report. The preamble now read, "We, the People of the United States. . . ."

During the next few days the draft was perfected, and on Saturday, about six o'clock in the evening, the Convention adopted the Constitution. Saturday night and Sunday, the Constitution was written out on parchment, probably by the assistant clerk of the Pennslyvania Assembly.

A Rising Sun

On Monday, September 17, the Convention met for the last time. Three members -- Randolph, Mason, and Gerry -- had said they would not sign, and Gouverneur Morris contrived a form of execution to disguise their dissent. The Constitution was to be adopted "by the unanimous consent of the States present." By this form, neither opposed individuals nor absent States were mentioned. One final change was made: At the urging of Washington, the number of citizens represented by a member of the House was changed from 40,000 to 30,000. The secretary erased "forty" and squeezed in "thirty".

The members then signed the document. Washington first, and the other delegates in the traditional order of States from north to south. Thirty-eight members signed, and the signature of a thirty-ninth who was absent was added at his request.

While the last members were filing forward to sign, Benjamin Franklin directed their attention to the President's chair, which had on its back a carved sun, painted in gold. Franklin observed that painters had found it difficult to distinguish in their art a rising from a setting sun, and that he had often during the vicissitudes of the Convention looked at that chair without being able to tell whether it showed a sun rising or setting. "But now at length," he said as the last names were being signed, "I have the happiness to know that it is a rising and not a setting sun."

The Great Convention then adjourned.

That night, the Founders dined at the City Tavern. Washington bid his colleagues a cordial farewell, then retired to his room "to meditate on the momentous work which had been executed." Within two years he would be President of the United States of America.

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SOURCES

The following books were used in preparing this account of the Philadelphia Convention of 1787: Sol Bloom, **The Story of the Constitution** (The United States Constitution Sesquicentennial Commission, 1937); Max Farrand, **The Framing of the Constitution of the United States** (Yale University Press, 1913); Max Farrand, **The Records of the Federal Convention of 1787** (Yale University Press, 1937 rev. ed.); Forrest McDonald, **E Pluribus Unum** (Liberty Press, 2nd ed. 1979); Carl Van Doren, **The Great Rehearsal** (Viking Press, 1961 reprint of 1948 ed.); Charles Warren, **The Making of the Constitution** (Little, Brown & Co., 1937)

Selected Dates in the History of the Constitution of the United States, 1775–1986

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1775-1786

April 19, 1775, Battle of Lexington and Concord.

July 6, 1775, Declaration of the Causes and Necessity of Taking up Arms (Second Continental Congress).

June 12, 1776, Virginia Bill of Rights adopted.

July 4, 1776, Declaration of Independence approved.

November 15, 1777, Articles of Confederation approved by Congress and sent to the States for ratification.

March 2, 1781, Congress met for the first time under the Articles of Confederation, Maryland having ratified the previous day.

September 3, 1783, Peace of Paris treaty, formally ending the war with Great Britain.

March 28, 1785, commissioners from Virginia and Maryland met at Mount Vernon to discuss navigation and commerce. Later invitations to other States led to the Annapolis Convention.

January 16, 1786, Virginia Statute of Religious Liberty.

August, 1786 - February, 1787, major events of Shays' Rebellion.

September 11, 1786, beginning of the Annapolis Convention on interstate commerce and navigation.

October 16, 1786, Virginia became the first State to approve delegates for a general Convention; its delegates were chosen in December.

1787

February 21, Congress passed the resolution calling for a convention to be held in Philadelphia.

May 14, Philadelphia Convention to have begun, but no quorum present.

May 25, quorum present and Convention business opened.

May 29, "Virginia Plan" presented to the convention.

July 13, Congress enacted the Northwest Territory Ordinance of 1787, pointing the territories toward statehood and protecting individual rights.

July 16, Philadelphia Convention adopted the "Great Compromise."

September 17, Constitution signed and the Convention adjourned *sine die.*

September 28, Congress sent the proposed Constitution to the governors of the thirteen States.

October 27, *The Federalist* first appeared in a New York newspaper. Signed "Publius," and written by Hamilton, Madison, and John Jay, these essays continued until Number 85 appeared on May 28, 1788.

December 7, Delaware was the first State to ratify the Constitution (unanimous vote of 30 members).

December 12, Pennsylvania ratified (vote of 46-to-23).

December 18, New Jersey ratified (unanimous vote of 38 members).

1788

January 2, Georgia ratified (unanimous vote of 26 members).

January 9, Connecticut ratified (vote of 128-40).

February 6, Massachusetts ratified (vote of 187-to-168).

April 28, Maryland ratified (vote of 63-to-11).

May 23, South Carolina ratified (vote of 149-to-73).

June 21, New Hampshire ratified (vote of 57-to-47). (New Hampshire's ratification, being the ninth, made the Constitution binding on the States that had ratified.)

June 26, Virginia ratified (vote of 89-to-79).

July 26, New York ratified (vote of 30-to-27).

August 4, first North Carolina ratifying convention rejected the Constitution, calling for amendments or a second constitutional convention (vote of 184-to-84).

September 13, Congress set the date for appointment of presidential electors; the electors were appointed in various ways as the State legislatures directed.

1789

March 4, the formal beginning of the Congress of the United States under the new Constitution. However, Congress had no practical existence until April 6 when quorums were present in both Houses.

April 30, George Washington was inaugurated as the first President of the United States.

September 24, enactment of Judiciary Act of 1789 which created the federal court system; established 1 chief justice and 5 associate justices on the Supreme Court; Congress finally settled on nine members in 1869.

September 25, Congress sent twelve proposed constitutional amendments to the States.

September 26, Senate confirmed John Jay as first Chief Justice.

November 21, North Carolina ratified the Constitution (vote of 194-to-77).

1790-1799

February 2, 1790, the Supreme Court of the United States held its first session.

May 29, 1790, Rhode Island ratified (vote of 34-to-32).

December 15, 1791, ten of the twelve proposed constitutional amendments were ratified (the Bill of Rights). The two other amendments were never adopted.

February 19, 1793, *Chisholm* v. *Georgia*, 2 Dall. 419: citizens of one State may sue another State in federal court.

August 8, 1793, the Justices of the Supreme Court refused President Washington's request for advisory opinions on certain legal questions arising from the war between France and Great Britain.

August 7, 1794, Washington's Proclamation on the Whiskey Rebellion; the President dispatched troops to end this first direct challenge to the authority of the new national government.

February 7, 1795, ratification of Eleventh Amendment (States may not be sued in federal court by citizens of other States, overturning *Chisholm* v. *Georgia*).

March 7, 1796, *Ware* v. *Hylton*, 3 Dall. 199: treaties of the United States are supreme over conflicting State laws.

August 8, 1798, *Calder* v. *Bull*, 3 Dall. 386: the Constitution's prohibition of *ex post facto* laws applies only to criminal laws.

November 16, 1798, first of the Kentucky and Virginia Resolutions; secretly written by Jefferson and Madison in opposition to the Alien and Sedition Acts, the resolutions asserted the States' right to nullify federal laws.

1800-1849

January 27, 1801, Senate confirmed John Marshall as Chief Justice.

February 17, 1801, on the 36th ballot, the House of Representatives chose Thomas Jefferson over Aaron Burr as the 3rd President of the United States. This was the first time that the House was called on to choose the President.

February 24, 1803, *Marbury* v. *Madison*, 1 Cr. 137: striking down a Congressional enactment, the Supreme Court asserted for the first time its power to refuse to give effect to an act of Congress which the Court finds unconstitutional. "It is emphatically the province and duty of the judicial department to say what the law is," said Chief Justice John Marshall.

March 12, 1804, the House of Representatives impeached Justice Samuel Chase, the only member of the Supreme Court ever impeached; he was not convicted.

June 15, 1804, ratification of the Twelfth Amendment (making changes in the electoral process, including separate electoral votes for President and Vice President to eliminate the former practice where political opponents could be elected to serve together).

March 16, 1810, *Fletcher* v. *Peck*, 6 Cr. 87: first case in which the United States Supreme Court struck down a State law as unconstitutional.

May 1, 1810, Congress referred to the States a proposed constitutional amendment relating to titles of nobility; the proposal was never ratified.

March 20, 1816, *Martin* v. *Hunter's Lessee*, 1 Wheat. 304: the United States Supreme Court is constitutionally empowered to review opinions of State courts on federal law.

February 2, 1819, *Dartmouth College* v. *Woodward*, 4 Wheat. 518: the Contracts Clause prohibits a State from altering or repealing a private corporate charter.

March 7, 1819, *McCulloch* v. *Maryland*, 4 Wheat. 316: because Congress has broad powers to select appropriate means to achieve legitimate ends, it may incorporate a bank; a State has no power to burden the national government, by taxation or otherwise.

March 6, 1820, enactment of the Missouri Enabling Act ("Missouri Compromise") prohibiting slavery in the territories.

March 2, 1824, *Gibbons* v. *Ogden*, 9 Wheat. 1: Congress has broad powers to regulate interstate commerce and State laws to the contrary must yield.

February 9, 1825, on the 1st ballot, the House of Representatives selected John Quincy Adams as the 6th President of the United States; Andrew Jackson came in second (although he received more popular votes than Adams in a 4-man race). This was the first time a President was elected with fewer popular votes than his opponent.

March 9, 1829, *Foster* v. *Neilson*, 2 Pet. 253: the federal courts will not decide political questions.

March 3, 1832, *Worcester* v. *Georgia*, 6 Pet. 515: federal authority over Indian affairs is exclusive. The State initially refused to comply with the decision, and the President openly supported their refusal, reportedly saying, "Well, John Marshall has made his decision, now let him enforce it."

November 24, 1832, adoption of South Carolina Ordinance of Nullification. A special Convention in the State declared national tariff laws unconstitutional and not binding on the State, its officers or citizens; based on the rationale of the State Legislature's South Carolina Exposition of 1828.

February 16, 1833, *Barron* v. *Baltimore*, 7 Pet. 243: the Bill of Rights applies to the Federal government only, not to the State governments.

March 3, 1837, Congress authorized the purchase of Madison's notes on the Federal Convention of 1787 for $30,000; Madison had died in 1836; the notes were published in 1840.

1850-1899

May 27, 1852, *Pennsylvania* v. *Wheeling & Belmont Bridge*, 13 How. 518: the Supreme Court held that a bridge obstructed interstate commerce, Congress then declared that the bridge did not interfere with interstate commerce. In 1856, the Court upheld the statute. This is the first instance of a legislative "reversal" of a Supreme Court decision.

May 30, 1854, enactment of Kansas-Nebraska Act allowing new States to adopt slavery (repealed Missouri Compromise).

March 6, 1857, *Dred Scott* v. *Sandford*, 19 How. 393: blacks were not citizens under the Constitution and not entitled to its privileges; Congress could not bar slavery in the territories. This was the first act of Congress to be struck down since *Marbury* v. *Madison* (1803).

December 20, 1860, South Carolina became the first State to secede.

March 2, 1861, Congress proposed a constitutional amendment prohibiting Congress from interfering with or abolishing the "domestic institutions" of any State, including slavery; the amendment was never ratified.

March 4, 1861, Abraham Lincoln took office, saying in his inaugural address that "the Union of these States is perpetual."

March 11, 1861, Confederate Congress adopted the Constitution of the Confederate States of America in Montgomery, Alabama.

April 12, 1861, the Union's Fort Sumter was fired on by Confederate forces.

January 1, 1863, President Lincoln issued the Emancipation Proclamation.

March 10, 1863, *The Prize Cases*, 2 Black 635: the President's order to blockade the Southern States was constitutional even though Congress had not declared war.

April 9, 1865, Lee surrendered to Grant at Appomattox Courthouse.

December 6, 1865, ratification of Thirteenth Amendment (abolishing slavery).

April 3, 1866, *Ex parte Milligan*, 4 Wall. 2: even in wartime, the President had no power to order civilians to be tried in military courts where civilian courts were functioning.

April 9, 1866, enactment of the Civil Rights Act of 1866, first of the civil rights acts of the Reconstruction Era.

February 24, 1868, President Andrew Johnson impeached by the House of Representatives for "high crimes and misdemeanors."

May 16, 1868, the Senate failed by one vote to obtain the two-thirds majority necessary to convict President Johnson and remove him from office.

July 9, 1868, ratification of the Fourteenth Amendment (due process, equal protection and other rights of citizens; overturning *Dred Scott*).

February 3, 1870, ratification of the Fifteenth Amendment (suffrage for all races).

January 15, 1872, *Second Legal Tender Case*, 12 Wall. 457: Congress could make paper money legal tender in payment of debts; the Court reversed its own decision of 1870.

April 14, 1873, *Slaughterhouse Cases*, 16 Wall. 36: the purpose of the Fourteenth Amendment was the freedom and protection of former slaves; the Amendment did not establish substantive rights.

March 1, 1877, *Munn* v. *Illinois*, 94 U.S. 113: States may regulate private, commercial enterprise when "necessary for the public good."

October 15, 1883, *Civil Rights Cases*, 109 U.S. 3: the post-Civil War constitutional amendments did not empower Congress to enact a law barring discrimination in private establishments.

May 10, 1886, *Yick Wo* v. *Hopkins*, 118 U.S. 356: laws neutral on their face may be administered in a discriminatory manner, violating the 14th Amendment.

May 20, 1895, *Pollock* v. *Farmers Loan & Trust Co.*, 158 U.S. 601: the Constitution does not permit Congress to enact a general income tax.

May 18, 1896, *Plessy* v. *Ferguson*, 163 U.S. 537: a State law requiring "equal but separate" railroad facilities for black and white passengers did not violate the 14th Amendment. In lone dissent, Justice Harlan wrote, "Our Constitution is color-blind."

1900-1919

January 30, 1905, *Swift & Co.* v. *United States*, 196 U.S. 375: Congress can regulate local commerce that is part of interstate commerce.

April 17, 1905, *Lochner* v. *New York*, 198 U.S. 45: a State law regulating the maximum number of hours that bakers can work is an unconstitutional abridgement of the freedom of contract.

February 24, 1908, *Muller* v. *Oregon*, 208 U.S. 412: State law setting maximum hours for women working in laundries was upheld as a justifiable health regulation.

February 3, 1913, ratification of Sixteenth Amendment (income tax; overturning *Pollock* v. *Farmers Loan*).

April 8, 1913, ratification of Seventeenth Amendment (Senators to be elected directly by the people instead of by State legislatures).

February 24, 1914, *Weeks* v. *United States*, 232 U.S. 383: evidence seized in violation of the 4th Amendment may not be introduced against a defendant in federal court.

June 8, 1914, *Shreveport Rate Case*, 234 U.S. 342: Congress's commerce power was expanded to include intrastate rail rates that were so intertwined with interstate rates that it was impossible to separate the two.

January 7, 1918, *Selective Draft Law Cases*, 245 U.S. 366: compulsory conscription does not constitute involuntary servitude in violation of the 13th Amendment.

June 3, 1918, *Hammer* v. *Dagenhart*, 247 U.S. 251: federal statute attempting to exclude from interstate commerce any goods produced by child labor was held unconstitutional.

January 16, 1919, ratification of Eighteenth Amendment (Prohibition – making illegal the manufacture, sale, or transportation of liquor).

1920-1939

August 18, 1920, ratification of the Nineteenth Amendment (guaranteeing to women the right to vote).

April 9, 1923, *Adkins* v. *Children's Hospital*, 261 U.S. 525: minimum wage law for the District of Columbia enacted by Congress struck down as a violation of freedom of contract.

June 2, 1924, Congress proposed a constitutional amendment to permit Congress to regulate child labor; the amendment was never ratified (ratification was made unnecessary by later Supreme Court decisions).

June 8, 1925, *Gitlow* v. *New York*, 268 U.S. 652: First Amendment protections apply to governmental acts of the States as well as the federal government; here began a long line of cases applying the Bill of Rights to the States, through the 14th Amendment.

October 25, 1926, *Myers* v. *United States*, 272 U.S. 52: Congress may not restrict the President's power to remove executive officers.

March 7, 1927, *Tumey* v. *Ohio*, 273 U.S. 510: the due process guarantees of the 14th Amendment require that a defendant be tried by an impartial judge; this was the first time that a State conviction was overturned because the procedure did not comply with due process requirements.

January 23, 1933, ratification of Twentieth Amendment (Congress to meet and the President to begin his term in January; presidential qualification and succession).

December 5, 1933, ratification of Twenty-First Amendment (repeal of Prohibition).

January 8, 1934, *Home Building & Loan Assn.* v. *Blaisdell*, 290 U.S. 398: Minnesota's Depression-era emergency mortgage moratorium law did not unconstitutionally impair the obligation of contracts.

March 5, 1934, *Nebbia v. New York*, 291 U.S. 502: the States may regulate business operations so long as the regulations are reasonable and the means appropriate.

January 7, 1935, *Panama Refining Co.* v. *Ryan*, 293 U.S. 388: first ruling striking down New Deal legislation.

May 27, 1935, *Humphrey's Executor* v. *United States*, 295 U.S. 602: Congress has power to establish independent quasi-legislative agencies; the President cannot remove a member of an independent regulatory agency without cause.

December 21, 1936, *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304: the power of the President in foreign affairs is "plenary and exclusive."

February 5, 1937, President Roosevelt's "court packing" judicial reform plan sent to Congress.

March 29, 1937, *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379: State minimum wage law for children and women upheld; freedom of contract doctrine largely abandoned. The same day, the Court upheld two New Deal statutes in the *Vinton Branch* and *Virginia Railway Co.* cases.

December 6, 1937, *Palko* v. *Connecticut*, 302 U.S. 319: 14th Amendment applies the Bill of Rights to the States "selectively," not totally; 5th Amendment guaranty against double jeopardy does not apply to the States (overruled in 1969).

April 25, 1938, *United States* v. *Carolene Products Co.*, 304 U.S. 144: in his famous footnote 4, Justice Stone suggested a "double standard" for judicial review: deferential review for economic rights, but strict review of personal liberties.

December 12, 1938, *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337: refusing to admit a black to an all-white law school, even if the State agrees to pay his tuition in an out-of-state school, violates equal protection of the laws.

1940-1959

February 3, 1941, *United States* v. *Darby Lumber Co.*, 312 U.S. 100: Congress can prohibit the interstate shipment of goods manufactured in violation of federal minimum wage and maximum hour standards; overruling *Hammer* v. *Dagenhart* (1918).

June 1, 1942, *Skinner* v. *Oklahoma*, 316 U.S. 535: laws affecting fundamental interests require strict judicial scrutiny.

November 9, 1942, *Wickard* v. *Filburn*, 317 U.S. 111: the interstate commerce power is so broad that Congress can regulate matters that are neither interstate nor commerce such as home-grown wheat used for personal consumption.

June 14, 1943, *West Virginia Bd. of Education* v. *Barnette*, 319 U.S. 624: students having religious objections may not be required to participate in public school pledges of allegiance; overruling *Minersville School District* v. *Gobitis* (1940).

December 18, 1944, *Korematsu* v. *United States*, 323 U.S. 214: relocation of American citizens of Japanese ancestry was authorized by wartime powers even though racial classifications are to be subjected to "most rigid scrutiny."

February 10, 1947, *Everson* v. *Bd. of Education of Ewing Township*, 330 U.S. 1: Establishment Clause applies to States, but transportation reimbursement to parents of parochial school students did not violate 1st Amendment.

May 3, 1948, *Shelley* v. *Kraemer*, 334 U.S. 1: racially discriminatory restrictive covenants cannot be enforced by State courts.

February 27, 1951, ratification of Twenty-Second Amendment (two term limit for Presidents).

June 4, 1951, *Dennis* v. *United States*, 341 U.S. 494: 1st Amendment does not bar prosecution for advocating the violent overthrow of the government.

June 2, 1952, *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579: the President exceeded his constitutional powers by seizing the steel mills without Congressional approval, even though he acted to avert what he saw as an economic and military emergency.

May 17, 1954, *Brown* v. *Bd. of Education of Topeka*, 347 U.S. 483: state-sponsored segregation in pubic schools violates the 14th Amendment; separate schools for blacks and whites are inherently unequal.

May 17, 1954, *Bolling* v. *Sharpe*, 347 U.S. 497: the segregated school system of the District of Columbia (set up by Congress) violated the 5th Amendment.

May 31, 1955, *Brown* v. *Bd. of Education of Topeka (Brown II)*, 349 U.S. 294: local school districts must move to eliminate segregation with "all deliberate speed."

June 24, 1957, *Roth* v. *United States*, 354 U.S. 476: obscenity is not protected by the 1st Amendment.

September 24, 1957, President Eisenhower sent federal troops to Little Rock to prevent the governor's obstruction of school desegregation.

September 9, 1957, enactment of Civil Rights Act of 1957, the first of its kind since Reconstruction.

September 12, 1958, *Cooper* v. *Aaron*, 358 U.S. 1: desegregation is the supreme law of the land; rights of black children may not be nullified openly or by evasive schemes.

1960-1986

March 29, 1961, ratification of Twenty-third Amendment (allowing the District of Columbia presidential electors).

June 19, 1961, *Mapp* v. *Ohio*, 367 U.S. 643: evidence obtained in violation of the 4th Amendment must be excluded in State trials.

March 26, 1962, *Baker* v. *Carr*, 369 U.S. 186: legislative apportionment is a proper subject for judicial review; overruling *Colegrove* v. *Green* (1946).

June 25, 1962, *Engel* v. *Vitale*, 370 U.S. 421: state-composed, denominationally neutral school prayer violates the Establishment Clause of the 1st Amendment.

March 18, 1963, *Gideon* v. *Wainwright*, 372 U.S. 335: persons charged with a felony in State court must be provided with an attorney, paid for by the State if necessary: overruling *Betts* v. *Brady* (1942).

January 23, 1964, ratification of Twenty-fourth Amendment (abolishing poll tax in federal elections).

March 9, 1964, *New York Times Co.* v. *Sullivan*, 376 U.S. 254: the 1st Amendment protects the press from libel suits filed by public officials unless the publication was made with actual malice.

June 15, 1964, *Reynolds* v. *Sims*, 377 U.S. 533: equal protection requires that both houses of a State legislature be apportioned according to "one man, one vote."

July 2, 1964, enactment of Civil Rights Act of 1964, prohibiting many forms of private discrimination.

December 14, 1964, *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241: Congress may prohibit private racial discrimination in public accommodations.

June 7, 1965, *Griswold* v. *Connecticut*, 381 U.S. 479: several constitutional provisions create a "zone of privacy" that forbids a State from penalizing the use of contraceptives by married couples.

August 6, 1965, enactment of Voting Rights Act of 1965.

March 7, 1966, *South Carolina* v. *Katzenbach*, 383 U.S. 301: Voting Rights Act of 1965 was a valid exercise of Congressional power under the 15th Amendment.

March 24, 1966, *Harper* v. *Virginia Board of Elections*, 383 U.S. 663: the Equal Protection Clause forbids the use of a poll tax by a State; the fundamental right to vote may not be burdened by a wealth classification; overruling *Breedlove* v. *Suttles* (1937).

June 13, 1966, *Miranda* v. *Arizona*, 384 U.S. 436: suspects in custody must be informed of their rights to remain silent and to have the assistance of counsel.

February 10, 1967, ratification of Twenty-fifth Amendment (establishing a procedure for determining disability of a President).

May 15, 1967, *In re Gault*, 387 U.S. 1: juveniles are protected by the Constitution.

June 12, 1967, *Loving* v. *Virginia*, 388 U.S. 1: a State law prohibiting persons of different races from marrying violated the 14th Amendment; racial classifications are "inherently suspect."

August 30, 1967, Senate confirmed Thurgood Marshall as an associate justice of the Supreme Court; first black justice.

May 20, 1968, *Levy* v. *Louisiana*, 391 U.S. 68: legislative classifications based on illegitimacy are subject to heightened constitutional review.

June 10, 1968, *Flast* v. *Cohen*, 392 U.S. 83: taxpayers may have standing to challenge certain governmental actions as infringements of specific constitutional limitations.

April 21, 1969, *Shapiro* v. *Thompson*, 394 U.S. 618: the Constitution protects the right of interstate travel.

June 16, 1969, *Powell* v. *McCormack*, 395 U.S. 486: even the exclusion of a member of the House of Representatives by the House itself was not a "political question" but a matter subject to Court review.

March 23, 1970, *Goldberg* v. *Kelly*, 397 U.S. 254: benefits to a welfare recipient may not be terminated without a prior hearing; this case began a revolution in procedural due process.

December 21, 1970, *Oregon* v. *Mitchell*, 400 U.S. 112: Congress had no power to lower the voting age in State elections, but could set residency requirements in presidential elections and ban literacy tests.

March 8, 1971, *Griggs* v. *Duke Power Co.*, 401 U.S. 424: Congress may bar private employment discrimination on the basis of race; non-job-related practices that "are fair in form, but discriminatory in operation" violate the Civil Rights Act.

April 20, 1971, *Swann* v. *Charlotte-Mecklenburg Co. Bd. of Education*, 402 U.S. 1: busing and and other race-conscious remedies are permissible methods for eliminating vestiges of State-imposed segregation.

June 30, 1971, *New York Times Co.* v. *United States*, 403 U.S. 713: the *Pentagon Papers Case*; any prior restraint on the press bears a heavy presumption against its constitutionality.

July 1, 1971, ratification of the Twenty-sixth Amendment (voting age of 18 years; overturning *Oregon* v. *Mitchell*).

November 22, 1971, *Reed* v. *Reed*, 404 U.S. 71: arbitrary legislative determinations based on sex are prohibited by the 14th Amendment.

March 22, 1972, Congress proposed the Equal Rights Amendment to the States; the term for ratification has expired.

June 29, 1972, *Furman* v. *Georgia*, 408 U.S. 238: all death penalty statutes in U.S. were struck down as arbitrary and irrational.

January 22, 1973, *Roe* v. *Wade*, 410 U.S. 113: the 14th Amendment protects a women's right to privacy which includes the right to abortion.

March 21, 1973, *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1: the right to education is not a fundamental right under the Constitution and wealth is not a constitutionally suspect classification.

November 7, 1973, enactment of War Powers Resolution (Act), an attempt to balance Congress's power to declare war and the President's power to wage war as Commander-in-Chief.

July 12, 1974, enactment of the Congressional Budget and Impoundment Control Act of 1974, an attempt to balance Congress's power to appropriate and the President's power to spend or defer spending.

July 24, 1974, *United States* v. *Nixon*, 418 U.S. 683: the Constitution does not grant the President an absolute executive privilege of immunity from judicial process.

July 27 - July 30, 1974, the Judiciary Committee of the House of Representatives adopted 3 articles of impeachment against the President of the United States.

August 9, 1974, Richard Nixon resigned as President of the United States.

January 30, 1976, *Buckley* v. *Valeo*, 424 U.S. 1: certain campaign spending limitations are unconstitutional abridgements of free speech; executive powers may be exercised only by persons appointed by the President.

June 7, 1976, *Washington* v. *Davis*, 426 U.S. 229: job qualification tests that have a disproportionate impact on some racial groups are not unconstitutional unless the tests have a racially discriminatory purpose.

July 2, 1976, *Gregg* v. *Georgia*, 428 U.S. 153: the death penalty is not, by itself, cruel and unusual punishment; courts must follow a two-part procedure to determine guilt and set the penalty.

March 1, 1977, *United Jewish Organizations* v. *Carey*, 430 U.S. 144: a State may use racial criteria in drawing its legislative boundaries to comply with the Voting Rights Act.

January 18, 1978, *Zablocki* v. *Redhail*, 434 U.S. 374: the right to marry is fundamental under the Constitution.

June 28, 1978, *Regents of University of California* v. *Bakke*, 438 U.S. 265: racial quotas for medical school admissions violate Title VI of the 1964 Civil Rights Act and the Equal Protection Clause, but race may be one of several factors used in an admissions program.

August 22, 1978, Congress proposed the District of Columbia Representation Amendment to the States; the period for ratification has expired.

October 6, 1978, Congress "extended" the ratification period for the Equal Rights Amendment; the period for ratification has expired.

June 27, 1979, *United Steelworkers of America* v. *Weber*, 443 U.S. 193: Title VII of the 1964 Civil Rights Act does not prohibit private employers from adopting voluntary, race-conscious programs of affirmative action.

April 22, 1980, *City of Rome* v. *United States*, 446 U.S. 156: the 1965 Voting Rights Act may be used to strike down a voting procedure that has the effect, but not the purpose, of discriminating against black voters.

June 30, 1980, *Harris* v. *McRae*, 448 U.S. 297: the Hyde Amendment, barring federal funds for Medicaid funded abortions unless the mother's life is endangered, is constitutional.

July 2, 1980, *Fullilove* v. *Klutznick*, 448 U.S. 448: a Congressional set-aside of 10% of federal funds for minority-owned businesses does not violate equal protection.

July 2, 1980, *Richmond Newspapers Inc.* v. *Commonwealth of Virginia*, 448 U.S. 555: the 1st Amendment guarantees the public and the press access to criminal trials; closures must serve an overriding interest.

June 25, 1981, *Rostker* v. *Goldberg*, 453 U.S. 57: male-only draft registration does not violate equal protection.

September 22, 1981, Sandra Day O'Connor confirmed by the Senate as an associate justice of the Supreme Court; first woman justice.

June 15, 1982, *Plyler* v. *Doe*, 457 U.S. 202: the 14th Amendment guarantees the equal protection of the laws to aliens illegally within the United States.

June 23, 1983, *Immigration & Naturalization Service* v. *Chadha*, 103 S.Ct. 2764: the "legislative veto" is a violation of the Constitution's separation of powers requirements; as many as 200 federal statutes include a legislative veto.

July 5, 1983, *Marsh* v. *Chambers*, 103 S.Ct. 3330: the 1st Amendment does not prevent the Nebraska legislature's practice of hiring a chaplain to open its daily sessions with prayer.

March 5, 1984, *Lynch* v. *Donnelly*, 104 S.Ct. 1355: the inclusion of a Nativity scene in a city sponsored holiday display does not constitute an establishment of religion.

May 30, 1984, *Hawaii Housing Authority* v. *Midkiff*, 104 S.Ct. 2321: a State may, without violating the 5th Amendment, use its power of eminent domain to transfer privately held land to other private individuals.

June 12, 1984, *Firefighters Local Union #1784* v. *Stotts*, 104 S.Ct. 2576: bona fide seniority plans under the 1964 Civil Rights Act may not be set aside in an effort to protect jobs of workers hired under an affirmative action plan.

February 19, 1985, *Garcia* v. *San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005: Congress can regulate wages and conditions of city employees; congressional power enlarged vis-a-vis States in the federal system; overruling *National League of Cities* v. *Usery* (1976).

December 12, 1985, enactment of Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) requiring automatic spending cuts ("sequestering") if Congress and the President do not otherwise act to meet deficit reduction targets.

June 30, 1986, *Davis* v. *Bandemer*, 106 S.Ct. 2797: Whether political groups have been impermissibly denied a chance to elect representatives of their choice because of a State legislature's gerrymandering presents an issue that may be reviewed by the Federal courts.

July 2, 1986, Local 28, *Sheet Metal Workers' International Assoc.* v. *E.E.O.C.*, 106 S.Ct. 3019: Neither the Civil Rights Act of 1964 nor the Constitution prohibits a court from ordering affirmative, race-conscious relief to persons who were not themselves victims of the employer's racial discrimination.

July 7, 1986, *Bowsher* v. *Synar*, 106 S.Ct. 3181: The automatic enforcement mechanism of the "Gramm-Rudman-Hollings Act" is unconstitutional as a violation of the separation of powers.

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Through September 10, 1986, there have been 10,124 proposed constitutional amendments introduced in the Congress of the United States. Thirty-three amendments have been adopted by Congress; twenty-six have been ratified by the States.

Through the term ending in 1986, the Supreme Court has held unconstitutional 119 acts of Congress and 1,030 acts of States and municipalities.

[THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AS AMENDED]

We the People OF THE UNITED STATES, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, DO ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.[1]] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,[2]] for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the

Footnotes appear on page 39.

Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.[2]]

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December,[3]] unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

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, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

[No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.[4]]

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.[5]]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.[6]]

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;[—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.[7]]

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.[8]]

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

G°. Washington—Presid^{t}. and deputy from Virginia

New Hampshire

John Langdon
Nicholas Gilman

Massachusetts

Nathaniel Gorham
Rufus King

Connecticut

W^{m}: Sam^{l}. Johnson
Roger Sherman

New York

Alexander Hamilton

New Jersey

Wil: Livingston
David Brearley.
W^{m}.. Paterson.
Jona: Dayton

Pennsylvania

B Franklin
Thomas Mifflin
Robt. Morris
Geo. Clymer
Tho^{s}. FitzSimons
Jared Ingersoll
James Wilson
Gouv Morris

Delaware

Geo:Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco:Broom

Maryland

James McHenry
Dan of S^{t} Tho^{s}. Jenifer
Dan^{l}. Carroll

Virginia

John Blair—
James Madison Jr.

North Carolina

W^{m}.. Blount
Rich^{d}. Dobbs Spaight.
Hu Williamson

South Carolina

J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia

William Few
Abr Baldwin

Attest William Jackson Secretary

[Amendments to the Constitution of the United States of America adopted pursuant to Article V.]

[AMENDMENT I]
[Ratified December 15, 1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[AMENDMENT II]
[Ratified December 15, 1791]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[AMENDMENT III]
[Ratified December 15, 1791]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[AMENDMENT IV]
[Ratified December 15, 1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[AMENDMENT V]
[Ratified December 15, 1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

[AMENDMENT VI]
[Ratified December 15, 1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[AMENDMENT VII]
[Ratified December 15, 1791]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[AMENDMENT VIII]
[Ratified December 15, 1791]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[AMENDMENT IX]
[Ratified December 15, 1791]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[AMENDMENT X]
[Ratified December 15, 1791]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[AMENDMENT XI]
[Ratified February 7, 1795]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[AMENDMENT XII]
[Ratified June 15, 1804]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.[9]—] The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

[AMENDMENT] XIII
[Ratified December 6, 1865]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT] XIV
[Ratified July 9, 1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[AMENDMENT] XV
[Ratified February 3, 1870]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT] XVI
[Ratified February 3, 1913]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

[AMENDMENT XVII]
[Ratified April 8, 1913]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

[AMENDMENT XVIII]
[Ratified January 16, 1919]

[**Section 1.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[**Section 2.** The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

[**Section 3.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.[10]]

[AMENDMENT XIX]
[Ratified August 18, 1920]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT XX]
[Ratified January 23, 1933]

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

[AMENDMENT XXI]
[Ratified December 5, 1933]

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

[AMENDMENT XXII]
[Ratified February 27, 1951]

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

[AMENDMENT XXIII]
[*Ratified March 29, 1961*]

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT XXIV]
[*Ratified January 23, 1964*]

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT XXV]
[*Ratified February 10, 1967*]

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the

issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

[AMENDMENT XXVI]
[*Ratified July 1, 1971*]

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

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FOOTNOTES

1. This clause has been changed by the 14th Amendment.
2. These clauses have been changed by the 17th Amendment.
3. This clause has been changed by the 20th Amendment.
4. This clause has been affected by the 16th Amendment.
5. This clause has been superseded by the 12th Amendment.
6. This clause has been affected by the 25th Amendment.
7. This clause has been changed by the 11th Amendment.
8. This clause has been superseded by the 13th Amendment.
9. This amendment has been affected by the 20th Amendment.
10. This amendment was repealed by the 21st Amendment.

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Editorial Notes on the Text of the Constitution

The original manuscript of the Constitution is kept in the National Archives building in Washington, D.C. Two of the original pages are on permanent display. Only on Constitution Day, September 17, are all four pages displayed.

Each printed version of the Constitution should be identical to the original text, but we have yet to find a printed version that is without error. In this edition, every effort has been made to achieve a literal, errorless text, and we believe we have succeeded. (But if we have not succeeded we would appreciate having any errors brought to our attention.)

Our texts of the original Constitution and the Bill of Rights were proofed against photocopies of the original documents. Our versions of the 11th Amendment and the 19th Century amendments were proofed against the original, enrolled resolutions. And our texts of the 20th Century amendments were proofed against Statutes at Large. *A few punctuation marks are indistinct and in those cases we simply used our best judgment.*

With the exception of modest decisions about style we have not made any changes in the form of the text except as explained below:

The Framers signed by State, from north to south, after General Washington had signed. On the original, Washington signed at the right margin and the northern State delegates signed below him. Delegates from the central and southern States signed to the left of their brethren, in a column that runs down the center of the page. To the left of each column of signatures were brackets that grouped the delegates by State. In this text, we have reversed the two columns of signatures and eliminated the brackets. To the left of the two columns of signatures is an explanation of the few corrections that were made by the scribe. We have omitted that explanation from our main text but include it here:

> The Word, "the," being interlined between the seventh and eight Lines of the first Page, The Word "Thirty" being partly written on an Erazure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

In the original, William Jackson's attestation (which we have printed below the signatures) followed the explanation just quoted.

In this text, brackets and footnotes have been inserted to show some of the changes that subsequent amendments have made in the operation of the Constitution. These notes generally follow the form of earlier texts published under the direction of the Joint Committee on Printing.

The word "Amendment" has been put in brackets because the word is an editorial addition, albeit a common one. Amendments to the original Constitution are formally called "articles" or "articles of amendment". The numbering of the amendments is also an editorial addition. With but four exceptions (the 13th, 14th, 15th, and 16th Amendments), the numbers are not part of the ratified texts. Therefore, the amendments have been numbered and the numbers put in brackets. The dates of ratification also appear in brackets.

There is some disagreement about ratification dates of some of the earlier amendments. We have accepted the dates used in the annotated Constitution published by the Library of Congress.

In the early days of the Republic, constitutional amendments often were regarded as ratified when they were declared so by the Secretary of State. However, in 1921 the Supreme Court announced that a proposed constitutional amendment is ratified when adopted by the last state necessary to form the required consensus of three-quarters of the States. Dillon *v.* Gloss, *256 U.S. 368. The Secretary of State was formerly the administrative officer for proposed amendments, but his duties have now been transferred by statute to the Administrator of the General Services Administration.*

Between the text of the original Constitution and the amendments there appears an introductory sentence, which, in most texts, reads as follows: "Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution." This sentence is no part of the Constitution but was derived from the resolution of the First Congress proposing twelve amendments to the States. (Ten of those amendments were ratified, becoming the Bill of Rights.) In this text, we have abandoned the traditional sentence because it is confusing and no longer accurate, the 21st Amendment having been adopted by state conventions, not legislatures.

Selected Index to the Constitution of the United States

★★★★

This pamphlet was prepared by members of the staff of the United States Senate Republican Policy Committee: Lincoln C. Oliphant; Thom Shurtleff; Brenda A. Morton; Paul Farley; David A. Jensen; Robert E. Potts; and George R. Stephens.

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U.S. Senate Republican Policy Committee
William L. Armstrong, *Chairman*

June 18, 1987

TALKING POINTS ON THE ECONOMY AND THE BUDGET

EMPLOYMENT IS UP

We continue to see a remarkable decline in the unemployment rate. The latest May figures show that U.S. unemployment is at 6.3 percent, the lowest monthly rate since early 1980. For all of 1987 so far, the unemployment rate is averaging under 6.5 percent. Since 1974, only a brief interlude during 1978-79 saw a lower annual unemployment rate.

At the beginning of this decade, the unemployment rate was 7.4 percent and the economy was teetering on the brink of the deepest recession since the 1930s. That recession pushed the unemployment rate up to 10.7 percent. But then the pro-growth policies of tax cuts and regulatory reform took hold. Along with an expanding economy, unemployment improved. The steady decline from 10.7 percent to today's 6.3 percent represents a remarkable 41% drop in the nation's jobless rate.

The employment rate, which is the ratio of total civilian employment to the U.S. working-age population, is at an all-time high 61.6 percent. By contrast, in 1980, the year before the Reagan Administration began, the employment rate was 59.2 percent.

MORE AND BETTER PAYING JOBS

Last month (May), found 612,000 more people working than in the previous month. Over the first five months of this year, we've added over 1.8 million new jobs. Since 1980, over 13 million jobs have been created in the U.S. This is over

two and one-half times the number of jobs created by Canada, Japan, Australia, and all of Europe combined.

The vast majority of these new jobs have been well-paid positions. According to economics writer Warren Brookes, 46.1 percent of the jobs created between 1981 and 1985 pay over $28,047 (in constant 1984 dollars). This reflects the fact that the jobs being created are high-skill, managerial and technical positions.

Indeed, the Chairman of the President's Council of Economic Advisors, Beryl Sprinkel, says that during the current economic expansion, 60 percent of the increase in employment has been in the highest-paying positions -- those with median earnings over $390 per week in 1986.

Prior to 1981, low wage jobs were proliferating. Low-pay jobs (under $7,012 in constant 1984 dollars) comprised 41.7 percent of all new jobs in the period 1977-81. From 1981 to 1985, however, the creation rate of low-pay jobs dropped to one-seventh its 1977-81 level. Low-pay jobs amounted to only 6 percent of all new jobs from 1981 to 1985.

HELP (NOT) WANTED

While the economy has been creating millions of new jobs, it appears Congress is getting ready to head in the opposite direction and enact job-killing legislation. Labor Secretary Bill Brock estimates that the minimum wage bill now pending in the Senate Labor Committee could cause a loss of nearly 800,000 jobs! The hardest hit? Young people and minorities! (June 10, 1987, testimony before Labor Committee).

STRONG GNP GROWTH

Revised GNP figures for the first quarter of 1987 show a continuing strong economy. Real GNP rose 4.8 percent so far this year, up considerably from last year's 2.5 percent rate. (We could see a much smaller GNP growth figure for the second quarter, but this would likely be an adjustment in business inventories.)

We are currently in the 55th month of the present economic expansion. This is the longest expansion since the 1960s, and the second longest in 40 years.

TRADE BALANCE IMPROVES

The trade deficit shrank for the second consecutive quarter. This has not happened since the Spring and Fall of 1980.

LIVING STANDARDS AT ALL-TIME HIGH

One of the best measures of individual economic well-being is per capita income after adjustment for inflation.

Real per capita income has risen much faster in recent years than it has in the past. From 1973 to 1977, real per capita income rose by 4.2 percent. From 1977 to 1981, it rose by 6 percent. But from 1981 to 1985, real per capita income rose by 6.9 percent.

Since 1985, U.S. real per capita income has jumped another 2.6 percent on top of the '81 to '85 growth.

PRODUCTIVITY CONTINUES RAPID RISE

Productivity increases, along with investment increases, provide the means to continue improvements in Americans' standard of living. Since 1981, manufacturing productivity has soared a phenomenal 21.7 percent. This rate of growth is 46 percent above the postwar average.

Overall productivity, which includes the service sector of the economy, has risen by 6.2 percent since 1981. This is in contrast to an increase of 5 percent over the preceding seven years.

CAPITAL SPENDING EXPECTED TO RISE

The Commerce Dept. reports that U.S. businesses expect to increase their spending on new production equipment by 2.8 percent this year, after adjustment for inflation. This means 1987 spending for productive capacity will be 14% higher, in real terms, than it was in 1981.

HOUSEHOLD ASSETS AT RECORD LEVELS

Since 1981, the value of all household assets owned by Americans has risen by over $6 trillion, an increase of 47 percent. Two of the factors contributing to the increase in assets are the monumental decline in inflation and the reduction of marginal tax rates.

In 1980, the rate of inflation was 13.5 percent and the top tax rate was 70 percent. Today, the inflation rate is 3 percent (April 1986 to April 1987), and the top tax rate is 35 percent and will fall to 28 percent next year. Lower taxes and inflation has dramatically beneficial effects on productivity of assets and makes them more valuable.

Household assets can be either tangible (houses, consumer durable goods, etc.) or financial (savings, pension assets, stocks, bonds, and the like). U.S. household financial assets are now 244 percent of GNP -- an all-time high. The high level of financial wealth is especially impressive considering that it amounted to only 181.4 percent of GNP in 1981.

Financial wealth is very equitably distributed in the U.S., so increases in financial wealth helps to make middle Americans more financially secure. Over 60 percent of all U.S. financial wealth is in the form of small savings accounts, life insurance reserves, pension funds, and equity in non-incorporated businesses. During the Reagan Administration, financial wealth rose at an inflation-adjusted annual rate of 7.3 percent. By contrast, during the 1970s the average annual rise was only 1.6 percent.

Pension funds are a great source of financial security to many Americans. The value of all pension wealth over the past six years has risen by over $1 trillion.

Americans' household liabilities have been rising over this time as well. But our assets have grown to such a degree that household net worth (assets minus liabilites) have increased by 44 percent since 1981.

THE FEDERAL BUDGET

- **Here's one for the "you've got to be kidding" file:**

Congress wants to claim a budget savings of $4.7 billion in FY88 by ordering the Pentagon to not pay any bills for the last 12 days of the year.

That's right! When the House passed the Department of Defense authorization bill (H.R. 1748) in May of this year, they claimed a $4.7 billion savings in the budget by ordering the Pentagon to shove the last 12 days worth of bills over into the next fiscal year.

The original proposal called for 10 days of "no-bills", but that didn't "save" enough, so it was expanded to 12 days. Talk about tough budgeting!

1987 BUDGET DEFICIT LOOKING BETTER

So far this year, the federal deficit has totaled $83.3 billion. This is way below the $126.4 billion for the same period in 1986. There was a surge in tax receipts in April which brought in a larger than expected flow of revenue.

Estimates for the year-end deficit are now running lower than had been anticipated. Some economists are predicting a 1987 fiscal year deficit in the $165 billion range, as opposed to earlier estimates of $175 billion.

Deficits had been on a skyrocket path up with no end in sight. In the last few years, Senate Republicans pushed through tough budget resolutions and Gramm/Rudman savings to put the deficit on a declining path.

The work of Senate Republicans, last year, is reflected in the improving deficit picture for this year. But what about next year?

1988 BUDGET DEFICIT PICTURE UNCERTAIN

The Budget Resolution for the 1988 fiscal year passed the Senate on May 6, 1987 and just emerged from conference with the House on June 17.

The conference version of the budget resolution calls for a $46 billion increase in spending next year and $73 billion in new taxes over the next three years. $21.1 billion in new taxes are levied for next year.

The Conference report misses the Gramm/Rudman target by over $26 billion.

The idea that somehow there will be more funds ($7 billion) for defense if the President agrees to a like amount in tax increases is a complete sham. In fact, under the conference report, the President would have to agree to and sign a reconciled tax increase of $65 billion over three years to even have the possibility of more funds for defense...and that would by no means be guaranteed. The additional $7 billion for defense would simply be allocated to the appropriations committee, for one year, but may or may not be spent for defense.

A June 17, 1987 Wall Street Journal article (written before the Conference report was announced) notes that projections of a shrinking deficit in the years ahead are unrealistic, absent further deficit cutting action. The Journal article notes that CBO estimates due out next month may show an '88 deficit larger than '87!

From the staff of the
U.S. Senate Republican Policy Committee
April 7, 1987

Here is a fact-filled report on crime. The numbers are frightening. The costs are shocking. Those most at risk in our country are the poor and minorities. The war against crime is high on the Republican agenda. This report details GOP accomplishments and items on the unfinished agenda.

CRIME IN AMERICA TODAY -- AND WHAT WE'RE DOING ABOUT IT

I. CRIME IN AMERICA: THE TOLL

Crime stalks millions of Americans. Every year 6 million of us are set upon by violent criminals -- murderers, rapists, robbers, and assailants. Another 29 million Americans are victims of non-violent crime.

In poll after poll crime ranks among people's greatest fears.[1] And no wonder, for in America today there is:

a murder every 28 minutes;
a rape every 4 minutes;
a robbery every 32 seconds;
an auto theft every 25 seconds;
an assault every 7 seconds;
a burglary every 6 seconds;
a household theft every 4 seconds; and
a personal theft every 2 seconds.

One of every four households is touched by crime every year, at a cost of nearly $11 billion -- or just about what the Federal government spends on all of its water, conservation, recreation, and pollution control programs. (And three times what it spends on law enforcement.) All costs of crime, including direct and indirect costs to individuals, families, businesses, unions, and government, may run into the hundreds of billions of dollars.

Crime rates have shown a welcome decline in recent years (victimizations per 1,000 population are down 16% since 1981), but crime rates are still far, far above the rates of a generation ago. For example, the number of the most brutal crimes (murder, rape, aggravated assault, robbery, and burglary) have increased more than 250 percent since 1960.

Endnotes can be found on page 13.

Violent crime is more likely to strike:

men than women (each year, about 1 of every 12 young males is a victim of a violent crime);

blacks and Hispanics than whites (black males have 1 chance in 30 of being murdered; white males have 1 chance in 130; black females are much more likely than white females to be raped; blacks are twice as likely as whites to say their neighborhoods are "very unsafe");

the poor (persons with incomes below $7,500 per year are more than twice as likely as persons with incomes above $50,000 to be victims of violent crime; about one-half of all rape victims are poor); and

younger rather than older persons (teen-agers are more than twice as likely as adults to be victims of violent crime).[2]

Nearly 2 million persons are injured or killed by criminals every year. About 15 percent of these victims require medical care; about 8 percent require hospitalization.

But annual crime rates can be deceiving. One might think, "Well, if 2 million persons are injured or killed each year by criminals, then 99% of us are not." True, but misleading:

One-half of all Americans will be victims of violent crime sometime during their lifetimes.

Today's 12-year-olds have more than an 80% chance of being victimized by a violent criminal sometime during their lifetimes. One-half of these young people will be victims more than once. 40% will be injured by a criminal during a robbery or an assault.

Over her lifetime, a woman has a 1 out of 12 chance of being raped (or having rape attempted).

During any 20 year period, 3 of 4 homes will be buglarized and 1 of every 5 cars will be stolen.

II. CRIME IN AMERICA: THE DRUG CONNECTION

Drugs are a large part of the crime problem: A Miami study showed that 239 heroin users were responsible for over 80,000 crimes in one year. That averages out to more than 340 crimes per user per year! A Baltimore study of 243 addicts showed that ten percent of them were involved in crime virtually every day of their lives after becoming addicted, and two-thirds committed crimes more than 100 days per year. During the period of their addiction (averaging about 11 years) these 243 addicts had committed crimes on nearly one-half million days!

The users in the Baltimore study were not continually addicted. They were off regular opiate use about one-third of the time. When abstaining they were involved in crime 41 days per year; when addicted they were involved in crime 248 days per year.

One-third of all State prisoners reported they were under the influence of an illegal drug at the time they committed the crime that got them imprisoned. Half had taken drugs during the month prior to their offense and three-fourths had used drugs at some point in their lives.

III. CRIME IN AMERICA: THE HUMAN IMPACT

Individuals can be devastated by crime. For one's personal well-being, "being a victim of crime, particularly one that involves a threat to personal or family safety, is among the most traumatic of life's experiences. It appears to be worse than losing a job, poor health, divorce or separation, or the death of a family member (other than a spouse or child)." Black, "The Life Quality Index," Public Opinion 52, 54, June/July, 1985

Murder puts an end to life, and a violent assault can put an end to a way of life. For example, one victim said, "I'm a senior citizen but I never considered myself old. I was active, independent. Now I live in a nursing home and sit in a wheelchair. The day I was mugged was the day I began to die."

No one is immune; not the young, not the old, not the strong:

> A 12-year-old San Francisco boy couldn't talk for a year after being sexually attacked by Charles Hatcher, a notorious offender.
>
> Cecil Hankins, a big, burly former truck driver, was burglarized and robbed dozens of times and eventually closed his business. The thefts made it nearly impossible to keep his truck stop open, but he finally quit because he was afraid he would eventually kill one of the thieves.
>
> Frank Irey, a 62-year-old shopkeeper, lost his store, his financial security and peace of mind, and his health after he was shot during a robbery. He said:
>
> > "Our lives have changed. We always had our daughters' children with us and we always took them places, and they loved to stay all night. They loved their grandpa, [but] I can no longer pick them up and hold them, or take them places. I can no longer drive, and after one year I am still on a large amount of medication, but as yet the pain is not controlled.
> >
> > ". . . I cannot put my arms around my wife. . . . We were people who were sufficient, happy, and looking forward to a pleasant retirement. . . . Now we have nothing but hope."

IV. CRIME IN AMERICA: THE PENALTY

At the beginning of 1986, more than 500,000 people were in State and Federal prisons. That is almost twice the number of a decade ago, and the highest number in U.S. history. Additionally, 230,000 people were in local jails, 270,000 on parole, and 1.7 million on probation. In short, more than 1 percent of the entire population is under some form of correctional supervision.

But in many ways we are not doing better, we are doing worse: Fifty years ago, one-fifth of all state inmates were serving time for a violent offense. Today, that fraction is up to one-third, yet a prisoner released today will have served about one month less than a prisoner released fifty years ago!

Actual time served in prison is much less that the maximum sentence length. The median time served in prison in 1982 was 16 months. That is the lowest median recorded since records began being kept in 1926. The contrast between theory and reality is shown in the following chart:

Sentence Length & Time Served, 1982
(months)

Offense	Admissions: Median sentence length	Releases: Median time served	Median time served as a percent of median sentence length
All offenses	51	16	31%
Murder	life	69	---
Rape	120	25	21%
Robbery	78	25	31%
Assault	48	15	31%
Auto theft	36	13	36%
Drugs	43	11	26%

A murderer who gets a life term will be back on the streets in 6 years. [In fact, nearly a quarter of those released from (what is erroneously called) a life sentence served 3 years or less!] A rapist who is sentenced to 10 years will be back on the street in 2 years. And the drug dealer? He'll be home for Christmas.

V. WHAT WE'VE DONE ABOUT CRIME

During the last 6 years, President Reagan's Department of Justice and the Republican-controlled U.S. Senate led a quiet revolution in criminal justice. Consider some of the remarkable accomplishments of the past 6 years:

A. WHAT WE'VE DONE: BUDGETARY SUCCESSES

We have done a better job of funding federal law enforcement agencies. Since taking office in 1981, all federal outlays have increased about 51 percent, but the budgets of the Federal Bureau of Investigation (F.B.I.) and the Drug Enforcement Administration (D.E.A.) have increased about 125 percent. Additional details are shown in the following chart:

Selected Budgets Within the Department of Justice, 1981 & 1988
(in millions of dollars)

	1981 Actual	1988 Request	Percent increase
F.B.I.	680.7	1,484.4	118%
D.E.A.	216.2	522.0	141%
Federal Prisons			
Salaries/Expenses	341.9	760.9	123%
Bldgs/Facilities	10.0	210.3	2,000%
Total, DoJ	2,345.9	5,201.2	122%
All Federal Outlays	678,209.0	1,024,328.0 (est.)	51%

In sum, crime fighting budgets have grown 2 1/2 times faster than the overall federal budget.

B. WHAT WE'VE DONE: STAFFING SUCCESSES

We have taken the increased funding and put it where it counts most -- in manpower. In 1974, there were 10,600 F.B.I. and D.E.A. agents. By 1981, almost 1,000 agents had left service; there were only 9,650 agents. In 1981 we began reversing that decline and by the end of this year we expect 12,170 agents in the field.

More agents permit us to hit crime harder, and more often. We have hit organized crime like it has never been hit before:

> "From 1981 through last year, federal prosecutors brought 1025 indictments against 2,554 mafiosi, and have convicted 809 Mafia members or their uninitiated "associates." Many of the remaining cases are still pending. Among all criminal organizations, including such non-Mafia types as motorcycle gangs and Chinese and Latin American drug traffickers, the FBI compiled evidence that last year alone led to 3,803 indictments and 2,960 convictions. At the least, observes FBI's [John L.] Hogan [chief of the New York office], all this legal action means the traditional crime families "are bleeding, they're demoralized." "Hitting the Mafia," Time Magazine 16, 19 (Sept. 29, 1986).

C. WHAT WE'VE DONE: LEGISLATIVE SUCCESSES

The system and substance of criminal justice has been greatly improved. Congress passed, and the President signed, the Comprehensive Crime Control Act of 1984, Pub.L. 98-473, the Child Protection Act of 1984, Pub.L. 98-292, the Anti-Drug Abuse Act of 1986, Pub.L. 99-570, and other measures that will make a real difference in the way we respond to crime.

Republicans had to keep constant pressure on the House of Representatives to get the job done. Consider, for example, the history of the vitally important 1984 Act:

In his 1983 State of the Union message, President Reagan declared "all-out war on big-time organized crime and drug racketeers." A month later, the President sent to Capitol Hill a crime package that contained many of the provisions that were ultimately adopted. The Senate, under Republican leadership, passed its omnibus crime bill in February, 1984.

But the House had to be dragged kicking and screaming. It was not until late September, 1984, that House Republicans succeeded in breaking the logjam, and they had to use the unusual parliamentary strategem of ordering a "must pass" continuing resolution back to the Appropriations Committee with instructions to add the Senate crime bill. The key vote on sending the resolution back passed 243-to-166, with 89 Democrats joining 154 House Republicans.

And what did that 1984 Act do? Consider a few of its major reforms:

A. We will soon have a uniform, determinate sentencing system. This year, a Congressionally established commission will issue new sentencing guidelines and judges will have to follow those guidelines or explain in writing why they didn't. Any sentence set below the guidelines can be appealed by the prosecution. After the new guidelines take effect, parole will be abolished in the federal system.

B. Too often, crime pays -- but it pays less well than it used to because criminals can no longer live on the fruits of their crimes. We have strengthened civil and criminal forfeiture laws, particularly in felony drug cases, to permit the government to seize the ill-gotten gains.

C. We redefined the insanity defense and shifted the burden to the defendant to show that he was insane at the time of the crime.

D. We're trying to get guns away from the crooks. A person convicted of using a firearm while committing a violent federal crime will go to prison. The first time, he gets 5 years tacked on to any other sentence. The second time, he gets 10 additional years. There is neither probation nor parole.

E. Did you know that juveniles account for about one-third of all arrests for serious crimes? And year by year, felons get younger and more violent. States generally handle juvenile offenders, but the Federal Government is now authorized to retain jurisdiction over any person 15 years of age or older who is charged with a federal crime of violence or a serious drug offense.

F. Most crime is committed by a small group of hardcore criminals, that's why we cracked down on repeat offenders. Now, persons with three previous (Federal or State) convictions for robbery or burglary who are convicted of possessing a weapon get 15 years in the slammer, minimum, with no suspension of sentence, no parole, and no probation.

G. Finally, finally Victims of crime are getting some attention. We have established a Victims Compensation Fund to provide State grants for services to victims. Some of the money for the fund comes from the convicted criminals themselves. And criminals who peddle their crime stories will see their profits end up in their victim's pockets.

Giving victims the attention they deserve has been one of our most important accomplishments. The system of criminal justice had deteriorated to the point where victims were too often ignored -- and sometimes simply maltreated. Many victims thought the system was worse than the crime. "I will never forget being raped, kidnapped, and robbed at gunpoint," said one victim. "However, my sense of disillusionment of the judicial system is many times more painful. I could not in good faith urge anyone to participate in this hellish process."

With the Victims of Crime Act of 1984 (and other measures), we are doing better now.

Other reforms were made in other bills:

H. We cracked down on child pornographers. New provisions allow wire taps and "bugs," forfeiture of profits, and increased fines.

I. Large-scale drug traffickers now get a mandatory minimum 5 year prison term. Larger-scale traffickers get a mandatory 10 years. Sentences can be reduced if the accused cooperates with the government.

J. Pushers who use a kid under age 18 to peddle drugs get double the regular sentence. Selling drugs to kids gets you an additional 5 years. Manufacturing or distributing drugs within a 1,000 feet of any elementary or secondary school or college also increases your penalty.

VI. WHAT REMAINS TO BE DONE ABOUT CRIME: AN AGENDA FOR THE 100th CONGRESS

Not surprisingly, there is work yet to be done. Of the dozens, perhaps hundreds, of criminal justice proposals that will be floating around during the 100th Congress, there are 5 that seem especially ripe for action.

A. REMAINING TO BE DONE: CAPITAL PUNISHMENT

The great majority of Americans support capital punishment. Death is, as most of us believe, the one just penalty for especially heinous crimes.

One eminent scholar (Walter Berns) has put it this way:

> "The purpose of the criminal law is not merely to control behavior -- a tyrant can do that -- but also to promote respect for that which should be respected, especially the lives, the moral integrity, and even the property of others. . . . If human life is to be held in awe, the law forbidding the taking of it must be held in awe; and the only way it can be made to be awful or awe inspiring is to entitle it to inflict the penalty of death."

In 1972, the Supreme Court struck down every death penalty statute in the nation, holding that the penalty was being imposed in an arbitrary and capricious manner in violation of the 8th Amendment. (*Furman v. Georgia*, 408 U.S. 238 (1972).) At that time, 6 federal crimes were punishable by death: espionage, treason, first degree murder, felony-murder, rape, and certain kidnappings.

The States responded with new procedures that have since been held constitutional, e.g., *Gregg v. Georgia*, 428 U.S. 153 (1976). The new procedures provide a two-part proceeding in which guilt or innocence is determined in the first part and the sentence is decided in a second proceeding. Thirty-seven States now have constitutional capital punishment statutes. However, with the single exception of murders committed during aircraft hijackings, Congress has not re-established constitutionally acceptable procedures. Federal judges and juries do not have the option of sentencing a murderer to death, no matter how vile the crime, no matter how numerous the murders -- unless an airplane was around at the time.

This Congress, 9 Republican Senators (and 1 Democratic Senator) have already introduced a capital punishment bill (S. 277) to provide the capital penalty for espionage, treason, certain attempts to assassinate the President, and certain other crimes in which a person or persons are killed. (Another measure, S. 70, has a death penalty for major drug dealers.)

In the 98th Congress, the Republican-controlled Senate passed a capital punishment bill (S. 1765, accompanied by S.Rpt. 98-251) but the House of Representatives refused to take a vote. In the Senate, the bill was supported by 80 percent of the Republicans and 49 percent of the Democrats. In the House it was opposed by the Democratic leadership, which was enough.

B. REMAINING TO BE DONE: CLOSING A LOOPHOLE THAT LETS CRIMINALS LOOSE

The 4th Amendment protects Americans against "unreasonable searches and seizures." But defining "reasonable" searches and seizures and deciding what to do about them once they have been found has itself become an unreasonable legal process of labyrinthine twists and turns.

The Supreme Court has decided to enforce the 4th Amendment by using the exclusionary rule. The rule provides that any evidence discovered as a result of improper police action cannot be introduced at trial. The rule was put in effect in Federal courts in 1914 (*Weeks v. United States*, 232 U.S. 383) and in State courts in 1961 (*Mapp v. Ohio*, 367 U.S. 643).

Here's the way the rule used to work: When the battered and burned body of Sandra Boulware was discovered in a vacant lot in Boston, police began the search for her killer and their inquiries led to Osborne Sheppard. Because it was Sunday and the local court was closed, police could not find the correct form to apply for a warrant to search Sheppard's residence. They used instead an application for a search for controlled substances. The police officer who applied for the warrant and the judge who signed the warrant crossed out words and inserted words in an effort to perfect the form, however the reference to "controlled substances" was not deleted. The search, authorized by a warrant signed by a judge, disclosed evidence that Sheppard was the killer, however the evidence was thrown out of court because the wrong form was used! Fortunately, this unreasonable result was reversed by the Supreme Court when it carved out a long-overdue exception to the exclusionary rule. *Massachusetts v. Sheppard*, -- U.S. --, 104 S.Ct. 3424 (1984) (decided the same day as *United States v. Leon*, infra).

The cost of the exclusionary rule is high: A decade ago, an estimated 45,000 to 55,000 felony and serious misdemeanor cases were dropped because of problems created by the exclusionary rule. Drug cases are particularly hard hit by the rule. In one study, about 30 percent of all felony drug arrests were rejected by prosecutors because of search and seizure problems.

The question is not whether 4th Amendment rights ought to be enforced; the question is whether setting criminals free is the best method of enforcing them:

> "The most shocking thing about the position of exclusionary rule proponents is the blithe assumption that a rule of evidence which excludes the most valid, unquestioned, convincing evidence against the accused, and frequently results in setting him free in spite of his obvious guilt, is somehow a normal method of administering justice. Proponents of the rule never face up to the issue that, if there is a choice of remedies to enforce the Fourth Amendment (and there is), the burden of justifying this extraordinary exclusion of evidence and costly result of setting the guilty free is on the proponents of such an evidentiary rule." Malcolm Richard Wilkey, Enforcing the Fourth Amendment by Alternatives to the Exclusionary Rule, quoted in S.Rpt. 98-350, 98th Cong., 2d Sess. 13-14 n. 64.

Steven R. Schlesinger, Director of the Bureau of Justice Statistics and a leading scholar on the exlusionary rule, gives the following 11 reasons why the exclusionary rule cannot be justified:

> 1. A substantial number of otherwise convictable persons escape prosecution or conviction because of the operation of the rule.
>
> 2. The rule often impedes the truth-finding function of our courts by excluding the most credible evidence -- fingerprints, guns, narcotics, or dead bodies.
>
> 3. The exclusionary rule benefits only the guilty; it offers nothing -- no help, remedy, or protection, and no compensation -- to the innocent. A fundamental purpose of criminal law is to help the innocent.
>
> 4. The rule undermines public respect for the legal and judicial system. One complaint about the legal system is that too many truly guilty suspects are released on technicalities. In fact, this complaint most often refers to the operation of the exclusionary rule.
>
> 5. Both the suppression hearings and the appellate litigation made necessary by the rule are a significant drain on the limited resources of the courts. According to a GAO study, exclusion was the most important single issue arising most frequently in federal criminals trials.

6. The rule deprives the innocent of adequate due process. The exclusionary rule literally buys what little Fourth Amendment protections it affords at the cost of fewer and less adequate trials for criminal defendants.

7. The rule encourages judges to condone dubious or illegal searches and seizures in order to admit evidence they are loath to exclude.

8. The rule does not distinguish between more and less serious crimes; the same rule releases both the pickpocket and the murderer.

9. The rule makes no distinction between willful, flagrant violations by an officer and "good faith" errors committed in difficult circumstances. [This problem has been solved in part by United States v. Leon, infra.]

10. Internal disciplinary efforts by law enforcement authorities are sabotaged by the rule. Law enforcement agencies will be discouraged from meting out internal discipline if their findings are used to suppress evidence at trial.

11. The rule intensifies plea bargaining because prosecutors who fear suppression of important evidence are more willing to negotiate over the seriousness of the charge or penalty.

In the 98th Congress (February 7, 1984), the Senate passed the Exclusionary Rule Limitation Act (S. 1764, accompanied by S.Rpt. 98-350) by a vote of 63-to-24. (88 percent of Republicans and 54 percent of Democrats supported the bill.) The bill would have allowed admission of evidence if it was obtained in a search and seizure "undertaken in a reasonable, good faith belief that it was in conformity with the fourth amendment to the Constitution. . . ." That bill died in the House Judiciary Committee, as so many criminal reforms do.[3]

The same year the Senate acted, the Supreme Court carved out a partial good faith exception. *United States v. Leon*, -- U.S. --, 104 S.Ct. 3405 (1984). The *Leon* exception permits the introduction of evidence seized in good faith reliance on a warrant that subsequently proves defective. *Leon* helps, but there is still the problem of good faith searches made without warrants, for example where a police officer detains a suspect and pat-searches him or stops a car and looks into it. Or, where a police officer, lawfully in an apartment searching for weapons and an assailant, lifts a stereo component a few inches to record a serial number. *Arizona v. Hicks*, -- U.S. --, (decided March 3, 1987).

This Congress, 5 Republican Senators (and 2 Democratic Senators) have introduced two bills to reform the exclusionary rule, S. 278 and S. 326.

S. 278 is similar to the bill passed in the 98th Congress. It allows the introduction in Federal courts of evidence that was obtained in a search or seizure that was "undertaken in an objectively reasonable belief that it was in conformity with the fourth amendment. . . ." S. 326, on the other hand, eliminates the exclusionary rule in Federal proceedings but makes the government liable "for any damages resulting from a search or seizure . . . in violation of the fourth amendment. . . ."

C. REMAINING TO BE DONE: STOPPING ENDLESS APPEALS

When the appeals are ended and the bars slam shut on a convicted criminal, that's the end of it, right? Wrong. That's often just the beginning. Using, or rather misusing, the legal process called habeas corpus criminals continue to attack the legitimacy of their convictions long after their cases have been upheld on appeal.

A State prisoner who has been duly convicted and whose appeals have been denied is able to begin a whole new set of appeals through the Federal courts by means of habeas corpus procedures.

What's so bad about that? Just this:

> There is no finality to the criminal justice system.
>
> Dangerous criminals may go free after years (or even decades), thereby making retrial nearly impossible.
>
> Prisoners do not reconcile themselves to their convictions -- they never "make peace" with society. They are less likely to repent of the past and prepare for an honest future.
>
> Public confidence wanes in a system that refuses to conclude its criminal processes. Consequently, the idea of law and justice suffers serious damage.
>
> Relationships between State and Federal courts deteriorate as Federal judges "second guess" their fellows at the State level.
>
> Victims and their families are unable to put their lives back together as the litigation drags on.
>
> The courts become clogged with mostly frivolous petitions.

Former Chief Justice Warren Burger has described the process in these terms:

> "I have seen cases -- and this occurs in many courts today -- where 3, 4, or 5 trials are accorded to the accused with an appeal following each trial and reversal of the conviction on purely procedural grounds. . . . In some of these multiple trial and appeal cases the accused continued his warfare with society for 8, 9, 10 years and more. In one case more than 60 jurors and alternates were involved in 5 trials, a dozen trial judges heard an array of motions and presided over three trials; more than 30 different lawyers participated . . . and . . . more than 50 appellate judges reviewed the case on appeals. . . . The tragic aspect was the waste and futility since every lawyer, every judge and every juror was fully convinced of the defendant's guilt from beginning to the end."

Most habeas corpus petitions are totally lacking in merit. Prisoners are often said to use them as a form of occupational therapy. Some 8,500 habeas petitions clog the federal district court dockets every year.

Forty percent of these petitions are filed more than 5 years after the person was convicted, and nearly one-third are filed more than a decade after conviction. Some petitioners are still filing after more than 50 years.

The Republican-controlled Senate of the 98th Congress passed a habeas corpus reform bill (S. 1763, accompanied by S.Rpt. 98-226) that would have set a time limit on habeas petitions and accorded deference to determinations by State courts that are "full and fair." The Senate vote was 67-9. (91 percent of Republicans and 83 percent of Democrats supported the bill.) The bill died in the House of Representatives.

In this Congress, 8 Republican Senators (and 2 Democratic Senators) have introduced a habeas corpus reform bill (S. 260) to accomplish the same purposes as the bill that passed the Senate in 1984. Also, Senator Symms has introduced S. 211, a bill providing habeas corpus procedures for prisoners under sentence of death.

D. REMAINING TO BE DONE: LABOR UNION VIOLENCE

Do you know that in this country today it is a federal crime to transport a water hyacinth (18 U.S.C. 46), to deface a penny (18 U.S.C. 331), and to misuse the cartoon character "Woodsy Owl" (18 U.S.C. 711a)? But do you also know that it is NOT against federal law to use violence or threats of violence to obtain higher wages and benefits for union members? This crazy situation is the result of a 5-to-4 Supreme Court decision on what is known as the Hobbs Act -- and the refusal of Congress to reverse that decision.

In *United States v. Enmons*, 410 U.S. 396 (1973), the Court held that 5 acts of labor violence involving the shooting and sabotage of an employer's transformers and the blowing up of its substation could not constitute extortion under federal law because the violence was used in pursuit of legitimate union objectives. This strange result was even too much for Justice William O. Douglas, one of the Court's all-time leading liberals, who wrote the dissenting opinion.

In the spring of 1986 the Senate made an effort to overturn Enmons by amending the Hobbs Act to outlaw union violence. During the course of that debate, proponents pointed out that there had been 5,100 incidents of labor violence during the previous decade. The F.B.I. had testified that the Enmons decision hampered federal efforts to combat labor union violence.

But the Senate effort failed when cloture on the bill (S. 1774) failed 44-to-54. On that vote, 71 percent of Republicans and 17 percent of Democrats favored cloture. Needless to say, the House of Representatives has never looked kindly on curtailing union extortion.

But the President's Commission on Organized Crime has called for overturning Enmons. And among the Commission's other recommendations to "protect workers' rights under federal law" are the following:

> 1. Amend the labor-management relations act to make it an unfair labor practice for a labor organization to be dominated by organized crime, and to make it an unfair labor practice for any employer to encourage or assist organized crime in the domination of a labor organization.
>
> 2. Enact a labor-bribery statute which will make the purchase of a union or a union office, or the selling of the right to obtain union work, unlawful. And
>
> 3. Amend the labor-management reporting and disclosure act to increase the penalty for a deprivation of rights by violence to a felony offense.

E. REMAINING TO BE DONE: OBSCENITY AND CHILD PORNOGRAPHY

> As many as 1 of every 5 girls and 1 of every 11 boys will be sexually assaulted before reaching age 18.
>
> Pornography is big business, grossing some $6 - $7 billion dollars annually. (In 1984, America's most successful corporation, IBM, had a profit of $6 billion.)

A child is sexually abused every 2 minutes.

For every McDonald's restaurant in the United States, there are 3 to 4 pornography outlets.

More than 800,000 calls are made each day to New York City's dial-a-porn numbers.

But of all the corrosive effects of pornography, none is more tragic than its effect on our children. One of the members of the Attorney General's Commission on Pornography (Dr. James Dobson) put it this way:

> It is extremely naive to assume that the river of obscenity inundating America has not invaded our children's world. Obscenity cannot flow freely through a society's veins without reaching the eyes and ears of children. Kids by the millions are watching cable porn and reading their parents' adult magazines. A growing number of children are sexually experimenting on younger children. At an age when children should be reading Tom Sawyer they are learning perverted "facts" which neither their minds nor their bodies are equipped to handle. Accordingly, the behavior of an entire generation of teen-agers is being adversely affected by the current emphasis on premarital sexuality and general eroticism. It is not surprising that unwed pregnancy, venereal disease, and abortion have skyrocketed. Teens are merely doing what they've been taught. And, to a large degree, they've been taught by pornography. [Dr. Dobson's comments are paraphrased.]

What can be done to help? The Attorney General's Commission on Pornography made the following recommendations (and others):

1. Amend the federal obscenity laws to require only that obscene materials "affect" interstate commerce (instead of the current standard of showing movement in interstate commerce).

2. Enact legislation making it an unfair business practice and an unfair labor practice for any employer to hire individuals to participate in commercial sexual performances.

3. Proscribe obscene cable television programming and the transmission of obscene material through the telephone or similar common carrier.

4. Enact legislation requiring producers, retailers, or distributors of sexually explicit visual depictions to maintain records containing consent forms and proof of performer's ages. Prohibit producers of certain sexually explicit materials from using performers under the age of twenty-one.

5. Enact legislation to prohibit the exchange of information concerning child pornography through computer networks.

6. Enact legislation to make the acts of child selling or child purchasing, for the production of sexually explicit visual depictions, a felony. And

7. Enact legislation providing financial incentives for the states to initiate task forces on child pornography and related cases.

S. 212, a bill to prohibit "dial-a-porn" operations, has already been introduced in the 100th Congress (and referred not to the Judiciary Committee, but to the Commerce Committee). S. 703, the Pornography Victims Protection Act, has been introduced by 5 Republican Senators.

NOTES

[1]Poll data can be found in the appendix.

[2]The statistic cited in the text can be misleading:

> ". . . Surveys of citizens suggest that the elderly are much less likely than younger persons to be the victims of crime, and some have inferred from this that the well-known fear of crime voiced by the elderly is an exaggeration. . . . This [inference] misses the point. . . . [T]he lower rate at which the elderly are victimized is a measure of the steps they have already taken -- chiefly, staying behind locked doors -- to minimize the risks they face. Young men are more frequently attacked than older women, not because they are easier or more lucrative targets, but because they are on the streets more." James Q. Wilson, *Thinking About Crime* 79-80 (2d ed. 1983) (footnote omitted, emphasis added).

[3]Two years later, on September 11, 1986, the Judiciary Committee was surmounted when Congressman Lungren brought his amendment (permitting good faith exceptions to the exclusionary rule) directly to the House floor where it was adopted by a vote of 259-to-153. The amendment was dropped from the final version of the drug bill, however, because of a threatened filibuster.

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APPENDIX: POLL DATA ON CRIME

When asked an open-ended question about the problems facing the country, the public usually places crime well below the threat of war, the fear of unemployment, and the specter of debt. However, in many polls the problems of crime and drugs combine to place very high among the public's concerns. For example, the Gallup Poll of November 9, 1986, asked, "What do you think is the most important problem facing this country today?" The results:

Unemployment, recession	23%
International tensions, fear of war	22%
Budget deficit	13%
Drug abuse	8%
. . .	
Crime	3%

The responses for crime and drug abuse total 11 percent, placing them within striking distance of the deficit.

The same question was asked by the CBS News/New York Times poll of October 30, 1986. Selected responses are shown:

War/nuclear war	7%
Arms control/summit	7%
Unemployment	10%
Economy/Inflation	9%
Deficit	10%
Crime	2%
Drugs	10%
Morality	3%

Here, drugs ties for first as the nation's top problem, and the sum of drugs and crime exceeds all other categories.

In a Los Angeles Times poll of December 12, 1985, the public was asked about the most important problem facing the country and a list of problems was provided. Having been prompted, the public placed crime second (at 26 percent) just behind the budget (at 30 percent) as the nation's most important problem.

For a number of years the Los Angeles Times has asked the public about the most important "social problem" facing the country, and crime is invariably number one. For example, the survey of October 15, 1984, asked which of several stated domestic problems was "most important right now?" The answers:

Abortion	10%
Crime	37%
Environment	16%
Special interests	3%
School prayer	7%
Civil rights	19%

United States Senate
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March 26, 1987

THE MINIMUM WAGE

A Case of Special Interest Politics Versus Jobs!

The current unemployment rate for teenagers is 18.0%. Black teenagers suffer from an unemployment rate of 38.9%. [1]

Imagine, for a moment, the impact of such rates if they applied to the workforce as a whole. At 18%, some 20 million people would be out of work -- a number equal to the entire population of our 10 largest cities. At 38.9%, as many people as work in California, New York, Texas, Pennsylvania, Illinois, and Florida would be out of jobs.

With that in mind, we can begin to get a picture of the impact these high rates have on young Americans.

Incredibly, Congress will soon be debating a proposal to make the situation worse.

House and Senate Democratic leaders have promised the AFL-CIO Executive Council that an increase in the minimum wage will be passed in the 100th Congress.[2] AFL-CIO President Lane Kirkland argues that the minimum wage should be increased from the current $3.35 an hour to $4.61.[3]

We calculate that such an increase will cause a loss of between 124,000 and 619,000 jobs for young Americans. This is based on a General Accounting Office survey that a 10% increase in the minimum wage will cause a .05 to 2.5% loss in youth jobs.[4] Applying that formula to a 37.6% increase equals a job loss of from 124,000 to well over half a million jobs.

By comparison, one of the recent government jobs creation programs, the Emergency Jobs Act of 1983, delivered only 35,000 new jobs at a cost of $4.5 billion.[5] Raising the minimum wage could wipe out over seventeen times that number of jobs.

Why then is anyone even thinking about a change in the minimum wage?

This is a classic case of blind adherence to ideology. A federal minimum wage was first established in depression era legislation. Today, minimum wage legislation is enshrined in liberal doctrine, without regard to the reality of today's workforce.

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1. Bureau of Labor Statistics, Department of Labor, March 6, 1987.
2, 3. See Kenneth B. Noble, "Democratic Leaders Say Congress Will Increase the Minimum Wage", New York Times, February 17, 1987, p. A15.
4. U.S. General Accounting Office, Report PAD-83-7, January 28, 1983, p. i.
5. U.S. General Accounting Office, Report HRD-87-1, December 1986, p. 3.

Supporters of an increase in the minimum wage have argued:

"Half of all minimum-wage workers are employed full time, and they earn less than enough to raise a family of three above the poverty line." [Congressman George Miller (D-Calif.), The New York Times, January 21, 1987, page 30A.]

"Employed full time, year-round at $3.35 an hour, a minimum-wage worker would earn only $6,968. This is far below the official poverty threshold income that would be available from welfare and basic food-stamp benefits in New York City. It represents a wage that is exploitative, degrading, and a substantial disincentive to work." [Jack Sheinkman, secretary-treasurer of the Amalgamated Clothing and Textile Workers Union, The New York Times, February 9, 1987, page 18a.]

Even those just reporting on the issue characterize a minimum wage worker as:

"For the 5 million people earning the minimum wage or less (out of 58 million hourly workers), a full time job means $6,968 a year at most. The poverty line for a single person is $5,469 a year, for two people $6,998, and for a family of four $10,989." [Time Magazine, January 26, 1987, page 19.]

Well, what's wrong with those statements?

In each case, an assumption is being made that a large number of the minimum wage workers are working full time at minimum wage jobs and they are heads of households. This doesn't square with the facts. According to the Census Bureau: [6]

- **Only 10% of all minimum wage workers are household heads with three or more in the household.**

- **Over 76% are not heads of households.**

- **Of the minimum wage workers who are not heads of households, over 60% are single. Another 21% are spouses of the head of household.**

- **65% of all persons earning the minimum wage are working part-time.**

A similar picture of the minimum wage workforce emerges from the study prepared by the Congressional Budget Office. [7] According to CBO:

- **Four-fifths of all minimum wage earners are not poor, in large part because so many of them live with relatives in a household where other members of the family have a job.**

- **Minimum wage workers in general are employed fewer hours and more intermittently than are other workers, but are just as likely to be in families in which other members worked during the year.**

- **Only a minority of minimum wage workers are employed year-round on full-time schedules.**

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6. The Census Bureau maintains a data base -- The Current Population Survey -- of demographic characteristics of the U.S. population. These figures are from this data base and they are for the 4th quarter of 1986.
7. "The Minimum Wage: Its Relationship to Incomes and Poverty", Congressional Budget Office Staff Working Paper, June 1986.

• **Raising the cost to employers of low-wage workers can reduce both the number of those workers hired and the number of hours they are employed.**

Those who argue for an increase in the minimum wage describe a group of people they are trying to help, and then apply a policy that affects a largely different group. This failure to understand the people most directly affected -- those currently working at the minimum wage -- has as harmful an effect as prescribing a powerful medicine for the wrong patient.

Because the minimum wage worker is largely a younger worker, a part-time worker, an inexperienced worker -- he or she is the most likely to lose a job when an employer faces cost increases.

Economist Walter Williams says, "The impact of legislated minimum wages can be brought into sharper focus if we ask the distributional question: Who bears the burden of legislated minima? As I said earlier, workers who are most disadvantaged by minimum wage legislation are those that are the most marginal. These are workers who employers perceive as being less productive or more costly to hire in some sense than other workers. In the U.S. labor force there are at least two segments that share the marginal-worker characteristic to a greater extent than do other segments of the labor force. The first group consists of youths in general. They are relatively low skilled because of their age, immaturity and lack of experience. The second group are some racial minorities, particularly the youth, who not only share the handicaps of youths in general but are further burdened by unusually poor schooling, racial discrimination and other socio-economic factors leading to lower skill levels. **While low skills can explain low wages, low skills cannot explain unemployment absent some kind of market interference. It is no accident that teenagers, particularly minority teenagers, are disproportionately represented among unemployment statistics."** [8]

Marvin Kosters of the American Enterprise Institute says, "Both the detailed examination of the effects of minimum wages on particular groups and general performance in the economy point to a simple conclusion: however well intentioned, boosting the minimum wage is not a policy that deserves support." [9]

Why then, to ask the question we asked earlier, is Congress considering an increase in the minimum wage? Unfortunately, this particular public policy debate is founded neither on what is good for the public nor on sound policy. It is, in short, old-fashioned politics with a capital P.

In a recent article on minimum wage legislation, the *Congressional Quarterly* quotes a Democratic House aide as saying, "We'll throw numbers out till nobody can have faith in numbers, and then political considerations will win. That's how we do it every time." [10]

If this cynical view prevails, thousands of young people will be condemned to continued high unemployment. To set the record straight, we summarized findings from a number of recent studies of the minimum wage. **The overwhelming evidence points to negative effects outweighing any benefits of a minimum wage increase. In short, it's a bad idea!**

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8. See Walter E. Williams, testimony before the Joint Economic Committee, June 27, 1984.
9. Marvin Kosters, "Should Congress Increase the Minimum Wage?; An Increase Would Hurt Teen-agers", *The New York Times*, March 30, 1986.
10. "Minimum Wage Getting Maximum Attention", *The Congressional Quarterly*, March 7, 1987, p. 406.

SUMMARY OF RECENT MINIMUM WAGE STUDIES

- Brown, Gilroy, and Kohen, 1983

An investigation of approximately twenty studies from 1973 to 1983 yielded a consensus that a 10% rise in the minimum wage would result in a reduction of teenage employment of 1-3%. Brown, Gilroy, and Kohen examined alternative mathematical and statistical versions of these models and concluded that a 1% reduction in teen employment in response to a 10% rise in the minimum wage is most likely. **Moreover, they found that a rise in the minimum wage will discourage teens from either entering or staying in the labor force.** For example, a minimum wage increase that disemploys 10,000 teens will also cause 10,000 teens to leave the labor force. This suggests that for every teen who fails to find or keep a job because of the minimum wage, there will be another teen who completely gives up searching for a job.

Brown, Gilroy, and Kohen found that an increasing minimum wage reduces adult employment as well. A 10% increase in the minimum wage will lead to a 0.20% increase in the unemployment rate for young adults, ages 20-24.

[Charles Brown, Curtis Gilroy, and Andrew Kohen, "Time-series evidence of the effect of the minimum wage on youth employment", *Journal of Human Resources*, Winter 1983.]

- McKee and West, 1984

Most studies examine the effects of minimum wages on aggregate employment and invariably find a negative relationship. McKee and West found that the structure of the labor market is also affected. In Canada, where both full time and part time work is covered by minimum wage legislation, higher minimum wages reduce the number of part time jobs relative to the number of full time jobs, in addition to reducing the total number of jobs. **Their findings suggest that a 1% rise in the minimum wage could lead to as much as a 1.5% decline in the ratio of part time to full time jobs.**

The result is that a higher minimum wage reduces job opportunities for those in the lowest income brackets since they are the most likely to be holding part time jobs. Since many students also attempt to find part time jobs to finance current or future education, a loss of part time jobs also lessens their educational opportunities.

[Michael McKee and Edwin G. West, "Minimum Wage Effects on Part-Time Employment", *Economic Inquiry*, July 1984]

- General Accounting Office, 1983

In a report to Congress prepared in 1983, GAO attempted to summarize the empirical evidence regarding the minimum wage. **The GAO "found virtually total agreement that employment is lower than it would have been if no minimum wage existed.** This is the case even during periods of substantial economic growth... The severity of the employment loss varies among different age, gender, and racial groups in the population. Teenage workers, for instance, have greater job losses, relative to their share of the population or the employed work force, than adults."

Regarding the other goal of the minimum wage, to provide a reasonable standard of living to lower income workers, the GAO said "The minimum wage exerts a less clear influence over the distribution of income among workers, households, and families. As the minimum wage reduces employment (relative to the level that would otherwise occur), some workers lose jobs or are unable

to find jobs, and thus lose income. (Again, this income loss is measured relative to the income that these workers would have earned without a minimum wage law.) Moreover, as these workers try to find jobs not covered by minimum wage laws, wages in these jobs may become depressed. At the same time, however, other workers are earning more than they would without the minimum wage. So they enjoy income gains... Economic theory does not predict whether there will be an overall gain in income or the extent to which employment will be reduced, and empirical evidence does not settle the matter."

[U.S. General Accounting Office, Minimum Wage Policy Questions Persist, *Report to the U.S. Senate Committee on Labor and Human Resources*, 1983]

- McKenzie, 1980

McKenzie argues that even those workers who we normally think will benefit from the minimum wage are actually harmed by it. Studies frequently assume that workers who keep their jobs are made better off, although this advantage only comes at the expense of those who lose their jobs. McKenzie finds that even this presumed advantage of the minimum wage is false.

The reason for this is that increases in the minimum wage cause employers to reduce non-money wages. These non-money wages, or fringe benefits, which can include everything from prepaid medical care and job training to subsidized cafeterias and parking privileges, should be added to money wages to determine effective wages.

Since there are limits to which employers can raise effective wages, a legislated increase in money wages will induce employers to limit fringe benefits. McKenzie's analysis shows that even workers who retain their jobs after a rise in the minimum wage will be worse off because of a decline in their effective wage -- "Our analysis shows that in the long run all workers in the relevant markets are made worse off".

[Richard B. McKenzie, "The Labor Market Effects of Minimum Wage Laws: A New Perspective", *Journal of Labor Research*, v. 1, no. 2, Fall, 1980.]

- Vandenbrink, 1987

This study examined the effect on youth employment that would arise from a reduction in the minimum wage. Vandenbrink used a statistical technique which allowed her to determine the probability of a person being employed based upon demographic characteristics, such as age, sex, and race, and also upon the wage level. She found that reducing the minimum wage by 25% would raise teenage employment by as much as 36%. This is a considerably larger employment effect than many other observers have predicted.

[Donna C. Vandenbrink, "The minimum wage: No minor matter for teens", *Federal Reserve Bank of Chicago economic perspectives*, v. 11, March-April 1987.]

- Behrman, Sickles, and Taubman, 1983

Most studies have indicated that, at best, the minimum wage has had no effect on the distribution of earnings and, at worst, has significantly harmed minority earnings. **In their examination of the earnings distribution, Behrman, Sickles and Taubman conclude that, in its best light, "a summary evaluation of the impact of federal minimum wage law on the earnings of the working poor, the supposed beneficiaries, is mixed."**

They say that the minimum wage has discriminatory effects on low-income, low-experience workers based on their race and sex. Although some low wage workers may benefit from the minimum wage, others are harmed, and minorities and females are more likely to be in the latter category.

For example, their work suggests that if there are two low-experience individuals, one black and one white, the minimum wage increases the likelihood that the black worker will be disemployed more than it increases the likelihood that the white worker will be disemployed. "Thus we agree with Kohen and Gilroy, and with Linneman that federal minimum wage policy on net probably has not been good policy."

[Jere R. Behrman, Robin C. Sickles, and Paul Taubman, "The Impact of minimum wages on the distributions of earnings for major race-sex groups: a dynamic analysis", *American Economic Review*, Sept., 1983]

- Linneman, 1982

Of the six amendments to the Fair Labor Standards Act (FLSA) that either raised the minimum wage or expanded its coverage, Linneman examined the effects of the 1974 amendments. **He concluded that workers whose earnings were affected by the minimum wage experienced "considerably reduced employment possibilities" as a result of the minimum wage.** In the event that these workers retained their jobs after the minimum wage was raised, he found that their annual hours worked substantially declined. **In contrast, he found that where there were earnings increases to be had from raising the minimum wage, that males, union members and individuals in the above-minimum wage population were the prime beneficiaries.**

An interesting result was that, "Surprisingly little influence of race was discerned on expected earnings". Within racial groups, however, the minimum wage caused large disparities in earnings. For example, "black males were found to be the greatest beneficiaries and black females the biggest losers... **In sum, it appears that this amendment (to the 1938 FLSA) increased the inequality in the distribution of individual earnings among the U.S. adult population".**

[Peter Linneman, "The economic impacts of minimum wage laws: a new look at an old question", *Journal of Political Economy*, 1982.]

- Hammermesh, 1982

Hammermesh modeled a carefully specified demand function for both teen and adult labor. This allowed him to simulate the employment effects on each group as a result of the imposition of a youth subminimum wage. His results were as follows: **"Based on 1979 employment of 9356 thousand teenagers and 88,961 thousand adults, a 75 percent subminimum would create two hundred fifty thousand jobs for teens and increase adult employment by four thousand under the most conservative assumptions about** (the substitutability of teen for adult labor)... Making the more liberal assumption (about substitutability) yields employment effects of 430 thousand teen jobs and minus one hundred seven thousand adult jobs. The major cause of the difference between these pairs of estimates is the difference in the extent of teen-adult substitution. Even under the more liberal assumption, many more teens are aided than adults are harmed."

[Daniel S. Hammermesh, "Minimum wages and the demand for labor", *Economic Inquiry*, July 1982.]

- Hashimoto, 1982

Hashimoto tested whether an effective minimum wage diminishes job training opportunities. He found that **"the evidence from my empirical analysis confirms the existence of adverse minimum wage effects on training for white young males.** It also indicates that the 1967 Amendments to the Fair Labor Standards Act are likely to have reduced the full wages unless lost training is recaptured fully in two years without cost".

[Masanori Hashimoto, "Minimum wage training on the job", *American Economic Review*, December, 1982.]

- Meyer and Wise, 1982

Meyer and Wise estimated the employment and earnings effects of the minimum wage by specifying a hypothesized relationship between underlying market employment and wage relationships versus observed wage and employment distributions in the presence of a legislated minimum wage. They conclude that, **"If there had been no minimum [wage] during the 1973-78 period, we estimate that employment among out-of-school men 16 to 24 would have been approximately 4 percent higher than it in fact was.** Among young men 16 to 19 employment would have been about 7 percent higher and among those 20 to 24, 2 percent higher. Employment among black youth 16 to 24 would have been almost 6 percent higher than it was, as compared with somewhat less than 4 percent for white youth. Thus the proportional employment effects of the minimum are greater for the younger than for the older youth and are greater for black than for white youth.

"Although it is sometimes argued that the adverse employment effects of the minimum are offset by increased earnings, we find virtually no earnings effect. Even though some youth with market wage rates below the minimum are paid the legislated minimum, the increased earnings of these youth is offset by the non-employment and thus zero earnings of others. Expected earnings of youth are about the same with the minimum legislation as they would be without it."

[Robert H. Meyer and David A. Wise, "The effects of the minimum wage on the employment and earnings of youth", Working Paper No. 849, National Bureau of Economic Research, 1982.]

- Betsey and Dunson, 1981

In an investigation of the differential effects that the minimum wage has on employment opportunities of non-white teens vs. white teens, Morse found that non-white teens fared worst. "Our results for the recent 1970-79 sub-period indicate a statistically significant large disemployment effect for non-white teens. While there was also a significant effect associated with the minimum wage for white teenagers during the 1970s their employment was not nearly as sensitive to the minimum and considerably more sensitive to cyclical factors than non-white teenagers' employment".

[Charles L. Betsey and Bruce H. Dunson, "Federal Minimum Wage Laws and the Employment of Minority Youth", *American Economic Review*, May 1981.]

- Fleisher, 1981

Fleisher found that disemployment from a rise in the minimum wage that increases the average hourly rate of pay by 5% in the retail trade industry is nearly 325,000 workers. This amounts to about 4.5% of the number of nonsupervisory retail trade employees.

For workers in food retailing, the disemployment effects of a similar 5% rise in the rate of pay are about 100,000 workers or 7% of the labor force of nonsupervisory personnel employed in food stores.

Minimum wages in retail trade have disemployed about 420,000 males, age 18 and 19, and females, age 14 to 17 based on 1970 population figures. This disemployment represents about 9% of the average employment rate for these males over the 1960-78 period, and 14% of the average employment rate for these females.

[Belton M. Fleisher, Minimum Wage Regulation in Retail Trade, American Enterprise Institute for Public Policy Research: 1981, Washington, D.C.]

- Ragan, 1981

"The legal minimum wage has been effective in raising teenage wage rates, both in real terms and relative to the wages of adults. This, in turn has caused firms to reduce their employment of teenagers... This is most evident for nonwhite males and males not in school... Manpower programs expand teenage employment. To the extent these programs are deemed necessary to mitigate the job loss induced by the minimum wage, **the billions of dollars spent on youth manpower programs can be viewed as a cost of the minimum wage."**

[James F. Ragan, Jr., "The Effect of a Legal Minimum Wage on the Pay and Employment of Teenage Students and Nonstudents", *The Economics of Legal Minimum Wages* (ELMW), Simon Rottenberg, ed., American Enterprise Institute: 1981, Washington, D.C.

- Cotterman, 1981

The estimated employment effects of a $.25 increase in all federal minimum wages on the proportion of 18-19 year old males in 1970 was statistically insignificant for whites and blacks in agriculture and manufacturing, and for blacks in services. **But for the same $.25 rise in the minimum wage, the estimated percentage change in the proportion of whites employed in services was -9.5%; for blacks in retail trade, -25.9%; and for whites in retail trade, -16.4%.**

[Robert F. Cotterman, "The Effects of Federal Minimum Wages on the Industrial Distribution of Teenage Employment", in *ELMW.*]

- Gardner, 1981

During the period 1967-78, when the minimum wage was first applied to agriculture, the mean hourly wage in agriculture rose about 5% in real terms due to the minimum wage. **This led to a loss of about 60,000, or 5% of agriculture jobs** (as represented by the number of hired farm workers).

[Bruce Gardner, "What Have Minimum Wages Done in Agriculture?", in *ELMW.*]

- Trapani and Moroney, 1981

The job loss experienced by workers in the cotton farming industry due to imposition of the minimum wage in 1967 was 63,000 peak month workers in 1967 and 69,000 in 1969. This includes 8200 and 9700 jobs in the typical south-central state and 4700 and 3500 workers in the typical southeastern state.

[John M. Trapani and J.R. Moroney, "The Impact of Federal Minimum Wage Laws on Employment of Seasonal Cotton Workers", in *ELMW.*]

• Al-Salam, Quester, and Welch, 1981

"The large expansion of the coverage of minimum wages (from 1954 to 1958) has reduced the proportion of male teenagers employed by 4% and has created a gap between the proportion of black male and white male teenagers employed of roughly 4% as well".

[Nabeel Al-Salam, Aline Quester, and Finis Welch, "Some Determinants of the Level and Racial Composition of Teenage Employment", in *ELMW*.]

• O'Neill, 1981

A survey of 12 major statistical studies during the past decade all found a negative impact of the minimum wage on youth employment. "In terms of numerical increases, the **studies indicate a ten percent reduction in the national minimum wage would increase the employment of teenagers by between 100,000 and 220,000."**

[June O'Neill, economist, Urban Institute, testimony before the Senate Labor Subcommittee, March 25, 1981.]

• Peterson, 1981

In an examination of the effects of the minimum wage on the retailing industry, Peterson found that a 10% rise in the minimum wage would eliminate 3.4 million man-hours. A drop in employment of this magnitude would especially hurt workers with wages previously below the new minimum, reducing their man-hours worked by over 11%.

Peterson calculated man-hour elasticity estimates for below-minimum wage workers which imply that a 1% increase in the minimum wage would lead to 0.97% employment reduction for all private non-farm workers, a 2.56% reduction for retail trade workers, and a 4.68% reduction for leather products workers, the lowest paying of all manufacturing industries. This clearly suggests that **the minimum wage causes the most damage to workers in the lowest paying industries.**

[John M. Peterson, *Minimum Wages: Measures and Industry Effects*, Washington, D.C.: American Enterprise Institute, 1981.]

• Wessels, 1980

Employers tend to react to higher minimum wages by looking for other ways of reducing labor costs. Although studies invariably show that a common way of reducing labor costs is to simply hire fewer workers, employers also cut year-end bonuses, re-define the worker's share in profit sharing, and limit fringe benefits.

[Walter J. Wessels, *Minimum wages, fringe benefits, and working conditions*, American Enterprise Institute for Public Policy Research, 1980.]

• Mincer and Leighton, 1980

Mincer and Leighton investigated whether the minimum wage tended to discourage job training, and found that their empirical analysis consistently demonstrated this. Moreover, they found that the discouraging effects on training and future wage growth were more pronounced at lower education levels.

[Jacob Mincer and Linda Leighton, "Effect of minimum wages on human capital formation", Working paper No. 441, National Bureau of Economic Research, 1980.]

- McKee and West, 1980

In an analysis of thirteen Canadian and American studies since 1970 on the employment effects of the minimum wage, McKee and West found the overwhelming majority (9 out of 13) reported unambiguous and statistically significant reductions in employment. Of the remaining four, one found no significant effects while three found mixed results for different labor force groups. As a result, they conclude that "there is no convincing evidence to refute the prediction that minimum wages cause reductions of employment (for young workers at least)".

[M. McKee and E.G. West, Minimum wages: the new issues in theory, evidence, policy and politics, A study prepared for the Economic Council of Canada and the Institute for Research on Public Policy, 1980.]

- Bloom and Grenier, 1986

Most studies investigating the minimum wage assume full compliance with the law by employers. But it is unlikely that such a costly law will be fully complied with. **Bloom and Grenier say that "studies which fail to account for noncompliance ... underestimate the adverse employment effect of increasing the minimum wage.** Some compliance will result in lower employment due to the higher cost of labor, and this is the amount of disemployment that quantitative studies pick up. In a mathematical model designed to show how firms react to higher minimum wages, Bloom and Grenier show that if the law were fully complied with, however, the disemployment effects would be even more severe.

[David E. Bloom and Giles Grenier, "Models of firm behavior under minimum wage legislation", Working Paper 1877, National Bureau of Economic Research, 1986.]

- Minimum Wage Study Commission, 1980-81

Nobel prize-winning economist George Stigler has said that commissions formed by governments are "efficient instruments of propaganda... The whole art of commissionmanship is to select honorable and disinterested members who will mostly agree with the position which the creators of the commission desire." [11]

The Minimum Wage Study Commission appointed by President Carter fit this characterization quite well. It was set up with, among other things, the mandate to determine the "beneficial effects of the minimum wage, including its effect in ameliorating poverty among working citizens", and spent $17 million toward this end. [12]

The result was a multi-volume document. The research portion confirmed the conclusions of all prior empirical evidence -- that the minimum wage causes disemployment in teens and has no effect on low-wage incomes. The minority report said, in fact, that **"the evidence is now in, and the findings of dozens of major economic studies show that the damage done by the minimum wage has been far more severe than even the critics of 40 years ago predicted".** [13]

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11. See George J. Stigler, "The National Commission as an Instrument of Controlled Impartiality", in G.J. Stigler, The Intellectual and the Market Place, (New York: The Free Press of Glencoe), 1963, pp. 20-21.
12. U.S. Minimum Wage Study Commission, Report, Washington, D.C., G.P.O., 1981, vol.1, p. xiii.
13. "Minority Report of Commissioner S. Warne Robinson", Minimum Wage Commission Report, op.cit., vol 1., p. 182.

Nevertheless, the Commission ignored its own findings and recommended that the level of the minimum wage be raised periodically by indexing it to the average wage paid in the economy, and that the coverage of the minimum wage be extended by eliminating from current law various exempt categories of work. These inconguous recommendations are really not surprising in view of the ideological purposes of the Commission. The expression of these biased intentions is clear in a quote from Commission Chairman James G. O'Hara, a former Democratic Congressman: "I believe that the payment of a subminimum wage to a particular age group is so in conflict with...the requirements of social justice that it ought to be rejected as a policy option even if it would substantially reduce youth unemployment". [14]

The Commission's Minority Report asserted that **"the evidence against the minimum wage is so overwhelming that the only way the Commission's majority was able to recommend that it be retained was to ask us not to base any decisions on facts."** [15] Those facts include a rough consensus that a 10 percent increase in the minimum wage would lead to a decrease of 0.5 and 2.5 percent in teenage employment, relative to what would have occurred with an unchanged minimum wage.

Some of the representative conclusions from the studies from which that consensus was taken have been summarized by noted labor economist Simon Rottenberg as follows: [16]

• Boschen and Grossman, "The federal minimum wage, employment, and inflation", vol. 6:

"...increases in the current or near-future Federal minimum wage appear to depress current employment in certain industries that probably have a high proportion of minimum wage workers and among teenagers, the demographic group that has the highest incidence of minimum wage workers."

• Pettengill, "The long run impact of a minimum wage on employment and the wage structure", vol. 6:

"... a minimum wage that covered all workers will cause a large (probably intolerable) amount of unemployment in the long run for all plausible values of the parameters" of his model.

• Heckman and Sediacek, "The impact of the minimum wage on the employment and earnings of workers in South Carolina", vol. 5:

A 20% increase in the minimum wage makes approximately 81% of South Carolina workers worse off than before the change. They found, "...large disemployment effects due to minimum wage increases".

• Behrman, Taubman, and Sickles, "The Short- and Long- run effects of minimum wages on the distribution of income", vol. 7:

"...both the minimum wage rate and the Fair Labor Standards Act coverage reduce the mean earnings for those with low education and (presumably) low skill levels... There is practically no evidence that minimum wage rate provisions increase the earnings of (improve) the poverty position of the least educated... Moreover there is some evidence that these provisions increase unemployment and nonparticipation... The (usually stated) rationale or goal of the minimum wage system is to help the working poor receive a higher income. Our results suggest that this goal

14. Minimum Wage Study Commission, Report, op.cit., p. 180.
15. "Minority Report...", op.cit., p. 182.
16. Simon Rottenberg, "National Commissions: Preaching in the Garb of Analysis", Policy Review, Winter, 1983.

generally is not met and indeed that the system often harms the groups who are the intended beneficiaries... Thus the minimum wage policy appears to be a poor policy with effects that often have been misunderstood or misrepresented."

• Johnson and Browning, "Minimum wages and the distribution of income", vol. 8:

"...the additions to household income produced by increasing the minimum wage are spread quite evenly across the distribution of household income. Households in the lower half of the distribution receive only about one half of the total "benefits" of this policy. In terms of the share of total benefits accruing to low-income households, the minimum wage compares unfavorably with government transfer programs... Increasing the minimum wage redistributes income within income classes as well as across income classes. **More than 80 percent of low-income households are harmed by the minimum wage."**

• Datcher and Loury, "The effect of minimum wage legislation on the distribution of family earnings among blacks and whites", vol. 8:

Increases in the minimum wage "have had a positive effect on the earnings of older white men, a significant negative impact on teenage black and white women and little or no effect on other workers as a whole... Our results indicate that white families tend to benefit more from (minimum wage) increases than black families and that the principal avenue of this differential is the effect of the minimum on adult men... **Raising the minimum wage is not an egalitarian policy from the point of view of raising the earnings of low income families relative to other groups... Overall, high income families benefit relatively more than low income families."**

• Kohen and Gilroy, "The minimum wage, income distribution, and poverty", vol. 8:

"Inasmuch as there is not a strong correlation between individual earnings and family income -- with large numbers of minimum wage workers found among households at all income levels -- **the message from the body of empirical evidence is that the minimum wage has had small "beneficial" effects on the distribution of income."**

SUMMARY

A review of the research on the minimum wage leads to the inescapable conclusion that it prevents a very large number of youths from holding jobs and does not measurably affect low-wage incomes. Designed for a situation -- depression level unemployment and a relatively large proportion of low wage jobs -- that no longer exists, the minimum wage has left a legacy of hardship for unskilled and inexperienced workers.

Minimum wage increases have been shown to:

- Eliminate entry-level jobs
- Force youths and minorities to bear a disproportionate share of the resulting unemployment
- Limit job training opportunities for low-income, low-skill workers, which depresses their future earnings
- Fail to measurably improve present earnings for low-income individuals.

On this issue, the evidence is very clear: raising the minimum wage is bad public policy.

Republican Policy Committee
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Bob Mottice
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BOB DOLE
KANSAS

United States Senate

OFFICE OF THE REPUBLICAN LEADER
WASHINGTON, DC 20510-7020

M E M O R A N D U M

TO: SENATOR DOLE
FROM: JIM WHITTINGHILL
SUBJECT: OIL AND GAS ISSUES

In an effort to obtain additional cosponsors, Senator Bentsen has delayed the introduction of the "Energy Security Act of 1987" until next Tuesday or Wednesday. He hopes to have at least 25 cosponsors by that time. As directed, you will be a cosponsor.

This should be the basis of your comments while in Wyoming. Senator Wallop has been deeply involved with the effort from the start, and Senator Simpson will be joining you as a cosponsor.

The bill sets the allowable limit of imports-to-consumption at 50%. Contained in the annual budget submission will be the projection for the following three years.

If the projection exceeds 50% in any of the years, and is not changed by Congress within 10 session days, the President must submit a plan to reduce imports under that level.

Unless modified or rejected by Congress, the plan becomes effective 90 days after submission.

The bill states that the plan <u>may include</u>:

a) oil import fee
b) conservation plans
c) expansion of SPR to maintain 90-day cushion against import disruptions
d) production incentives for domestic producers

TALKING POINTS

o This bill will finally focus the attention of Congress on the problem. Congress usually acts too late on problems, only to come up with solutions that exacerbated recovery.

o Unless something is done to correct the problem, the gas lines will be back, somebody in Washington will want to print up another batch of rationing coupons, impose price controls and start selling entitlements tickets.

o Today, we are importing around 38% of our total daily consumption. While that may not sound like much, our all time high was 45.7% in late 1977 -- right before the beginning of our last oil crisis.

o The first crisis, in the early 1970's, was brought about by OPEC when we were only 35% dependent on imports. That's the same level we had in 1986, and that was up from 27% in 1985. The trend is a forecast for disaster.

o Frankly, the 50% level established in the bill is probably too high, but it is a starting point for debate and education. Some projections reviewed in a recent report by the American Petroleum Institute indicate we would be near that level as early as 1990, if prices are still in the $14 to $20 range.

o We are now producing about 833,000 b/d less than we were last year -- about 10% of total U.S. production. And that figure fails to point out the fact that the North Slope in Asalka has increased deliveries by about 200,000 Alaska.

o This is also a national economic issue. Simulations of macroeconomic models performed for the National Petroleum Council indicate that U.S. GNP was reduced by about 2.5% by the price jump related to the 1973-1974 crisis in the three following years, while the 1979 oil shortage was responsible for a 3.5% decrease within three years.

o I keep trying to remind folks from all over the country that there is a connection between national security and energy security.

o In 1985, the U.S. military used 484,000 b/d. However, in a sustained military conflict, that need would increase 3 to 5 fold. I cannot imagine we would allow our F15's to be grounded at the end of a runway or our M-1 tanks to be parked on the edge of a field awaiting the delivery of an OPEC oil tanker when our nation was facing a national security emergency. Yet that is exactly where we are heading.

o The oilpatch breeds tough independent Americans, from the roustabouts to the tool pushers, those working for service companies, the refineries and the pipelines. They are the ones who have given the handouts over the years, and they are not looking for one now. But our Nation is, the U.S. is desperately in need of help to defend ourselves on the energy front.

U.S. Dependence on Oil Imports Is Shooting Up But Congress, White House Fumble With Policy

By Robert E. Taylor
Staff Reporter of The Wall Street Journal

WASHINGTON—Less than two years ago, 27% of the U.S. oil supply was imported. Today the foreign share is about 40%, but although there's cause for concern, Congress and the Reagan administration can't seem to get together to reverse the trend.

"You have to ask why they don't do something," says Charles DiBona, president of the American Petroleum Institute, the domestic oil industry's leading trade group. Although Mr. DiBona has a direct interest in seeing imports' share of the U.S. market diminish, his complaint is shared by many experts outside the industry.

"We aren't doing anything to make foreign oil less important," says Eli Bergman, executive director of Americans for Energy Independence, a private foundation.

Interior Secretary Donald Hodel predicts the return of gasoline lines in as little as two years. Failing to curb imports, he says, is like telling oil-producing countries, "Take advantage of us, we're not going to defend ourselves." The Fund for Renewable Energy and the Environment, a coalition of environmental groups and supporters of alternative energy sources, who seldom agree with Mr. Hodel, warns that the U.S. is failing to prepare for "inevitable" oil price increases that "could well imperil the national economy and the country's security."

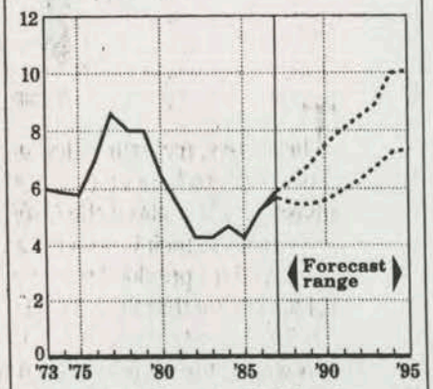
Which Way Do We Go?

The difficulty is reaching agreement on what to do. The oil industry and some others want to encourage increased U.S. production by means of an oil-import fee or with tax incentives. But a price-raising import fee or tax breaks for the oil industry raise steep political hurdles in the form of strong opposition from oil-consuming interests. Meanwhile, environmentalists' proposals to stimulate conservation and increase use of substitute fuels are blocked by the administration.

Currently stirring controversy is a proposal by Senate Finance Chairman Lloyd Bentsen (D., Texas). He recently got his committee to amend the pending trade bill to require the president to do whatever is necessary to keep oil imports from exceeding 50% of the U.S. supply, subject to congressional veto. But New Englanders and Midwesterners oppose the amendment as a backdoor route to an import fee that would raise fuel costs. "It's simply unfair," says Sen. John Chafee, (R., R.I.), whose constituents get two-thirds of their energy from oil.

U.S. Net Oil Imports

Actual and forecast, in millions of barrels per day.



Sources: Energy Information Administration through 1986 and Energy Department forecasts thereafter.

The problem will worsen, forecasters say. Oil imports are expected to top 50% of the U.S. supply between 1990 and 1995. That would heighten the importance of the volatile Persian Gulf. Although the U.S. now gets only about 6% of its oil from the gulf, that region is expected to dominate world oil markets in the 1990s when the current world oil glut is expected to be over.

Skepticism in Oil Industry

Congress has made small energy-conservation moves. It passed a bill, reluctantly signed by President Reagan, reinstating appliance-efficiency standards. The House currently is exploring ways of diverting 2% of all oil imports into the nation's Strategic Petroleum Reserve, and there has been talk of a gasoline tax that would be used to help cut the budget deficit while discouraging consumption.

Although administration officials say the president has supported "appropriate" responses to the oil-import problem, such as lifting the oil-industry's "windfall" profits tax and opening more federal lands to drilling, industry leaders are skeptical that much will be done. David Wilson, president of the Independent Petroleum Association of Mountain States, says that both Congress and the administration "are hoping the situation will go away without action on their part."

Just last month, Mr. Reagan killed a seven-month drive by some administration officials to get him to take strong new action. The Energy Department urged the president to propose tax credits and quick expensing of oil-exploration costs totaling $560 million to $960 million annually. It projected these would boost domestic production after five years by 500,000 barrels a day, or about 6%.

According to Mr. Hodel, some cabinet members were loath to open last year's tax law to assaults by special interests. Top officials also balked, insiders say, at the cost of tax breaks and the difficulty of pushing them through Congress.

Oil Reserve Plan Scrapped

Also scrapped was an Energy Department plan to buy more oil for the strategic reserve. It urged that private investors be allowed to own the oil through government-backed securities. Instead, Mr. Reagan said he would support tripling his proposed purchase rate for the reserve to 100,000 barrels a day *only* if Congress found a way to pay for it.

"That makes no sense," says oil-state lawmaker Bennett Johnston (D., La.), chairman of the Senate Energy Committee. Even the administration says such reserves are crucial to enable the U.S. to comfortably ride out small oil-supply disruptions like those of the 1970s.

Talk of gasoline taxes and alternative oil leasing systems was blocked by Reaganite aversion to taxes and regulation. Import fees were doomed by the administration's projection that they would be extremely costly without producing much more oil.

Harvard professor William Hogan argues that the benefits of a $10-a-barrel fee actually would exceed its costs. But the Energy Department doesn't buy Mr. Hogan's view. Neither does Robert Fri, president of Resources for the Future and a former head of the Energy Research and Development Administration, who says, "Energy is a long-term problem, and quick fixes will do more harm than good."

But even Mr. Fri says that "the administration should have a more comprehensive program," mainly in research and development on cheaper oil production and ways to use substitute fuels, such as methanol, to fuel automobiles.

Curbing oil imports hasn't been a priority, complains the oil industry's Mr. DiBona. "In this country, we tend to deal with the immediate crisis, not the long-term problem," he says, faulting administration officials for inattention to energy amid the distractions of Iran-Contra hearings and other issues.

Rep. John Dingell (D., Mich.) charges that Mr. Reagan has a "do-nothing approach" to preparing for "the next energy crisis." Others contrast the inaction on oil imports with Mr. Reagan's quickness to defend Persian Gulf shipping. Irwin Steltzer, the director of the Energy and Environment Center at Harvard University's Kennedy School of Government, says, "I think our (energy) policy is called aircraft carriers."

STATEMENT OF SENATOR BOB DOLE

ENERGY SECURITY ACT OF 1987

MR. PRESIDENT, TODAY I AM JOINING A NUMBER OF MY COLLEAGUES IN COSPONSORING THE ENERGY SECURITY ACT OF 1987.

THE BILL IS A STATEMENT OF PURPOSE, AN ATTEMPT TO BRING SOME ORDER TO THE CURRENT AIMLESS DRIFTING THAT HAS BESET THIS COUNTRY WITH RESPECT TO ENERGY.

THE CONGRESS HAS ESTABLISHED AN UNFORTUNATE REPUTATION FOR NOT ACTING ON PROBLEMS FACING THE COUNTRY UNTIL IT IS TOO LATE. AND OFTEN, IN ATTEMPTING TO CORRECT A PROBLEM AT A LATE DATE, THE SOLUTION ONLY COMPOUNDS THE RECOVERY.

I HOPE THAT THE INTRODUCTION OF THIS MEASURE, AND SUBSEQUENT HEARINGS BY THE COMMITTEE, WILL FOCUS OUR ATTENTION ON A DISASTER WAITING TO HAPPEN.

LIKE IT OR NOT, OUR ECONOMY, NATIONAL SECURITY, HEALTH AND SAFETY ARE DEPENDENT UPON OIL AND NATURAL GAS. BRING BACK THE GAS LINES AND THE GOOD HUMOR OF OUR CITIZENS WILL BE DEPENDENT UPON OIL AND GAS, TOO.

YET, WE ARE NOW STEERING OUR ENERGY POLICY ON A COLLISION COURSE WITH ANOTHER OIL CRISIS, VERY POSSIBLY A CRISIS FAR SURPASSING THE DISRUPTIONS OF THE PAST.

THE BILL BEGINS TO ESTABLISH A NATIONAL ENERGY POLICY THROUGH A MANDATE THAT WE WILL NOT ALLOW OIL IMPORTS TO RISE ABOVE 50% OF TOTAL CONSUMPTION WITHOUT REQUIRING SOME ACTION -- WHETHER IT BE CONSERVATION, AN IMPORT FEE, OR SOMETHING ELSE -- TO BRING IMPORTS BACK DOWN BELOW 50%.

HISTORICAL IMPORT LEVELS

QUITE FRANKLY, IF WE EVER DO REACH A 50% DEPENDENCY ON IMPORTED CRUDE OIL AND PETROLEUM PRODUCTS, WE WILL HAVE ALREADY REACHED A THE POINT OF NO RETURN.

THE ALL TIME RECORD IMPORT LEVEL WAS 45.7%, AT THE TIME OF OUR LAST OIL CRISIS IN 1978 AND 1979. THE 1973 CRISIS WAS BROUGHT ABOUT AT A TIME WHEN WE WERE ONLY 35% DEPENDENT ON FOREIGN SUPPLIERS.

NOW, IN JUST A LITTLE OVER TWO YEARS, WE HAVE INCREASED OUR DEPENDENCY ON FOREIGN OIL FROM 27% TO OUR CURRENT 38%, A LEVEL ABOVE THAT PRECEDING THE 1973 OPEC EMBARGO.

ECONOMIC IMPACT

THE TWO OIL CRISES OF THE 1970'S WERE MORE THAN JUST TEMPORARY INCONVENIENCES. THE NATIONAL PETROLEUM COUNCIL RAN SIMULATIONS OF MACROECONOMIC MODELS ON THE U.S. ECONOMY TO DETERMINE WHAT EFFECT, IF ANY, THE LAST TWO OIL DISRUPTIONS HAD ON THE ECONOMY.

IN THE THREE YEARS FOLLOWING THE 1973 CRISIS, THE COUNCIL DETERMINED THAT GNP WAS REDUCED BY APPROXIMATELY 2.5%. AND, THE 1979 SHORTAGES WERE RESPONSIBLE FOR A 3.5% REDUCTION IN THE THREE SUBSEQUENT YEARS.

PRODUCTION LEVEL

AS WE CONTINUE TO WITNESS DRAMATIC INCREASES IN OUR DEMANDS FOR IMPORTED ENERGY, DOMESTIC PRODUCTION CONTINUES TO SLIDE. IN FACT, WE ARE NOW PRODUCING ABOUT 833,000 BARRELS OF OIL PER DAY LESS THAN WE WERE JUST LAST YEAR. THAT'S REPRESENTS ABOUT 10% OF OUR TOTAL PRODUCTION, AND THE DECLINE WILL CONTINUE IF LEFT UNCHECKED.

ACTUALLY, THE LOSS OF DOMESTIC PRODUCTION FROM THE CONTINENTAL UNITED STATES IS EVEN MORE DRAMATIC. THESE RECENT FIGURES FAIL TO POINT OUT THAT PRODUCTION FROM THE ALASKA NORTH SLOPE HAS INCREASED AS DOMESTIC PRODUCERS SEARCH FOR AVENUES TO HALT IF NOT REVERSE THE DANGEROUS DECLINE IN DOMESTIC PRODUCTION. A.N.S. DELIVERIES HAVE ACTUALLY INCREASED BY 200,000 BARRELS PER DAY DURING THE PAST YEAR. WITHOUT THIS SURGE FROM ALASKA, OUR LOSS OF PRODUCTION WOULD BE WELL OVER 1 MILLION BARRELS PER DAY.

SUMMARY

CONGRESS MUST FOCUS ITS EARLY ATTENTION ON OUR NATIONAL PROBLEM OF OIL AND GAS BEFORE WE HIT THE NEXT CRISIS, NOT AFTER. WE DO HAVE THE OPPORTUNITY TO REVIEW OPTIONS AND MAKE INTELLIGENT CHOICES, IF WE ACT SOON. THIS WINDOW OF OPPORTUNITY WILL NOT LAST LONG, HOWEVER.

REVIEWING THE HISTORY OF PAST EFFORTS TO ADDRESS OIL SUPPLY DISRUPTIONS SHOWS THAT CONGRESS WAITED AND ACTED TOO LATE, AND THAT THE EFFORTS THAT WERE IMPOSED ONLY FRUSTRATED OUR RECOVERY.

THIS TIME, WE HAVE THE OPPORTUNITY TO ACT BEFORE THE CRISIS AND IN A PRODUCTIVE MANNER. LET'S ACT TO PRESERVE THIS VITAL SOURCE OF ENERGY.

JUNE 11, 1987

TO: SENATOR DOLE

FROM: GREG SCHNACKE

SUBJECT: ETHANOL UPDATE

The attached charts are a fairly close chronological summary of Senate and House legislative activity on ethanol. Additionally, I have included a chart on non-legislative activity. Talking points are also attached.

John Gordley and I are working on a draft of a bill designed to extend the ethanol excise tax exemption from 1992 to 2000. We are trying to come up with a formula that would also systematically increase ethanol in gasoline over the same time period by percentage and share of use. This may not be feasible, but we should know more next week.

TALKING POINTS--ETHANOL

0 I am always amused to see old ideas presented in new packages. In recent weeks, I have been amazed at the new found interest in ethanol. Frankly, I was supporting ethanol when ethanol wasn't popular.

0 The interesting thing is, that ethanol, like aspirin, has been around for a long time. Today, the packaging is slicker and prettier, but a few of us, and a lot of you, have known for many years the benefits ethanol can generate.

0 I was first asked to look into the use of wheat for ethanol when I was in the House in the 1960's. That's been over 20 years ago. I have probably sponsored at least two dozen amendments or bills to provide tax breaks for ethanol and fight cheap ethanol imports.

0 Developing the ethanol industry is good for America. It will improve farm income by reducing our enormous grain surpluses. It will improve our air quality because it burns cleaner. It will make us less dependent on foreign oil imports and more energy secure here at home. And it will create jobs.

0 Let me emphasize a couple of points that ought to be of interest: The Denver Air Quality Control Commission will hold hearings next week on the use of oxygenated fuels for pollution abatement. I fully expect this to be adopted. That would be good news for many of us who have felt for a long time that ethanol can go a long way in our cities to meet the public health threat of air pollution. It's an important first step in the adoption of alternative fuels solutions to these problems.

0 Secondly, I repeat my call for an extension of the six cent excise tax exemption for ethanol blending to the year 2000. I was an original sponsor of this exemption and feel it continues to be needed if we are to ensure adequate development of this industry.

0 The heartland of this nation has always produced good things for this nation: our food supply, some energy products, solid values and a generous people. Once again, we must turn to this part of the country to provide answers to key problems that affect our nation.

ETHANOL RELATED LEGISLATION - 100TH CONGRESS-SENATE

Bill and Date Introduced	Sponsor	No. of Co-sponsors	Short Title Summary	Action
S.Res.92 1/29/87	Grassley	7	Expresses the sense of the Senate that the Senate reject the President's recommendation in the 1988 budget for repeal of the excise tax exemption for alcohol blending.	Ref. to Finance Comm. 1/29/87
S.Con.Res.36 3/19/87	Pressler	6	Expresses the sense of the Congress that the USDA, Departments of Transportation and Energy, and EPA should work together to establish the use of ethanol and methanol to reduce air pollution and surplus grain stocks and effectively utilize urban wastes. Same as H.Con.Res.36.	Ref. to Govt. Affairs Comm. 1/19/87
Sen. Chamber Action, Amendment 163	Dole, Grassley	n/a	Amends Wheat Acreage Diversion Program & Disaster Assistance; requires the Sec. of Agriculture to conduct a study on the cost effectiveness of ethanol.	Passed Senate 4/23/87
S.1080 4/23/87	Boschwitz	7	Requires that manufactures of new model cars after 1988 indicate on the window whether the vehicle can operate on gasahol.	Ref. to Commerce Comm 4/23/87
S.1232 5/19/87	Exon	n/a	Requires Sec. of Agriculture to make CCC surplus stocks (no less than 5 million nor more than 100 million bushels of grain) available to state entities for construction or expansion of fuel ethanol production facilities.	Ref. to Ag. Comm 5/19/87
S.Res.219 5/21/87	Daschle	6 (Dole)	Expresses the sense of the Senate that EPA should actively encourage the states to include in their State Implementation Plans the mandating of alcohol blends (including ethanol and methanol) as a pollution control strategy.	Ref. to Environment Comm. 5/21/87

ETHANOL RELATED LEGISLATION - 100TH CONGRESS - SENATE - (CON'T)

Bill and Date Introduced	Sponsor	No. of Co-sponsors	Short Title Summary	Action
S.1304 6/2/87	Simon Daschle	n/a	"Ethanol Motor Fuel Act of 1987". Requires 1/2 of all motor fuel in the United States to contain 10% ethanol by 1992. Requires Sec. of Energy to establish a program of ethanol development and use in motor fuels. Program would include public information on benefits of ethanol motor fuel use. Same as H.R. 2052.	Ref. to Energy Comm. 6/2/87

ETHANOL RELATED LEGISLATION - 100TH CONGRESS - HOUSE

Bill and Date Introduced	Sponsor	No. of Co-sponsors	Short Title Summary	Action
H.R.168 1/6/87	Jeffords (R-VT)	n/a	"Replacement Motor Fuels Act of 1987" Would replace 10% or more of U.S. gasoline by 1995 with alcohol and other alternative fuels derived from coal & renewable resources.	Ref. to Energy Comm. 1/6/87; to Energy & Power Sub. Comm. 1/22/87
H.R.3 1/6/87	Gephardt (D-MO)	208	"Trade and Int'l Economic Policy Reform Act of 1987". Establishes criteria for imported ethanol eligibility for tax exemption under Title VIII.	Passed House of Rep. 4/30/87
H.Res.53 1/21/87	Smith (D-NEB)	40	Expresses the sense of the House to reject the President's 1988 budget recommendation for repeal of the excise tax exemption for alcohol blending. Same as S.Res.92.	Ref. to Comm. on Ways and Means 1/21/87.
H.Con.Res.31 1/22/87	Smith (D-NEB)	11	Expresses the sense of Congress that USDA, Depts. of Energy & Transportation, and EPA work to establish the use of ethanol to reduce air pollution and surplus grain. Same as S.Con.Res.36.	Ref. to Ag. Comm. 2/5/87; to Comm. on Energy & Commerce 2/5/87.
H.Res.74 2/5/87	Durbin (R-IL)	15	Expresses the sense of the House that farmers should expand the market for corn; reject the President's 1988 budget proposal to repeal the excise tax exemption for alcohol and to reduce domestic sugar price supports.	Ref. to Comm. on Ag. 2/5/87; to Comm. on Ways and Means 2/5/87
H.R.2 1/6/87	Anderson (D-CA)	65	"Federal-Aid Highway Act of 1987", Extends 6 cent excise tax exemption for alcohol blends from 12/31/92 to 9/30/93.	Passed both Houses of Congress; signed into law 4/2/87; P.L.100-17

Bill and Date Introduced	Sponsor	No. of Co-sponsors	Short Title Summary	Action
H.R. 2052 4/9/87	Durbin (D-IL)	38	"Ethanol Motor Fuel Act of 1987". Requires 1/2 of all motor fuel sold in U.S. to contain 10% ethanol by 1992. Requires Secretary of Energy to establish a program for ethanol development and use in motor fuels. Program would include public information on benefits of ethanol motor fuel use. Same as S.1304	Ref. to Comm. on Energy & Commerce & Ways and Means 4/9/87.
H.R. 2031 4/29/87	Alexander (D-AR)	4	Amends the Clean Air Act to require certain percentages of ethanol and methanol content in gasoline; extends excise tax rate of ethanol and methanol fuel from 1992 to 2000; provides revenues to Highway Trust Fund shall not be reduced by reason of such tax benefits.	Ref. to Comm. on Energy & Commerce and Ways and Means 4/9/87.
H.R.2355 5/8/87	Scheuer (D-NY)	n/a	Lujan amendment to Environmental Research Authorization. Requires the Administrator of EPA to report to Congress w/in 180 days after enactment on the current status of research into the use of oxygenated fuels containing ethanol or methanol to reduce carbon monoxide and ozone emissions.	Passed House of Rep's. 6/4/87
H.R.2355 5/8/87	Scheuer (D-NY)	n/a	Richardson amendment to Environmental Research Authorization that directs the Administrator of EPA, within 90 days of the submission of the report on methanol/ ethanol oxygenated fuels to Congress, to develop a technology transfer program to provide this information and other appropriate technical assistance to States and localities to carry out research and demonstration projects.	Passed House of Rep's. 6/4/87

ETHANOL RELATED NON-LEGISLATIVE ACTIVITIES - 100TH CONGRESS

Item & Date	Sponsor	No. of Co-sponsors	Summary of Item	Status / Action
March 1-7 (approx) Ag. Dept. study	Bush	n/a	V.P. Bush persuaded Ag. Dept. to reconsider August 1986 study that included statement "Subsidized ethanol production is a very inefficient way to raise farm income."	Sen. Dole 4/23/87 amendment #163, (see Senate)
3/11/87 speech, Iowa Corngrowers	Dole	n/a	Called for extension of the 6 cent excise tax exemption for ethanol blending from 1992 to 2000.	
3/27/87 Letter to Lee Thomas EPA	Dole	n/a	Encouraging EPA to include ethanol in menu state and local authorities may use to combat air pollution.	Lee Thomas response 5/7/87
4/8/87 Letter to Lee Thomas EPA	Daschle	42 (Dole)	Encouraging EPA to include ethanol and methanol in menu state and local authorities may use to combat air pollution.	Lee Thomas response 5/7/87
4/10/87 Bush working group	Bush	n/a	Bush announcement as chairman of President's Task Force on Regulatory Relief of "working group" to assess air pollution reductions that result from the use of alternative fuels. Included are ethanol, methanol, and compressed natural gas.	Daschle letter to Bush. 6/8/87
5/7/87 Letter from EPA	Thomas	n/a	Administrator Lee Thomas response to 4/8/87 letter signed by 43 Senators. Stated that states will have to adopt a wide range of pollution controls, but that alternate fuels like methanol, compressed gas or oxygenated gas blends could play a significant role.	Daschle letter to Thomas 6/8/87. Dole co-signor.

ETHANOL RELATED NON-LEGISLATIVE ACTIVITIES - 100TH CONGRESS (CON'T)

Item and Date	Sponsor	No. of Co-sponsors	Summary of Item	Status / Action
5/31/87 Dear Collegue	Daschle	6 (Dole)	Invitation to co-sponsor S.Res.219, resolution to promote increased use of alcohol fuels including ethanol and methanol (see Senate).	Ref. to Env. Comm. 5/21/87
6/4/87 Letter to President	Daschle	8	To urge the President to raise the ethanol issue at the European Summit. Called for multinational umbrella council to be established by food exporting countries to review costs and benefits of national fuel ethanol programs re; world food surpluses.	
6/8/87 Letter to Lee Thomas EPA	Daschle	6 (Dole)	Similar to earlier letter. Pointed out language from Thomas' 5/7/87 response and encouraged Thomas to do all he can to make alternative fuels part of air pollution control mix.	
6/8/87 Letter to V.P. Bush	Daschle	6	Request that Bush "working group" assess the effect of the use of alcohol fuels on bringing the U.S. into attainment with ozone and carbon monoxide levels.	

ETHANOL RELATED NON-LEGISLATIVE ACTIVITIES - 100TH CONGRESS (CON'T)

Item & Date	Sponsor	No. of Co-sponsors	Summary of Item	Status/Action
Clean Air Act Deadline 12/31/87			Deadline for attainment of ambient air quality standards for ozone and carbon monoxide. Failure to meet deadline exposes area to potential sanctions.	Look for bills to soften impact on cities and states that fail to meet the deadline.
Colorado Air Quality Control Commission 6/18/87 - 6/19/87 Hearing			Public hearing to receive testimony on proposed oxygenated fuels program.	Decision this summer.
Alcohol Fuels Caucus 6/12/87	Durenberger Daschle		Expected revival in next couple of weeks of Caucus with first emphasis on Clean Air Act deadline, problems.	