9/4/84

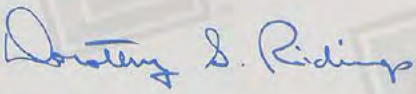
Agenda for Security

League of
Women Voters

A Message from the League of Women Voters

The League of Women Voters has a long, proud history of spotlighting issues during election campaigns and of helping voters get clear, honest answers to their questions. Since the 1984 election year is marked by heightened public concern about world events, we feel that it is especially important this year to focus attention on U.S. foreign and military policy. This is neither a new nor obscure topic; every year, Congress considers bills that set U.S. trade and weapons policies and affect U.S. relations with other countries. However, these bills rarely spark wide public discussion.

The crucial questions in this brochure are designed to give citizens and candidates alike an opportunity to address general philosophies and fresh approaches that will enhance national and global security. We hope that they will encourage public debate and that they will help citizens to make decisions about candidates and to hold newly-elected members of Congress accountable for their positions on these issues.



Dorothy S. Ridings
President, League of Women Voters

World Affairs at Large

1. What do you consider to be the most pressing international problems facing the United States over the next ten years?

Two major threats to U.S. national security are mentioned with increasing frequency in public opinion polls: the danger of nuclear war and the uncertain future of the American economy. These broad categories fuse together many troubling problems that have both national and global ramifications. Consider:

- Political tensions between the United States and the Soviet Union have strained arms control negotiations, as well as U.S. relations with Europe and developing countries;
- The United States and the Soviet Union are now deploying a new generation of more accurate and powerful nuclear weapons that reduce warning time, make the other side's land-based forces more vulnerable, and increase the pressure for launch-on-warning strategies;
- Proliferation of arms and conflicts in developing countries increase the risk of superpower confrontation;
- The combined debt of developing countries is nearly $800 billion—a situation that imperils the international banking system;
- Hunger, population growth and environmental pollution strain global resources;
- Nations appear more willing to resort to unilateral use of military force and to circumvent regional and international peace-keeping mechanisms;
- America's basic industries—autos, steel, textiles—face competition not only from Europe and Japan, but also from the newly industrialized nations of Asia and Latin America.

The President, members of Congress, and the public share responsibility for shaping the U.S. response to these challenges. We will—and should—disagree over the solutions. But we must understand the issues and share ideas in order to ensure that all options are explored and that the consequences of decisions are understood.

Defense Spending

2. What guidelines should be used to determine defense-spending levels?

Defense spending can be viewed from different and sometimes competing perspectives. Many view it solely within the context of implementing U.S. military commitments. Defined in this way, the defense budget is the mechanism by which military commitments are translated into dollars and cents. Current U.S. military commitments include not only defense of the homeland but also defense of Western Europe and Japan. Alliances, particularly the North Atlantic Treaty Organization (NATO), play a key role in these commitments. In addition, the United States has pledged to use force to protect access to oil supplies and to protect U.S. interests worldwide.

Of the total amount spent to implement these commitments, about 10 percent goes to strategic nuclear forces, 57 percent to general purpose forces (conventional forces and theater nuclear forces) and related activities, and 33 percent to general military support activities. Advocates of increased defense spending argue that the United States must increase the numbers and capabilities of U.S. military forces in response to growing Soviet military strength. Skeptics contend that U.S. military interests are too far flung and that the United States has sufficient capabilities to deter Soviet or other nations' military actions.

A second way of viewing defense spending is to think of it as one tool among many to promote U.S. foreign policy. Some would say, in this context, that a position of military preparedness is a prerequisite to an effective foreign policy. Others argue that the dollars being spent on the current military buildup are not an accurate reflection of U.S. interests in the world today. They point out that some of the most pressing challenges to global security defy military solution. Such issues include allocation of water, energy and other resources, scarcity of arable land, hunger, poverty, and protection of the global commons, including space and the seabed.

Still a third perspective is taken by those who argue that defense spending should be examined in light of its impact on other national needs and the trade-offs in the rest of the federal budget required to finance increased defense spending. Defense-related spending consumes about 32 percent of the federal budget. Social programs account for about 47 percent. For many, the issue is whether sufficient funds are being allocated to meet the basic human needs of the American populace, without which a strong military is seen as useless. Others, however, contend that without a strong military to defend our freedom, other concerns are secondary.

There are doubtless other perspectives on the defense budget, and those presented here are not mutually exclusive. Still, every discussion of the defense budget contains elements of these views. Being able to identify these frames of reference is a first step in making sense of the defense budget debate.

U.S.-Soviet Relations

3. What should our country aim for in relations with the Soviet Union, and what policies will achieve this goal?

U.S.-Soviet relations are rooted deep in the post-World-War-II policy of containment and continue to affect U.S. actions on everything from restrictions on high technology exports to deployment of cruise and Pershing II missiles in Europe. The centrality of the Soviet Union in U.S. foreign policy helps to explain why there is so much concern today about the two-sided defense buildup, suspended arms control negotiations and bitter rhetoric coming from leaders of both nations.

While most officials acknowledge the need for stable U.S.-Soviet relations in order to reduce the risk of direct conflict, there is a divergence of opinion regarding the best way to deal with the Soviet Union, especially on issues of arms control and defense spending.

The current Administration's approach is based on a belief that the United States should seek to contain the Soviet Union militarily and isolate it internationally in order to check its aggressive, expansionist aims. This approach assumes that Soviet military capabilities outstrip those of the United States and that the Soviets cannot be trusted to uphold treaty commitments. Such thinking has led to a policy of "peace through strength" and initiation of a nuclear weapons modernization program that is considered, among other things, to be a "bargaining chip" for arms control negotiations.

Critics of this approach do not deny that there are basic differences between East and West, but they argue that the United States must aim for a two-track relationship with the Soviet Union: defense *and* dialogue. They support new ways of managing the competitive elements of the U.S.-Soviet relationship while strengthening the cooperative aspects. The underlying assumption is that military parity exists between the United States and Soviet Union and that it is in the best interests of both nations to control the arms race and to prevent nuclear war. Accordingly, revitalizing suspended arms control negotiations should be a mutual priority and should not be linked to other aspects of U.S.-Soviet relations. This approach emphasizes economic cooperation, arms control and avoidance of third-party conflicts.

Strategic Weapons

4. What are the uses and limits of nuclear weapons in promoting U.S. national security, and what actions should Congress take regarding strategic weapons?

Since the end of World War II, the United States and the Soviet Union have each developed enormous stockpiles of nuclear weapons under the theory that the deployment of large numbers of nuclear weapons will dissuade or deter the other side from attacking. As a result, both nations now

possess strategic nuclear triads composed of land-based missiles (ICBMs), submarine-based missiles (SLBMs) and bombers. Both nations also are developing new, more accurate and sophisticated nuclear weapons. Current U.S. policy is guided by the belief that deterrence can best be achieved by making clear our ability to threaten Soviet military forces, particularly its land-based missiles.

However, the logic of deterrence is beginning to face questioning from several quarters. Some argue that in an age of nuclear stalemate, nuclear weapons are no longer useable and should be eliminated, either through arms control or through restraint in our choices of weapons systems. Others believe that deterrence remains a valid concept but argue that it can be achieved at much lower force levels. Still others believe that the United States should move beyond *offensive* weapons systems (weapons capable of attacking the Soviet Union) and develop *defensive* systems (ways of protecting the United States from attack, such as the "Star Wars" proposals for ballistic missile defense).

The House of Representatives' debate on the MX missile in early 1984 illustrates the uncertainty and lack of consensus about the role of nuclear weapons in promoting U.S. national security. While not rejecting the MX missile outright, the House voted to delay funds for the MX until April 1985, at which time funds will have to be approved by a joint resolution of both houses. Proponents of the MX argue that it is needed to match improvements in Soviet land-based missiles and serve as an arms control "bargaining chip." Opponents contend that the MX's vulnerability and increased accuracy will increase first-strike incentives and hinder prospects for arms control.

The MX is not the only controversial issue, and the debate is not over. Similar uncertainties about the uses and limits of nuclear weapons will continue to arise concerning the MX as well as in discussions about the Trident II submarine-launched missile, the Stealth and B-1 bombers, antisatellite weapons and ballistic missile defense.

Hotspots

5. What should be the U.S. policy in Central America?

The commitment of U.S. funds, troops or national prestige in Central America—or anywhere else in the world—evolves from a continuous grappling with four basic questions:

What are U.S. interests? Is our goal to influence the political direction of another country, to secure our access to oil, minerals and other markets, to promote certain values such as human rights? Which interests are vital and how do we rank them?

What are the sources of conflict? Does the situation result from external or indigenous factors? Is it fueled by outside money or weapons? Is it the culmination of many years of unmet demands for reform?

What are the solutions? Which policy tools will be most effective in achieving U.S. interests: negotiations, diplomatic pressure, economic aid, military advisors, materiel or troops—or are there no effective external solutions? Does U.S. involvement increase or lessen tensions? Are there other actors that should or should not play a role?

Who decides? The War Powers Act requires congressional approval of any commitment of U.S. combat troops abroad for more than 60 days. Does this hinder the President as Commander-in-Chief? On the other hand, Presidents can send troops abroad when no war is declared. Is the law strong enough? At what point should the public get involved?

There is no guarantee that answering these basic questions will result in consensus of purpose or strategy. For example, the National Bipartisan Commission on Central America, also called the Kissinger Commission, addressed the questions this way: "Central America is our near neighbor and a strategic crossroad of global significance." After identifying the long-festering social, economic and political problems in the region as being the root cause of the unrest, the commission concluded nevertheless that problems were

made worse by Cuban and Soviet-backed forces in Nicaragua. The commission argued that these activities must be neutralized—by negotiation if possible, by force if necessary.

While many agree with the goals outlined in the Kissinger Commission report, there is sharp disagreement over strategy. Critics argue that its cold-war focus is simplistic and that it relies too much on military solutions. Still others feel that this viewpoint gives too little emphasis to the "Contadora" peace process, an effort by Mexico, Colombia, Venezuela and Panama to mediate the conflicts and arrange a regional agreement.

Whether in Central America, the Middle East, Asia or elsewhere, U.S. policy is guided by an ongoing assessment of interests, perceptions, proposed solutions and decision-making processes.

U.S.-Third World

6. What are U.S. interests in developing countries, and what strategies will promote those interests?

U.S.-Third World links are undeniable:

- Developing nations represent the largest single market for U.S. goods, accounting for 38 percent of total exports in 1980;
- The United States depends on the developing world for more than half of the bauxite, tin and cobalt used by U.S. industry;
- Of 215 incidents in which U.S. military forces have been used since World War II, 185 were in developing countries.

But Third World problems are equally inescapable:

- While three-quarters of the world's people live in less-developed nations, they hold only one-fifth of the world's wealth;
- Increasing percentages of developing nations' export earnings go to service debt payments totaling nearly $800 billion worldwide;
- Roughly one billion people in the developing world lack at least one of the basic necessities—adequate food, access to safe water, shelter, education and health care.

For developing countries, foreign aid is both sign and substance of the industrialized nations' commitment to the development process. Taxpayers in the developed nations, however, view this "taking from the rich to give to the poor" differently, so funding has been uphill work even in the best of times. Many of the criticisms levelled at present U.S. programs reflect disillusionment with the competing mix of approaches used to deal with direct U.S. interests and urgent Third World needs.

For example, U.S. development policy has long been a mix of both *bilateral* (government to government) *assistance* and *multilateral aid*, dispersed through institutions such as the World Bank. After a decade of emphasis on bilateral channels to disperse U.S. aid, the proportion of total U.S. assistance provided through multilateral channels began to increase substantially during the 1970s. Proponents of multilateral aid maintain that it distributes funds more uniformly, allows larger contributions for bigger projects and avoids unnecessary and troublesome political strings. During the 1980s, U.S. funds have shifted again to emphasize bilateral economic and security assistance. Proponents argue that this change is necessary to promote specific U.S. interests and that bilateral aid can be controlled and targeted more efficiently to U.S. allies and friends.

Another area of dispute is *economic versus military assistance*. Those who favor economic aid to ensure basic human needs (food, health, education and housing) argue that it is in the long-term interest of the United States to deal with the economic, social and humanitarian problems that threaten stability in the developing nations. Others believe that U.S. security interests involve helping developing nations to resist leftist, often Soviet-backed, forces and to protect vital resources.

Debate revolves also around the *role of trade* as an engine of growth in developing nations. This strategy includes several options, including private investment, commercial lending, preferential tariff treatment and debt relief.

International Organizations

7. How should the United States assert its leadership in international organizations?

Another round in the ongoing debate over the role of international organizations in securing U.S. interests was touched off in December 1983 when President Reagan announced the U.S. intention to withdraw from membership in UNESCO unless substantive changes are made in the upcoming year. UNESCO is a UN specialized agency dedicated to stimulate progress in education, science, culture and communication. The specifics of the UNESCO controversy parallel the broader arguments over U.S. membership in the United Nations. In that debate, the sides are drawn between those who view the UN as inefficient, costly and antiwestern and those who argue that it is a vital arena for defusing explosive differences and resolving problems that transcend national controls.

UN critics and supporters both acknowledge that there have been major changes in the world system since the United Nations was established in 1945. Most noteworthy among these changes are: the polarization of international conflict between East and West; the tripling of the number of nation states from 51 original UN charter members to a current 158; and the emergence of a host of new "global" issues, including those affecting energy resources, economic development, monetary reform and environmental protection.

Where the parties to the debate over the UN split is on the U.S. response to these changes. Some recent proposals for managing U.S. affairs in this area include:

- Selectively participate and set limits or conditions on membership;
- Upgrade professional status of U.S. delegations and encourage U.S. initiatives at UN conferences and meetings;
- Increase U.S. reliance on existing international organizations and help create new ones to strengthen treaty compliance and peace-keeping mechanisms.

This range of options reflects different perceptions of what it means to assert "constructive" U.S. leadership in the United Nations. There are also diverging points of view regarding other aspects of international order, including whether or not the United States should sign the Law of the Sea Treaty, abide by all aspects of the General Agreement on Tariffs and Trade, or promote human rights through international law.

Trade

8. What policies will improve the U.S. trade deficit situation over the long term?

In 1983 the United States imported $69 billion more in goods than it exported to markets abroad, and this trade deficit is expected to double for 1984. The deficit situation has been linked to a variety of economic ailments: high interest rates, an overvalued dollar, unemployment and a decline in U.S. manufacturing industries. The symptoms, however, are more visible than the causes of the trade problem: budget deficits, foreign export subsidies and inefficient U.S. industries, to name a few. Central to the debate over cause and effect are proposals affecting U.S. trade policy, internal adjustment and the international monetary system.

Trade policy: Proponents of free or liberal trade argue that when goods and services can move freely among nations, each country will specialize in producing and trading the products in which it has a comparative advantage (i.e., goods and services that it makes or provides more efficiently). This will in turn bring lower prices and a check on inflation. The United States has played a leading role in the push for freer trade, primarily through multilateral negotiations under the General Agreement on Tariffs and Trade (GATT).

It is hard, however, for political leaders to keep the long-term picture in mind amidst cries for help from workers who believe they are losing their jobs to foreign labor and from domestic businesses that can't compete with foreign-made

products. Advocates of protectionist measures, such as quotas, voluntary export restraints and domestic content legislation, argue that trade has ceased to be a two-way street. They point out that other governments intervene with subsidies and price supports despite GATT restrictions and thereby distort the benefits of trade.

Internal adjustment: While the trade debate characterizes one set of choices, there are still others who see a need for a recovery that begins at home. Proponents in this case assert that American industry can become more competitive over the long term through increased investment in new product lines, retooling, and new management techniques, along with the development of new export markets and a strengthened service sector.

Monetary reform: Another way to approach the trade deficit issue is to focus on reform of the international monetary system. Economists attribute $25 billion of the U.S. trade deficit to the appreciation of the dollar against other currencies. The present system of flexible exchange rates should allow balance of payments deficits and surpluses to right themselves automatically over time. While international monetary agreements try to guard this natural process, governments do intervene to change the value of their currencies and protect export revenues. Some experts now argue that efforts must be made to set and enforce new international monetary rules that would enable the exchange rate system to adjust to currency over- or undervaluation without unnecessary government intervention.

What makes the trade deficit debate so difficult is the way all of these policy choices influence and are affected by each other. In fact, the success of any one is linked to that of the others.

Leadership

9. What responsibility does Congress have in the development of U.S. foreign and military policy? How should elected officials keep the public informed about and involved in making decisions on these issues of global and national security?

The U.S. Constitution establishes a system of checks and balances between Congress and the Executive Branch and between the House and Senate. In areas of foreign policy, it provides that the Congress shall declare war, appropriate funds and, in the case of the Senate, advise on high level appointments and ratify treaties. The President is designated Commander-in-Chief of the armed forces and given authority to negotiate treaties and implement U.S. policies abroad. Why, then, does Congress repeatedly criticize the President for wielding power? And, why do Presidents perenially complain about congressional interference in foreign policy?

The responsibilities outlined in the Constitution are a framework, not a blueprint. They leave a great deal of discretion to both branches of government, a situation that has resulted in many skirmishes over the years. Two symbols of the historic power struggle are illustrated in the increased use of Executive Agreements by recent Presidents in order to avoid the treaty ratification process, and enactment by Congress of the 1973 War Powers Act to establish procedures for deploying U.S. combat troops abroad.

Another source of ambiguity and pressures in the policy-making process is the public. To some extent, the role officials ascribe to the public reflects the kind of leadership they envision for themselves. Should elected officials look to their constitutents to provide basic philosophical values that shape policy or is the public more appropriate as a sounding board to gauge how already adopted policies are being received? Officials are always aware that the ultimate assessment of their policies and approach will be expressesd in the voting booth.

Rating the Candidates

Listed below are a series of foreign and military policy issues. Add your own and include others of special interest to your community. And then . . . pick a candidate.

Your Position	The Issues	Candidate Position Most Like Your Own
	World Affairs at Large	
	Defense Spending	
	U.S.-Soviet Relations	
	Strategic Weapons	
	Hotspots	
	U.S.-Third World	
	International Organizations	
	Trade	
	Leadership	

FOR MORE INFORMATION

- *Pick A Candidate*. League of Women Voters, 1730 M St., NW, Washington, DC 20036. (Pub. #259; 10/$1.50 minimum order)
- *Promoting Peace: Agenda for Change.* An analysis of developments and trends affecting world trade, international development, international organizations, arms control and military strategies, with special emphasis on the role of U.S. foreign and military policy. League of Women Voters. (Pub. #542, $1.25; 75¢ for members)
- *Foreign Policy Choices for Americans: A Nonpartisan Guide for Voters*. Foreign Policy Association, 205 Lexington Avenue, New York, NY 10016. 160 pp. $5.95.

CREDITS

This brochure is part of the League of Women Voters Education Fund project "Agenda for Security: Election '84." Special thanks is extended to the W. Alton Jones Foundation for financial support.

 Pub. #541, 85¢ (60¢ for members). Order from League of Women Voters, 1730 M Street, NW, Washington, DC 20036 202-429-1965.

ISBN 0-89959-357-7

LEAGUE OF WOMEN VOTERS

Agenda for Security

Making Democracy Work.

A Message From The League Of Women Voters

The League of Women Voters has a long, proud history of spotlighting issues during election campaigns and of helping voters get clear, honest answers to their questions. Due to a heightened public concern about the U.S. role in world affairs, the 1986 congressional elections will focus on such issues as the threats of nuclear war and terrorism, shrinking financial resources and the changing design of U.S. foreign policy. Since the Congress to be elected this fall will be considering bills that affect U.S. trade, military and foreign policies, the League has placed national security issues at the center of its 1986 congressional debates.

The questions in this brochure are designed to give citizens and candidates alike an opportunity to address general philosophies and fresh approaches that will enhance national and global security. We hope that this publication will encourage public debate, and that it will help citizens to make decisions between candidates and, after the elections, to hold newly elected members of Congress accountable for their positions on these issues.

Nancy M. Neuman
President, League of Women Voters

Defense Spending and the Budget

With the passage of the Balanced Budget and Emergency Deficit Control Act of 1985, better known as Gramm-Rudman-Hollings, budget considerations dominate any discussion on national security. By placing progressively lower ceilings on deficit spending in each fiscal year, Gramm-Rudman-Hollings seeks to balance the federal budget by 1991. The law sets the maximum deficit at $144 billion for fiscal year (FY) 1987, $108 billion for FY 1988, $72 billion for FY 1989, $36 billion for FY 1990 and $0 for 1991.

According to the act, if Congress and the President fail to agree on a budget within these limits, automatic spending cuts could be triggered. These cuts are to be equally divided between defense and nondefense programs, with a number of specific accounts (including Social Security and Medicaid) exempted.

In February 1986 a federal court found the method of triggering the automatic cuts unconstitutional, and the Supreme Court is expected to rule on an appeal in mid-1986. No matter what the Supreme Court decides, however, it is clear that future federal spending decisions for both defense and social programs will be cast in terms of the deficit. At issue is how deeply defense programs will be affected by deficit reduction.

During the 1980s, defense spending has reached unprecedented peacetime levels. Even including the 1986 cuts required by Gramm-Rudman-Hollings, defense budget authority has grown at an average annual rate of 6.8 percent above inflation since FY 1981. President Reagan's request for the 1987 defense budget amounts to a real increase of 8.2 percent over 1986 figures. But the Senate and the House have passed budget ceilings that cut the President's defense budget by $19 billion and $35 billion respectively.

In addition to the defense budget, U.S. security assistance (military aid and the "Economic Support Fund") to other countries rose by 130 percent between 1980 and 1986. The Reagan administration's proposal for FY 1987 would increase spending for these programs by 10 percent over the 1986 level, as opposed to a 5-percent increase for foreign development aid programs that offer assistance to the poorest of developing countries.

Despite Gramm-Rudman-Hollings, the Administration continues to support increased spending for both U.S. and foreign military programs. The issue is one of priorities. Does U.S. national security in the last half of the 1980s require that military spending remain at current levels or should these programs be trimmed in light of budget reductions in nonmilitary programs?

Congress will play a pivotal role in redefining national priorities to fit limited federal resources. The answers to the following questions should reveal candidates' overall philosophies on deficit reduction and defense spending.

Questions

1. The Gramm-Rudman-Hollings deficit reduction act forces Americans to consider priorities and make tough choices about which benefits and programs to cut. What actions do you see as necessary to reduce the federal deficit? raising taxes? slowing defense budget growth? curbing domestic spending?

2. Over the last five years, defense spending has increased by an average of 6.8 percent annually after inflation. Is this level of defense spending necessary? Can we continue to afford it in light of current budget realities?

3. Increases in defense spending over the past five years have focused on expensive weapons systems, such as the MX missile and Trident submarine, while funding for spare parts, repairs, training and transportation—that is, military "readiness"—has fallen as a percentage of defense spending. Given the need to make choices, would you support funding for new weapons systems or funding to strengthen military readiness?

4. More than two-thirds of President Reagan's proposed 1987 foreign aid budget is allocated to foreign security assistance, which includes military and economic aid to friendly governments. Less than one-third remains to assist in the development of poorer countries. Would you favor increasing or reducing development aid in relation to foreign security assistance?

Strategic Weapons Policy and Arms Control

At the summit meeting in November 1985, President Reagan and Soviet General-Secretary Gorbachev agreed on the goal of 50-percent reductions in strategic offensive weapons (land- and sea-based missiles and bombers). But progress is hindered by disagreements over what systems would be included in those cuts, as well as a dispute over the Strategic Defense Initiative (SDI), President Reagan's missile defense plan.

The Soviets insist on linking progress on strategic force reductions to a ban on SDI beyond the research phase. President Reagan maintains that SDI cannot be bargained away. This issue will undoubtedly be raised again at the next superpower summit, and the future of arms control, as well as the superpower relationship, will be shaped by the willingness of both sides to compromise.

President Reagan maintains that SDI is a reliable means of defending the United States from a Soviet nuclear attack. Hypothetically, both land- and space-based weapons would be used to disarm some hostile missiles shortly after launching, some warheads would be destroyed in space and others would be destroyed during their reentry into the atmosphere.

To this end, various new technologies are being explored, but their feasibility remains in question. Scientists who support SDI generally contend that the necessary technology is within reach. But a large portion of the scientific community considers many components of SDI to be unworkable and believes the whole system could be at best only partially effective.

Whether the United States can afford SDI is another hotly contested point. Even the more conservative estimates describe SDI as a long-term venture, with a fully deployed system costing as much as a trillion dollars. Congress has allocated more than $4 billion for SDI to date, and President Reagan has asked for an additional $4.8 billion for FY 1987 ($5.4 billion if Department of Energy nuclear weapons programs are included). Critics contend that spending for SDI cannot be justified in an era of budget cutting in both defense and nondefense programs. Supporters argue that SDI offers the hope of fundamentally reducing the risk of nuclear conflict and thus is worth the expense.

A second arms control issue is whether the United States should continue to abide by the provisions of the unratified 1979 SALT II agreement. In SALT II the United States and the Soviet Union agreed to numerical limits on strategic offensive forces and placed some restrictions on the development of new weapons. Although the treaty was never ratified by the U.S. Senate, successive U.S. Presidents have agreed to abide by its terms as long as the Soviets do. But in May 1986

President Reagan—citing flaws in the treaty, Soviet violations and the fact that the treaty was never ratified—announced that the United States will no longer be bound by SALT II in making future decisions about deploying strategic weapons.

Another area of contention between the United States and the Soviet Union is nuclear weapons testing. The USSR initiated and then extended a moratorium on nuclear weapons testing and has invited the United States to respond. The United States has so far refused, citing inadequacies in verification techniques and a need to continue U.S. weapons-testing programs to compete with the Soviets.

These are all issues of contention to be discussed at the ongoing Geneva arms control negotiations and the next superpower summit. Congress plays an important role in setting the course of U.S. arms control policy through funding decisions on major weapons systems and by the support or opposition it shows to executive branch arms control initiatives.

Questions:

1. The Reagan administration says that the Strategic Defense Initiative (SDI) promises a reliable means of defense and has asked Congress for $5.4 billion for SDI in the FY 1987 budget. On the other hand, critics warn that SDI can, at best, be only partially effective against long-range missiles and offers no protection against submarine - and air-based nuclear systems. In light of budget constraints and questions about SDI's effectiveness, how would you vote on funding for SDI?

2. The United States and the Soviet Union have agreed on the goal of reducing strategic offensive forces by 50 percent. However, the Soviets insist on linking arms reductions to a ban on the Strategic Defense Initiative, while President Reagan maintains his commitment to SDI. Should SDI be negotiable in order to achieve significant reductions in offensive nuclear weapons?

3. The Reagan administration has accused the Soviets of significant arms control violations, while others contend that the problem is not so serious. Do you believe Soviet cheating on arms control is a serious problem and, if so, how should the U.S. government respond?

4. President Reagan announced earlier this year that the United States will no longer be bound by SALT II in making decisions about deploying strategic weapons. How important is SALT II to the future of arms control? Would you support SALT II ratification?

International Conflict

Given the vast number of governments, cultures and ideologies competing for limited global resources, conflict is inevitable in the international arena. The United States uses a variety of tools to respond to some of the clashes occurring around the globe. For example, during the 1980s the United States has imposed limited economic sanctions against the South African government in an effort to end the apartheid system of institutionalized racism, engaged in arms control talks with the Soviet Union and employed military forces in Grenada.

Much of the Reagan administration's approach to international conflict has been governed by a desire to reassert American power and prestige. This goal is embodied in the so-called "Reagan Doctrine," which pledges support for Third World, anticommunist insurgencies. In an effort to promote democracy and counter Soviet adventurism in the developing world the Administration offers "freedom fighters" resources to fight against what the Administration believes to be Soviet-imposed regimes. To date, this policy has been applied in the cases of the Contra rebels in Nicaragua, the Afghanistan resistance, UNITA forces in Angola and noncommunist rebels in Kampuchea.

Critics of this approach argue that the world is not simplistically divided between communist and democratic forces and that the battle between them is not at the heart of Third World conflict. Skeptics also contend that the insurgents being supported under this doctrine are not committed democrats, and there is little reason to believe that governments established by their leadership would have popular support. Critics also point to the Administration's support of authoritarian governments that are similarly opposed by democratic movements—in Chile, South Korea and South Africa, for instance.

The desire to protect America's position and prestige in the world also influences the U.S. response to terrorism. In the Administration's view, the best way to deal with terrorism is to demonstrate the "cost" of such activity, whether through military attack or isolation from the family of nations, and to make clear that the United States is willing to retaliate against government-sponsored terrorism.

However, some analysts see such methods as counterproductive since the behind-the-scenes, independent nature of terrorist activities makes an effective military response extremely difficult. Furthermore, critics argue, demonstrations of power simply confirm terrorists' self-image as martyrs. In this view, U.S. policy should address the fundamental social and political problems at the heart of terrorist demands.

Through funding legislation and resolutions setting the direction of U.S. foreign policy, members of Congress play an important part in

determining what roles the United States will play in resolving international conflicts. The following questions address specific issues that illustrate how candidates would approach international conflicts once in office.

Questions

1. In September 1985 President Reagan imposed limited economic sanctions against the South African government as a response to the apartheid system of racism. Critics suggest that stronger action is needed. Should the United States pressure the South African government to reform its system and, if so, what actions would be effective?

2. The Reagan administration maintains that one of its foreign policy goals is to support the forces of democracy through anticommunist "freedom fighters." Do you believe that the United States should support democratic movements struggling against authoritarian regimes, whether communist or noncommunist?

3. Critics of President Reagan's foreign policy point to what they see as a reliance on military rather than political solutions to international conflict. An example often cited is Administration support for the Nicaraguan Contras and its lack of enthusiasm for the Contadora peace process, a regional effort to settle problems by diplomatic means. Would you support the Contadora plan or any similar agreement that calls for a diminished role for both the United States and the Soviet Union?

4. The question of how to respond to terrorism has become an urgent priority for American lawmakers. Some strategists believe it is in the United States' interest to demonstrate resolve with force, as was done in April 1986 with the air strikes on Libya. Others fear that such methods could escalate the violence. What kind of response do you believe will be most effective against terrorism in the long run?

Trade

International trade agreements must be adaptable to the needs of diverse national economies and yet be stable enough to provide consistent standards of conduct for trading partners. Throughout the postwar era, there has been a consensus in the United States that the fairest way to reconcile these ends is through a policy of free trade. To promote a liberalized world trade system, the United States helped to establish the General Agreements on Tariff and Trade (GATT) in 1948.

GATT functions as a multilateral agency through which its member nations negotiate reciprocal reductions in trade barriers, develop agreements on new trade issues (such as technology and banking), settle trade-related disputes and establish rules and standards. A new round of GATT negotiations is scheduled to begin in September 1986.

While GATT has been effective in lowering trade barriers in many countries, it has come under a barrage of criticism lately for what is seen as a failure to deal with the current world trade imbalance. Since 1970, a world recession and oil price increases have strained the global economy. These events have led to a massive trade deficit for the United States, a debt crisis for many developing nations (restricting their ability to import U.S. goods), and uncontrolled international exchange rates. In 1983 the U.S. trade deficit was $60 billion; by 1985 it had jumped to $148 billion.

One reaction to the expanding U.S. trade deficit has been increasing domestic pressures to restrict foreign imports. Advocates of "protectionism" believe that the trade deficit is the result of unfair trade practices, such as export subsidies, by other governments. Foreign imports, they say, rob Americans of jobs and threaten U.S. national security by undermining basic industries such as machine tool builders and steel. It also is argued that for U.S. industries to remain competitive, Congress should enact import restrictions and the United States should tailor its trade policies to specific nations or markets.

Opponents of protectionism charge that a prime cause of the U.S. trade deficit is the U.S. federal budget deficit, which has driven up interest rates and the value of the dollar, making U.S. goods more expensive than their foreign competition. From this perspective, one solution lies in making U.S. exports more competitive by reducing the budget deficit and bringing down the value of the dollar.

Advocates of free trade contend that import restrictions meant to protect American jobs actually put jobs in jeopardy as other countries retaliate by restricting U.S. goods. They also believe that import restrictions unwisely protect outmoded, uncompetitive industries.

Since international trade issues affect local jobs and businesses as

well as the national economy, candidates' views on these issues can have an impact at many levels.

Questions:

1. The U.S. trade deficit, which reached $148 billion in 1985, is frequently blamed for a loss of American jobs, the undercutting of American industry and a weakening of U.S. national security. One way to attack this problem is to restrict imports. Another approach is to reduce the federal deficit and lower the value of the dollar. Should Congress enact legislation to protect U.S. industries or concentrate on reducing the budget deficit?

2. Arguments have been made by the steel, auto and machine tool industries that U.S. security depends on the survival of these industries and their ability to respond in times of war. Is this a valid concern and, if so, how can Congress ensure the health of these industries?

3. GATT, a multinational forum to promote liberalized international trade, has scheduled a new round of negotiations to begin in September 1986. As a member of Congress, would you support attempts to strengthen the U.S. role as a leader in international trade through the GATT, or do you believe U.S. interests are better served through bilateral negotiations?

4. Many U.S. trading partners in the developing world are experiencing a debt crisis; in other words, they are unable to repay loans from American banks with foreign currency earned from exports. Given a choice of protecting jobs in (your state) that are threatened by foreign imports and ensuring the solvency of banks in (your state) that have developing country loans, which do you think is more important?

RATING THE CANDIDATES

Listed below are a series of foreign and military policy issues. Add your own and include those of special interest to your community. Rate how each candidate's positions compare to your own with a (+) for positions you agree with, a (−) for positions you oppose and a 0 when the candidate evades the question.

The Issues	**Candidate:** A	B	C
Deficit Reduction			
Defense spending			
Foreign aid			
Arms control policy			
Strategic Defense Initiative (SDI)			
Nuclear weapons testing			
SALT II adherence			
Sanctions against South Africa			
Contra aid			
U.S. response to terrorism			
Trade policy			

Credits:

This brochure is part of the League of Women Voters Education Fund project "Agenda for Security: Election '86." Funding for the project is provided by the W. Alton Jones Foundation, Inc. of Charlottesville, Virginia and the John D. and Catherine T. MacArthur Foundation.

Researched and written by Sherry Rockey, Senior Program Analyst, LWVEF.

Order from:
League of Women Voters Education Fund, 1730 M Street, NW, Washington, DC 20036, (202) 429-1965. Pub. #817, $1.00 (75¢ for members).

ISBN 0-89959-370-4

FAMILY VIOLENCE

—

THE BATTERED WOMAN

League of Women Voters of Texas Education Fund

FAMILY VIOLENCE

—

THE BATTERED WOMAN

League of Women Voters of Texas Education Fund

Researched and written by
Elaine Basham, Director of Domestic Violence Program, Rape Crisis-Domestic Violence Center of Amarillo, Texas
Pamela House, Civil Division Chief, Potter County Attorney's Office
Linda Nickum, A.C.S.W., Professor of Social Work, West Texas State University, Canyon, Texas

In conjuction with
Franci Smith, Director, Women Under Texas Law, League of Women Voters of Texas
Susan Coleman, Attorney at Law

Edited by Diana Clark

1212 Guadalupe #109, Austin, Texas 78701 August 1984

ISBN 0-915757-07-9 $2.50

Contents

Introduction

The phrase "family violence" sounds like a contradiction in terms. "Family" and "violence" are thought of as mutually exclusive terms, since the family home historically has been a place of warmth, love, and security. Home and family are considered the nucleus of society, idealized as safe—secure from the dangers of the outside world. In reality, there are few places as violent as home. Research has shown that, with the exception of the military and the police, the family is the most violent social group in the nation. A person is more likely to be hit, beaten, or killed at home than anywhere else, and the assailant is more likely to be a family member than a stranger. As a society, we give a great deal of attention to public violence and feel vulnerable outside our own homes. The truth is, statistically we are safer on the street. An inescapable fact of life is that extraordinary numbers of people are victimized at home by those closest to them.

Various terms are used to describe this American tragedy: family violence or domestic violence, and more specifically, marital or spouse abuse, wife battering, child abuse, and abuse of the elderly. These terms pinpoint particular kinds of violence with the family. While all are critical issues, this publication will focus on violence to the woman in the home.

Precise definitions of what is meant by "abuse" vary among researchers and experts in the field because the phenomenon covers a broad spectrum of violent acts. Generally speaking, statistics and research focus on overt, physically destructive acts of violence. These range from pushing, slapping, hitting, and kicking through punching, choking, throwing down stairs, hitting with handy household objects, and using weapons. Besides knives and guns, such things as baseball bats, hot ashes, bleach, acid, golf clubs, bricks, and pool cues have been used in reported attacks. Besides physical abuse, psychological and sexual abuse are often involved. Verbal accusations, throwing food, breaking furniture, extreme suspicion or jealousy, and terrorism with threats of death to the wife or children are not uncommon. Sex on demand, rape, and degrading or unusual sexual acts are frequently a part of the violent behavior.

A major difficulty in quantifying family violence is the lack of concrete statistical data. Figures for various kinds of family violence are often approximations, since so many victims for reasons of fear, shame, or the indifference of authorities do not report the abuse. In the United States statistics on family violence have only recently begun to be collected in a systematic way. Using a combination of official reports and random sam-

ple surveys, it can be seen that — even allowing for a degree of inexactness or conservative estimates — the numbers are chilling.

Nationally, the FBI estimates that one out of two women will be physically abused at some point in her life by a man with whom she lives. The FBI describes wife beating as "the most under-reported of all crimes."

- Nearly six million wives (legal and commonlaw) are abused by their husbands in any one year.
- Some 2,000 to 4,000 women are beaten to death annually.
- Battery (the legal term for beating) is the single major cause of injury to women, more significant than auto accidents, rapes, or muggings.
- 40% of women killed are murdered by their partners, and ten percent of men by theirs (many of the women acting in self-defense).

According to a comprehensive study funded by the National Institute of Mental Health, a minimum of 14% of American women who have ever been married have been raped by a husband or ex-husband—or one out of every seven women.

The number of child abuse cases is conservatively estimated at well over one million a year, with experts stating that this figure represents only 10% to 25% of the actual number of cases.

About 5% of dependent elderly Americans are estimated to be physically *abused* within their own homes by relatives, usually their children or grandchildren. *Neglect* of the elderly is even more widespread.

• In Texas conservative estimates are that over 87,000 women are subject to abuse by a husband on a weekly basis.

• 70% of all hospital emergency room assault cases are women; 20% of all hospital emergency room visits by women are attributed to wife beating.

• 80% of Texas spouse abuse cases go unreported because of fear of reprisal.

These figures focus on the victims of family violence. Yet the effects of this level of violence spread far wider than the pain and suffering inflicted on the immediate victims. The reality is that violence begets violence. Research unequivocally indicates that much violent behavior is indeed learned within the family structure and is perpetuated from generation to generation. Children who witness violence between parents are more likely, as adults, to engage in violence with their own partners. Wife batterers are often following the example of their fathers, just as adults who abuse children are more likely to have experienced abuse themselves as children.

Outside the family unit the effects of family violence are also clear. Studies of prison populations show that close to 90% of inmates grew up in violent homes. For police, 40% of injuries and 20% of all deaths on duty are the result of becoming involved in family violence. The costs—both financial

and psychic—are enormous. Police and court time needed for family violence cases, hospital costs, and Medicaid to patch up the abused victims, lost productivity and sick days taken, and special education and psychological therapy for both victims and abusers are just a few of those costs. These are borne, to a considerable extent, by all of us.

What follows focuses on one aspect of family violence—the battered woman. But it is important to remember that the other components, i.e., abuse of children and of the elderly may occur simultaneously within the same family.

1 THE ISSUE

Women as Victims

One issue that must be clarified first has to do with the question, "Who is the victim of spouse abuse?" While studies indicate that violent acts are committed by *both* husbands and wives, the nature of violent marital (and extra-marital) relationships must be examined in more than one way. As Richard Gelles, a researcher on family violence, says:

> Beyond the measurable questions of who does what to whom, how often, and with what consequences, the real issue is the social, political, and legal context of the violence. This becomes a question of victimization. When men hit women and women hit men, the real victims are almost certainly going to be women.

Undoubtedly the extent of violent acts points up what can be the violent nature of the total family. Yet upon examining the social context of marital violence, one finds that women are far more seriously harmed than are men. First, the economic, social, and legal constraints on women serve to bind them to a violent marriage more often than men. The subordinate position of women in our culture make them more vulnerable to violence and victimization. Second, the physical differences between women and men mean that women are hurt more seriously by violence and that men generally are able to defend themselves when attacked by a woman. One in four women who are victims of violence is hit when pregnant. And third, studies indicate that a woman's violent acts are more likely to be "protective" to ward off the more serious damage caused by a man. For example, although spouse murder is committed by both husbands and wives, wives are seven times more likely to murder their husbands in *self-defense*.

This is not to say that those husbands who are seriously abused by wives are not to be given consideration and attention. But the consensus of experts in the field of family violence is that women *are* the majority of victims of spouse abuse and that beyond dispute, the problem is primarily one of wife battering.

A Historical Perspective

The historical record provides examples of wife abuse dating back to Roman times. Evidence of this kind of behavior and the acceptance of it have been recorded throughout human history. Our word "family" is derived from the Latin word "familia," meaning the total number of wives, children, and slaves belonging to one man. According to Roman law, a man had the right of life and death over all persons in his family. Wives, like slaves, could be bought, sold, and chastised. In Western cultures, a long history exists of laws that explicitly subordinated women in marriages.

> To be a wife meant becoming the property of a husband, taking a secondary position in a marital hierarchy of position and worth, being legally and morally bound to obey the will and wishes of one's husband, and thus . . . . . physical chastisement or murder.

Under English common law, a husband had the legal right to use force against his wife to gain her obedience. Gradually laws governing marriage began to place some restrictions on the methods and weapons that could legally be used against wives as punishment, although wife beating was still considered quite acceptable. Welsh common law limited the beatings by a husband to "a maximum of three strokes with a rod the length of his forearm and the thickness of his middle finger." English common law regulating wife beating developed the "rule of thumb," which restricted a husband's method of beating to "a whip or rattan no bigger than his thumb."

Wife beating became a part of American tradition when most of the original colonies adopted much of English law. In 1824 a Mississippi court held that "moderate chastisement . . . would be allowed to enforce the salutory restraint of domestic discipline." Fifty years later, in 1874, the Supreme Court of North Carolina rescinded a husband's right to chastise his wife " under any circumstances," but went on with this chilling statement:

> If no permanent injury has been inflicted, nor malice, cruelty, nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forgive and forget.

Such legal reasoning underscored the cultural value of the sanctity of the home beyond intervention by the court. It was not until 1895 that the Married Women's Property Act made conviction for assault sufficient grounds for divorce; even then, such convictions were almost impossible to obtain since the standard of proof was so high.

Slowly the legal concept of the wife as property has changed in the 20th century. But rescinding laws legalizing abuse of women and giving abused wives legal protection has not ended the problem.

Present Day Attitudes

In spite of the fact that by 1980 laws in most states permitted wives to bring criminal charges against husbands for physical assault, the process of filing charges and bringing a case to trial remains so difficult that there is a wide gap between the number of incidents and actual cases taken to trial. It is even more difficult to obtain convictions. (See Part 3)

Although men no longer legally own women, many continue to believe and behave as if they do. Laws may improve, but attitudes and traditions may take decades to change. Many marriage vows still include only the woman's promise to "obey." Husbands are considered "heads of households," even "kings of their own castles." Traditional values, particularly among certain religious groups, still stress the husband's needs and wishes as primary and the wife's role as secondary. A husband's higher status is upheld by a division of labor both within and outside the home, making women economically dependent on men. As author Susan Schechter says, male dominance "is further reinforced by institutions—courts, police, hospitals, and social service agencies—that either explicitly or implicitly support a husband's right to control his wife." And so our heritage of law and tradition continues to uphold a system of inequality between men and women, one reflection of which is the acceptance of violence within marriage.

Despite the reluctance of many to address the problem realistically, there is a growing public awareness of wife battering. But there remain numerous misconceptions about not only the nature of wife abuse, but also about who is typically involved. Commonly held stereotypes characterize victims and/or abusers as being either mentally ill, alcoholic, or of lower socioeconomic class.

All studies show family violence cutting across every social, educational and economic level, from the poor to the very wealthy; it occurs among all age groups, from teenage couples to senior citizens, and it happens everywhere—on farms, in suburbia, in cities. While virtually no social group is immune to family violence, some families are more likely to be violent than others.

Statistics gathered nationwide indicate that the highest rates of violence are found among the following: families living in large urban areas, minority racial groups, families with low incomes, families without religious affiliations, and families where the husband is unemployed. But researchers stress that these findings must be interpreted with caution since each category requires a more thorough explanation than can be provided here. Higher rates of violence among racial minority groups, for example, are probably due more to economic than to racial factors. It may be that abused wives with higher income levels see a private physician rather than emergency room doctors. There is no requirement to report spouse abuse as there is child abuse. Overall, the greater amounts of stress that couples experience, the higher the likelihood of violence.

Of course all kinds of people experience stress and not all stressful mar-

riages include violence. Another factor involves the kind of marital relationship a couple has—higher levels of wife abuse are found among families where traditional roles are closely followed. Families where power is invested solely in the husband—where both husband and wife believe the husband to be the "boss," and where aggressiveness is accepted as part of the masculine role—are families that are more likely to experience violence during times of stress. This fact contradicts the view of some who believe that wife beating occurs because of the woman's failure to devote herself to traditional domestic roles. (One well-known opponent of the Equal Rights Amendment commented,"no wonder some women get beaten, those women's libbers are irritating as hell.") In fact, the *lowest* rates of family violence are found among couples who share decision-making and have more egalitarian marriage relationships.

The Batterer

In terms of the individuals involved, researchers are better able to profile the typical abuser than the typical victim. At one time psychologists and sociologists attempted to profile the woman's personality in order to explain wife beating. More recently, this approach has come to be seen as a form of "victim blaming." Battered women generally do not share characteristics, qualities, or behaviors that can explain wife beating, thus the focus of research has shifted to the abuser himself. Studies show that the average abusive husband is likely to believe in his right to physically discipline or punish his wife and children. (As one batterer put it, "It's my goddamned house and I'll hit whoever I want.") Such men are frequently unable to express their emotions, are reluctant to talk over problems, and are unable to deal with stress other than by outbursts of violence. Insecurity, which produces extremes of possessiveness and jealousy, is commonly found among violent husbands.

Alcohol or drug use can act as a catalyst in making a violent episode more likely. Many researchers cite the unrealistic standards set by the traditional ideal of masculinity. The problem seems to be:

> . . . not maleness, but the traditional male role, which requires men to be stoic. It requires men to not need intimacy, to be in control, to be the "big wheel," and when there is a problem, to "give 'em hell." The problem is that nine out of ten men fail at that list, at least in their own judgment.

Societal-Cultural Perspective

These research findings and interpretations point up a central theme that many experts emphasize: individual personality disorders are *not* the cause of family violence. Rather, the issues of sex roles and cultural

norms are the contributing factors. Sociologist Murray Strauss states, "The cultural norms and values permitting and sometimes encouraging husband-to-wife violence reflect the hierarchical and male dominant type of society that characterizes the Western world." He points out that beliefs in male superiority which sanction men's control over their families and the subordination of women within marriage, especially the sex-based division of labor that keeps wives financially dependent upon their husbands, plays an important role in family violence. To put it simply, sociologist Richard Gelles says, "A man beats up his wife because he can."

Clearly then it is important to view family violence from more than one perspective. To see it as a problem only of "other people"—the poor, the drug abusers, the mentally deranged—is to deny both historical roots of wife beating and still-present social supports for male violence. It is also to deny the victims of violence a true understanding of their plight.

Sociologists who have examined domestic violence from a social and cultural perspective generally point to three aspects of the American family that seem to underlie violence: intimacy, privacy, and socialization. First, the *intimacy* shared by family members can set the stage for emotional reactions that are far stronger among them than among friends, acquaintances, or colleagues. These family relationships are invested with much more emotional intensity when conflicts arise within the family. As Bassis, Gelles, and Levine point out, a man may be amused at a female acquaintance who has a bit too much to drink at a party, but the same behavior in his wife is likely to elicit stronger and probably more negative reactions. Because family members are tied together by intense bonds of intimacy, the potential for extreme emotional reactions to conflicts is higher.

Second, the *privacy* factor often creates the opportunity for an abuser to act out his anger with little possibility of outsiders knowing about the violence or interceding on the victim's behalf. Even the law speaks to the private nature of the home, and many law enforcement officials still maintain that family quarrels are different from other types of assaults. This "hands off" policy often means that there are few outside restraints on family violence. The attitude that what goes on within the confines of a family home is "private business" can result in not only the unwillingness of outsiders to become involved but more important, the victim's shame and reluctance to reveal the violence to anyone.

The third factor—*socialization*— refers to the process by which people learn that violence can be a legitimate means to express emotions within the family. The acceptance of marital violence, whether as a victim or an abuser, very often has roots in early childhood, where children learn that violence between parents is how married people behave.

To Stay or to Leave

One question that invariably arises in discussions of domestic violence is "why doesn't she just leave?" Many who have not experienced violence at home say they would never stay in a violent marriage; some go so far as to say that a woman must enjoy it to endure it.The fact is that many

do leave. Shelters for abused women are filled to capacity, with long waiting lists. (A shelter is a temporary or emergency residence for women and their children. Residence is usually for no more than 30 days.) For those who stay, their reasons reflect the cultural expectations associated with the institution of marriage as well as the pragmatic realities of women's status in American society.

There are no reliable statistics as to how many battered women stay in the marriage and how many ultimately leave. What is clear from the research is that while many abused women stay married to a violent spouse, a high percentage leave the relationship temporarily from time to time. Often there is a pattern of staying, leaving, and returning that reflects a complex set of personal, social, and economic factors that motivate battered wives.

What are some of these factors? Many of the attitudes that led women to accept abuse down through history are still with us. While circumstances and law *have* changed, many women still face social and legal barriers that reinforce wives' secondary status in relation to husbands.

By and large, women have grown up in a society that sees a woman's primary role as wife and mother. Thus a wife is conditioned to believe a good wife *makes* a happy marriage. Many abused women blame *themselves* for the state of their marriage, in large part because they have been socialized to believe that they are more responsible than men for the quality of the marriage relationship. A woman conditioned to a traditional female role often has learned to place heavy emphasis on the husband as the primary source of approval and reward, to see her sense of self-worth as reflected by her husband's behavior.

When anyone, from a traditional background or not, is subjected to verbal or physical abuse, her self-confidence is often shattered. If violence continues, she may experience increasing amounts of guilt and shame over what she sees as her inability to succeed at the one role she's been brought up to consider the most important. As one victim put it, "If your husband beats you, then your marriage is a failure and *you're* a failure. It's so horribly opposite of what it's supposed to be."

This loss of self-esteem can produce a kind of paralysis of will, making it very difficult for her to believe in her ability to accomplish anything on her own. One victim states, "After a few years of a husband telling you he beats you because you are so ugly, stupid, and incompetent, you are so psychologically destroyed that you believe it." The extent to which a wife believes the violence to be her responsibility is often the extent to which she will stay in a violent marriage and keep trying to improve the situation. In some cases, when the wife actually does leave, it is because the husband's excuses for beating her become so irrational that she stops believing that she is at fault.

Quite often there is hope that a husband will change. The typical pattern occurs in a cycle: build-up of tension, a violent rampage, followed by a period of remorse and apologies. During this third phase, many husbands beg forgiveness, promise the violence will never happen again, and promise

to get help. Many women, especially those who adhere to the values of the sanctity and permanence of marriage, who feel guilt or fear at the thought of a "broken home," want desperately to believe that their lives really will improve. Even though the vast majority of abusers repeat their behavior again and again (the violence also tends to escalate in severity), many victims do not begin to realize this until they have lived in a violent marriage for some time. The period when the husband is contrite and promising to reform is usually when the problem is revealed to counselors, ministers, friends, police, or family. Often the wife is urged to "give him one more chance." The ambivalence that many women feel is especially strong during this time—ambivalence not toward violence, but toward the myriad aspects of the marriage and the social expectations placed on them as wives.

For many women, the motivation to stay is outright fear, knowing that whatever they do, they probably cannot escape another explosion. Frequently, leaving once has already had violent consequences. Far too many cases record a husband tracking down a wife and dragging her back home or even murdering her. For the isolated insecure woman who feels too paralyzed to change her situation, fear of reprisal keeps her immobilized. Many husbands who batter are extremely possessive and jealous. Wives of such men are aware that leaving could make their situation far worse; many are afraid of actually being killed. Especially devastating are the threats to harm or kill the children. Until recently there has been little or no expectation of help from the police, courts, social agencies, or family members. Because the scope of the problem has been hidden for so long, assistance from outside agencies is still relatively unavailable. (see Part 3)

These psychological factors combine and interact with a second set of factors that prevent some women from leaving a violent home—the external circumstances and everyday realities of life. The degree to which the woman is financially dependent upon her husband can be the ultimate determinant of whether she leaves or stays. Women at any socio-economic level can be economically dependent. If she has no marketable skills, no job, no access to money or transportation, and children to support, she has few alternatives to staying in a violent marriage. Simply bridging the gap between the day she leaves to the day she finds a job can be overwhelming. Long-term unfamiliarity with day-to-day skills of independent living (often a result of an abusive husband who forbids a wife to attend school or to work) can cripple any woman, regardless of socio-economic class, when it comes to formulating a plan to leave. When this lack of practical knowledge interacts with the emotional devastation that comes from abuse, such circumstances can paralyze many victims from even considering a way out.

Closely related to economic deprivation is often the factor of isolation. Some abusive husbands actively work at keeping their spouses from normal social interaction, forbidding them to leave the house without them, or not allowing visitors. (One husband described in a Texas study removed all the phones from the house every day when he went to work.)

The woman's psychological state often leads to self isolation. She may be too ashamed to tell friends or relatives of her home situation. The more isolated a woman is in the home, the more dependent she is upon her husband for any sense of her value as a person. Many of the irrational psychological reactions to being battered, such as self-blame, continue because the victim has no one to talk to, no one to give her encouragement, of another perspective, and no one to refer her to resources that can help.

Finally, even when a woman does consider trying to break out of her isolation, she may find that there is simply no place to go. If friends or family members are unable or refuse to help, because of fear of reprisal from the husband, from religious conviction, or the idea that marriage is a private matter, a woman whose community has no shelter, or no vacancies in the shelter, faces an insurmountable obstacle in simply locating a place to go. Even if temporary lodging can be found, if there is no other help available, i.e. psychological, legal, financial, or employment counseling, it is very difficult for a victim to work out a realistic plan for independent living. In those cases where the marriage might be preserved, without a shelter or other community support, many wives cannot protect themselves or get their husbands to accept counseling. Studies indicate that those husbands who do seek help in attempting to change violent behavior, generally do so when the wife has already left. If she has no option but to stay, many husbands see no incentive for changing. For a battered woman who wishes to leave the marriage, even temporarily, community services and shelters could provide her with a structure to begin rebuilding a new life. But if these community resources do not exist, the answer to the question "why does she stay?" will continue to be "because she has nowhere to turn."

Linda Nickum

2 HELP FOR VIOLENT FAMILIES

One of the most complex areas in family violence is that of assistance to members of the family—the victim, the batterer, and their children. Providing alternatives for the individuals involved is important but developing priorities for the allocation of limited resources is also necessary. Although shelters are essential in providing safe places for victims, not all women wish to leave their homes. Their needs could be met by counseling, therapy, a support group, a program for batterers, legal action, or by a combination of all of these.

Support for Victims

Shelters for Battered Women

The development of shelters as safe harbors for victims is not a new idea in Texas. In 1875 Martha McWhirter established a shelter in Belton for abused women—both those physically abused and those economically deprived. The residents lived a communal life in the shelter; it prospered and continued into the 1890's. "The house in Belton in which the center was housed still stands, riddled with bullet holes from the time an irate husband got a vigilante group together and tried to shoot the residents out of their refuge." It didn't work—the women shot back.

The modern shelter movement in Texas was revived in 1977 with the opening of the Austin Shelter for Battered Women. It wasn't until 1979 that the Texas Legislature took notice that family violence was placing an increasing burden on the states' social service agencies and the criminal justice system. A pilot program for battered women's shelters was funded through the Department of Human Resources (DHR) and demonstrated such effectiveness that the 1981 legislature established ongoing funding for shelters through the Family Violence Program of DHR.

In Texas there are currently 38 shelters for battered women and their children. Not all are located in major metropolitan areas but can be found in such places as Alamo, Marble Falls, Killeen, and Seguin. In addition to these, there are at least 24 developing support groups. Some are using motels as emergency shelters while working to build community support to begin a more permanent facility. Other groups are gathering information about the extent of the problem in their community and assessing the need for housing for abused families.

The development of shelters for battered women usually begins by setting goals:

- To help raise public awareness and recognition of the incidence of family violence within the community;
- To aid battered women who are in immediate danger;
- To provide supportive services not yet available in the community;
- To end violence against women.

Once the goals have been adopted, funding becomes the first priority. Should the shelter be financed solely by private money or should government funds be sought? Which level of government—national, state, county, or city—should be approached? Which funding sources will best provide some long term financial certainty? Given limited revenues, which services should be provided first?

Most budgets for domestic violence programs are based on funds from diverse sources: contributions from business and industry, from organized charities such as United Way, and from foundations and individuals. Some groups receive support from city or county budgets or both. Limited funds from the state for already established shelters are channeled through DHR, but only shelters which provide 24-hour services for a minimum of five persons are eligible. In addition the shelter must have been operating for nine months. This money must be used for the operating expenses of providing shelter services, not for start-up costs nor for the acquisition of a permanent facility.

The philosophy behind such state requirements is that domestic violence programs should primarily be community projects. A qualifying shelter is supposed to receive no more than 75% of its budget from state funds, gradually decreasing to 50% over five years. But because of limited state appropriations, the average percentage is actually closer to 25%. Only very limited amounts are available for non-residential support services.

Some argue that the variety of funding sources is an advantage. It means that the entire community, rather than just a small segment, is tied to the program, increasing the visibility of the project. Others feel that more fiscal certainty is needed and that the present system of funding depends too much on the vagaries of governmental bodies and the economy. Texas communities are diverse with great disparities in the resources, financial and otherwise, upon which a community can draw. Very poor communities might find it difficult to raise start-up funds required. Some also feel that the constant need to raise funds diverts resources from the actual provision of services to those in need. More fiscal certainty could be accomplished through increased state appropriation to the Family Violence Shelter Program. In addition the criminal justice system could dedicate more of its resources to the treatment of batterers and to the training and education of its personnel in the handling of domestic violence situations.

While shelters are not the complete solution to family violence, they can provide a haven where women may go with their children to assess the situation and make decisions concerning the future. The healing process in recovering from abuse cannot begin for many battered women until

they are removed from the threat of further violence.

When a woman enters the shelter, she is asked to give thought to her goals and what she wishes to accomplish while in residence. She may wish to find employment, find an apartment, and file for divorce. Others who want to maintain the relationship without the violence, may wish to try marriage counseling with their spouse or partner while living apart. The philosophy of a shelter is not to advocate divorce or any specific course of action. The shelter staff and volunteers are there to support the woman's own decisions and to put her in touch with community resources that will help her accomplish her goals, not to make decisions for her.

As shelters were established it quickly became apparent to shelter workers that children of abused mothers had also suffered in many ways. Thus shelters began taking a more active role in helping them as well. Programs have been developed to help children deal with stress and anger in their world and enable mothers and children to work together on alternatives to violence.

Unfortunately at present, the established shelters cannot provide spaces for all who need them. Most try to keep a few beds for life-threatening situations, but waiting lists of over 100 are not uncommon. Part of shelter budgets also goes to maintain hotlines to help those needing emergency advice or assistance.

The exact location of shelters is not revealed publicly in order to protect the residents from those who have abused them. Thus support groups usually meet in locations away from the center.

Support Groups

Some victims of family violence do not want to abandon their relationship with the batterer even temporarily. An alternative is to meet with a support group for counseling or to receive help on a one-to-one basis. If held away from the shelter, the meeting can be advertised, thus making it more accessible to victims. It has been noted that spouse abuse victims in middle and upper income groups who have been reluctant to seek assistance through shelter programs are now seen regularly as clients of walk-in support programs.

Support groups usually stress anonymity, allowing the victim to discuss her problems without identifying herself or her spouse. Here she can get help from professionally trained counselors and mutual support from others with similar problems.

Such groups allow the victim to profit by bolstering her self esteem and self confidence and to learn techniques for dealing with the abuser. Such support groups fill the void between isolation and the shelter.

Treatment for the Batterer

Although counseling and intervention programs for batterers have recently been discussed, there are few services to help abusive men. Most

available resources go into programs for battered women and children since their lives and safety are directly threatened by the abuse. It is generally agreed that treatment for batterers is vital in reducing or preventing the abuse of family members, but many men are unwilling to accept it. Because of this resistance, most programs have had limited success. But if rehabilitation is not achieved, the batterer is likely to repeat the violent behavior; thus the cycle continues.

Comprehensive treatment programs for batterers would provide judges and juries with sentencing alternatives in lieu of fines or incarceration. A court diversion program could offer a positive opportunity for the batterer to replace violent outbursts with appropriate responses to anger or frustration. Unfortunately, even with court intervention, men often drop out of counseling after several sessions, knowing that enforcement of a court order is difficult. Too, mere attendance at the sessions is no guarantee of success if the person does not actively wish to change his behavior.

In 1977 *Emerge*, a counseling service on domestic violence, was the first organization in the nation established specifically to provide services to abusive men. Because of the social nature of male violence, *Emerge* recommends all-male groups led by male counselors as the most effective treatment.

Since then, other support groups and treatment programs have been established. In contrast to the all-male support group theory, some of the new programs insist that women and victims be involved in the process. In 1983 the Texas Legislature mandated further study by the Family Violence Program of the DHR to examine existing treatment programs for batterers and to analyze their effectiveness in reducing or preventing violence toward family members.

There is concern, however, that the limited resources for meeting the needs of battered women not be reduced to meet the needs of those who abuse. An alternative financing method for services to the abuser may be set up through the criminal justice system. Many support using fines collected from convicted batterers as one way to fund such services.

Conclusion

Reasons for domestic violence differ from family to family. Therefore, the solutions also vary. What is appropriate for one family may not be right for another. Whether the need is for shelters, group counseling, or legal remedies, all carry a price tag. Unfortunately, these various programs often must compete against each other for funds to carry out their objectives. This may prove to be the most difficult issue involved in dealing with the epidemic of violent families.

Elaine Basham

3 RESPONSE OF THE LEGAL SYSTEM

Historically the legal system has shown a marked inability to deal effectively with the problem of domestic violence. In part this may be the result of long-held attitudes or lack of understanding of those in the system—police, lawyers, prosecutors, and judges. But even if everyone involved were enlightened and well-informed, at present there are limits as to how the legal system can respond.

In examining what legal remedies are presently available for victims of family violence, we look first at civil protection, then at the criminal code, and finally at what might be done to improve the system.

Civil Protection

Jane has been married to John for ten years. They have two children, Adam, six, and Carol, four. Jane quit her job when Adam was born and stayed home to rear the children. John is a successful stock broker, but recently he has been under considerable stress at the office. During family arguments, John has occasionally resorted to physical violence against Jane, often in the presence of the children. These incidents have become more frequent. One night John slapped Jane and knocked her to the floor. John then stormed out of the house telling Jane that he'd be back, and if she was still in the house he'd kill her. Jane gathered up the children and went to the shelter for battered women for help. She didn't want to be hit anymore. What legal options does she have?

Peace Bonds

If Jane had only been threatened by John, not physically attacked, she might have been able to get a peace bond issued by a Justice of the Peace. Authority for a peace bond comes from the Texas Code of Criminal Procedure, but it is civil in nature.

Jane will need to appear before the J.P. and sign a sworn statement that John has threatened her with bodily harm. The J.P. will then issue a warrant for John's arrest.

When John is arrested he will be brought before the J.P. who will hear evidence as to the truth of Jane's accusations. John may bring an attorney with him, but if he cannot afford one, he is not entitled to have one appointed for him, neither is he entitled to a jury trial. If the J.P. is satisfied

that John intended the threat when he made it, the J.P. will order that John post a bond in an amount set by the J.P. The bond, in force, up to one year, will contain conditions such as to refrain from making threats, or to stop abusive phone calls. If John fails to post the bond, he may be jailed for one year, or until he posts bond.

Strengths of a Peace Bond

Some believe that a peace bond can be a very effective way of dealing with threatened violence. It is a relatively simple, inexpensive procedure and takes only a few days to put into effect. Filing fees are minimal, and Jane does not need to hire an attorney. It functions like an arrest in demonstrating to John that his behavior is unacceptable to society, but it does so without giving him a criminal record. It may also act as a financial incentive to keep him from further threats against Jane.

If John should violate any of the conditions of the bond, a suit to forfeit the amount of the bond can be brought in the name of the state by the district or county attorney in the county where the bond was issued.

Weaknesses of a Peace Bond

It is becoming more difficult to find a J.P. who will issue peace bonds. Of those who will, many will do so only if the parties are no longer living together *but* there is not a divorce pending between them. Others will not issue peace bonds if the parties are married. The reasoning here is usually that protective orders are more appropriate when the threats are between spouses. A peace bond is a solution only for threats—not for violence that has already occurred. Since Jane has been assaulted, a criminal offense has been committed and should be handled by the criminal justice system. In the past, peace bonds have been misused when they have been issued in lieu of filing of criminal charges.

Furthermore many legal experts and district and county attorneys have come to the conclusion that the peace bond statutes are constitutionally defective in numerous ways. The accused is not entitled to the appointment of an attorney to represent him despite the fact that he can be jailed; an accused does not have the right to a jury trial, and an accused has no right to appeal. It may also be a violation of the constitution to release on bond a wealthy man but to jail a poor man unable to post bond.

Protective Orders

If Jane does not want to divorce John, but simply wants to live apart from him until she decides if there is any way to save her marriage, the Family Code provides another civil remedy—protective orders. These court orders are intended to protect members of a family or household from the intentional use or threat of physical force by another member of the household or family. This includes protection from a former spouse or a boyfriend.

To begin a protective order proceeding, Jane will need to consult a lawyer. If the court finds from the information contained in Jane's application that there is a clear and present danger of family violence, the court may issue a temporary protective order valid for 20 days,

without notice to John. The order will then be served on John and a hearing will be set sometime before the expiration of twenty days.

At the hearing if the court is satisfied that family violence has occurred or is likely to occur, the court may make a protective order for a specified period, not to exceed one year. Thus what has been temporary becomes more permanent.

If John violates the terms of the temporary protective order, Jane can then bring a separate proceeding to find him guilty of contempt of court. If found guilty, John may be punished by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

If John violates the terms of the protective order made after the hearing, he is not only guilty of contempt of court, but also has committed a Class B misdemeanor, punishable by a fine of as much as $2000 or by confinement in jail for as long as one year, or both. Since the violation of the protective order is a criminal offense, it should be dealt with through the criminal justice system.

This procedure is a relatively new and effective weapon against domestic violence, particularly when the parties are not married or when no divorce is possible or desired. It may include all the specific orders that are available in a temporary protective order, such as the awarding of the exclusive use of a residence, ordering child or spousal support, requiring consultation with a psychologist or other counselor, prohibiting one party from removing a child from the possession of the other, and preventing one party from going to or near the residence or place of employment of the other party.

A protective order (as opposed to a temporary protective order) is available in a divorce proceeding in addition to the relief available in a temporary restraining order, but only after notice to the other party and a hearing.

Weaknesses of Protective Orders

A violation of a temporary protective order is not self-enforcing, but requires a separate court action to bring contempt charges against the abuser. Although a protective order is available in a divorce, a *temporary order* is not.

Once the temporary order becomes a protective order, (after notice and hearing) the criminal sanctions available if the order is violated should make it a very effective tool. Unfortunately, many lawyers, judges, and police officers are unaware of the availability of protective orders and of their status once they are granted. Many police officers are also unaware that they now have the ability to make an arrest of anyone violating a protective order. Before passage of enabling legislation in the 1983 Texas Legislature, police could not arrest anyone for violation of a *civil* court order.

Protective orders were intended by the drafters of the legislation to be a simple way for victims of family violence to be protected. They were supposed to be easy to acquire so that applicants would not need a lawyer and little expense would be involved. Unfortunately court personnel remain relatively uninformed about the procedures for issuing protective orders. Although fees may now be waived if a judge finds the applicant

to be without sufficient funds, many Texas counties charge additional fees to process the order.

Until the courts, police, and lawyers become more familiar with the procedures and power of protective orders, they will remain under-used and ineffective.

Temporary Restraining Order in Connection with a Divorce

Jane may decide that she can no longer live with John and wants a divorce. In connection with the divorce action, she can seek a temporary restraining order (TRO) against John.

In order to file for divorce, Jane will need to consult a lawyer who will tell her that, based on allegations of past abuse, fear of future harm, or both, she may be able to get a temporary restraining order against John. This order can only be issued upon the filing of the divorce petition. It becomes effective when personally served on John and is valid for a maximum of ten days.

Within the ten day period, a hearing must be held at which Jane can seek to have the temporary restraining order made into a temporary injunction. At this hearing other temporary orders may be decreed determining temporary custody of the children and the amount of temporary child support to be paid.

Should John violate any condition of the temporary restraining order or temporary injunction, he will be in contempt of court. Jane will then need to bring a separate action in order to hold John in contempt. A hearing will be held on the contempt charges; if John is found guilty, he can be sentenced to a jail term or a fine, or both.

Strengths of Temporary Restraining Orders

Temporary restraining orders are a useful tool in controlling family violence because of their relative immediacy. They are granted upon application, without notice to the other party, and without the need for a hearing. They can restrain John from making harassing phone calls, from making threats, either in person or over the phone to Jane or the children, from causing bodily injury to Jane or the children, from molesting or disturbing the peace of the family, and from removing the children from the jurisdiction of the court.

Weaknesses of Temporary Restraining Orders

These orders are relatively expensive to obtain, since hiring a lawyer is normally necessary. They can only be obtained when a divorce or annulment is pending and are only as effective as the abuser will allow. Before deciding on seeking a temporary restraining order (TRO) Jane needs to consider what John's reaction is likely to be when he is served with the order. At times a restraining order may simply serve to trigger more aggressive behavior.

Formerly, the worst problem with TROs was the lack of an effective enforcement mechanism. Normally police would not intervene to enforce

TROs in the absence of other criminal behavior. Contempt procedures, though available, are cumbersome, expensive, and take time to achieve. However, with the passage of SB 997 by the 69th legislature in 1983, police do have the power to arrest a violator. Whether or not individual police officers have knowledge of this power remains to be seen.

A TRO is limited in the relief it can offer. Because it is an *ex parte* (in the interest of only one party) order issued with no notice to the opposing party, the legislature has limited its use. A TRO may not forbid John access to his home, but such an exclusion may be important for Jane. Unless an abuser can be excluded from the home, the abused spouse is often forced to seek shelter elsewhere.

In Jane's case, she should determine if she would be better off if she obtained a protective order before filing for divorce.

Criminal Protections

Jane could not decide what to do. She did not have enough money for filing or legal fees, so while she and the children lived in the shelter, she looked for a job. One afternoon when John was usually at work, Jane went home to pick up some clothes. As she was packing the suitcase, John came into the house and began screaming. After a long loud argument, during which Jane tried to leave, John hit her, causing her nose to bleed and bruising her cheek. Just then police arrived, called by a next-door neighbor.

Police

Cautiously, two police officers entered the home. They knew that family disputes are among the most dangerous situations encountered on their jobs. (20% of police fatalities occur during these situations.) The officers saw Jane bleeding and crying, and John continuing to yell at Jane that if she did not stop crying, he would break her neck.After separating the couple the officer with Jane asked her what was going on. After hearing her story, he told her that he could not arrest John because he did not see him hit her, but that if she wanted to press charges, she would need to go to the county (or district) attorney's office and sign a complaint. If she did not want to sign a complaint, the police would not pursue the matter.

The officer with John took him outside to cool off and told him that the hitting had to stop or he would end up in jail. He escorted John back into the house to collect his clothes, then drove him to his sister's to spend the night. Jane was left alone in the house.

What is wrong with this picture? Before 1981 the police may have been right in saying that they could not arrest John at the scene for the assault, but that is no longer true. The Texas Code of Criminal Procedure now authorizes police officers to arrest a person without a warrant when the officer has probable cause to believe (1) that the person has committed an assault resulting in bodily injury to another person and (2) that there is immediate danger of further bodily injury to the victim. Therefore, the

police officers could have arrested John simply based on what they observed.

Beyond that, the police officers actually had witnessed a misdemeanor offense by John. The Texas Penal Code includes in its definition of assault "intentionally or knowingly *threatening* another with imminent bodily injury, including the person's spouse." John's threat to Jane therefore constituted assault under the statute.

Prosecutors

In spite of the fact that the police did not arrest John, Jane decided that she wanted to press criminal charges. She went to the district attorney's office and asked to sign a complaint. But an assistant attorney told her that she would need to come back in ten days. If she still wanted to file charges, they would file a complaint.

The assistant explained to Jane that in their experience most women drop their complaints and they are a waste of everyone's time. If the victim is the only witness and refuses to testify, there is no case. Besides, if they arrested John on the charge, he would be released on bail and he would probably be angrier than ever.

What went wrong here? First, there is no requirement under the law that a victim sign a complaint. An assault is a violation of criminal law and a crime against the state. The state is the entity that prosecutes the case, not the wife. A victim of theft is not required to sign a complaint before the state will prosecute; neither is an assault victim.Furthermore, in cases of non-family assault, victims are not treated in the way that Jane was. The ten-day wait is not required by law so it has probably been used only for cases of family violence.

It is true that there is a high number of family assault victims who want to drop charges after they have been filed. But the reasons for this high number are not often closely examined by prosecutors. Sometimes the desire to drop charges comes as the result of new threats from the abuser, or from a feeling of guilt for putting the father of the children in jail. Rather than making it more difficult for assault charges to be filed, some progressive prosecutors' offices have adopted "no-drop" policies. Essentially, the state takes responsibility for prosecuting these offenses. No longer is it the victim's fault or the victim's choice as to whether or not to prosecute.

In addition, rather than discouraging a victim by warnings of possible retribution from the abuser, some prosecutors support the victim and help her follow through. This may include referring the victim to the local agency dealing with domestic violence and finding her a safe place to stay. Such actions let the victim as well as the abuser know that assault, even if within the family, is a crime and will be treated as such.

Courts

Jane did come back after ten days and signed a complaint. John was charged with assault in that he intentionally caused bodily injury to Jane. (Assault with bodily injury is a Class B misdemeanor.) Should John be convicted, he could be fined up to $2000 or sentenced to jail for up to

six months or both.

John requested a jury trial, which was held about four months later. The trial took less than a day, with Jane and the police officers as the only witnesses for the prosecution. John testified for himself; several of his colleagues testified as to his good character. The jury deliberated for forty minutes and found John not guilty.

Jane was devastated. Her lawyer talked to some of the jurors later and learned that they felt it was just a family fight. In their minds Jane had invited the assault by going back to the house.

Improving the System

Jane's story is not unusual; the legal system does not yet deal effectively with the epidemic of domestic violence. There may be no way to solve all the problems that are inherent in the system, but solutions can be found for many others.

Training For Justice System Personnel

When the system breaks down, it is often because the participants do not know how to make it work. For example, protective orders could really be that—protective in many situations if the people who are charged with issuing and enforcing them have had proper training.

Court clerks and personnel cannot aid victims of violence in applying for protective orders unless they know what protective orders are. Domestic violence experts say that training for court personnel in the mechanics of the issuance of protective orders is essential.

At present the state standards for law enforcement education do not *require* specific training for handling domestic assaults. Counselors stress that police need to be trained through their academies and on the job to deal with domestic violence disputes in an effective and sensitive manner. Protective orders will only be effective when they are properly enforced.

According to the Texas Senate Committee on Human Resources report, in 1982 only 8 of the minimum 320 hours of training for police cadets are devoted to family violence. Although the 1983 session of the legislature passed a concurrent resolution asking that the Texas Commission on Law Enforcement Officer Standards and Education increase this requirement, it did not appropriate funds for implementation. The Department of Human Resources has funded nine pilot projects to develop curricula, program models, and training of Texas police officers in the area of family violence.

On their own initiative, some cities have established special crisis intervention teams who combine trained civilian counselors with police officers to respond to family disturbances. Others have increased training hours for cadets and in-service training in domestic violence for other officers.

Without appropriating funds, the legislature by concurrent resolution recommended pilot programs to establish family violence units in prosecutors' offices.

The Texas Council on Family Violence is a statewide private, non-profit organization. It coordinates efforts to establish shelters and other kinds of assistance for victims of abuse in communities around the state. It helps to train shelter workers and holds seminars for criminal justice personnel and a variety of other public education projects. Operating funds come from shelters belonging to the network, foundation grants, and contracts from state agencies involved in services to victims of family abuse.

Cooperative Efforts with Community Resources

Often, effective intervention by the legal system requires cooperation with other community resources. The successful prosecution of family assault cases is often aided tremendously by the assistance of community domestic violence centers. If there are victim support and witness assistance programs available, they can provide the guidance and support to victims that prosecutors do not have the time or skill to give. Counseling a victim of assault to help her understand the cycle of domestic violence and the need to break it can help ensure solid testimony from her when the case comes to trial.

The same community agencies can be the source for needed training of law enforcement, court, and prosecutorial personnel in dealing with victims of domestic assault.

Shelters

Probably nothing has aided in the successful protection of potential victims and the prosecution of abusers more than the shelter movement. The existence of a safe, secure place where the victims of violence may go in times of crisis has meant that remedies now available have begun to have more real impact and have increased the possibility that victims of abuse will carry through on decisions to prosecute abusers.

There are some who feel that a new movement is needed that goes beyond the shelter movement. They say acceptance of a domestic violence shelter implies an acceptance of the notion that if a woman wants to break the cycle of violence in her home, she must be willing to abandon it to the abuser. The next step may be to set up shelters for the abusers so that they are the ones who must abandon their homes. This would require some legal means of immediately removing an abuser from the family home and controlling his behavior.

Innovative Litigation

In many places the only way to effect true change and responsiveness in the legal system has been through litigation. This has included suits to force prosecutors, judges, and police to deal with assault as criminal behavior and not simply a civil dispute.

Litigation against prosecutors has included challenges to their policy of refusing to initiate prosecutions against men for crimes allegedly committed by them against their present or former wives or girlfriends. Litigation against police has challenged police practices of no arrest in domestic violence situations. The resolution of suits such as these can carry en-

forceable guarantees that the pattern and practice of leaving battered women to fend for themselves in the law enforcement system can be ended.

Public Education

What is the explanation for the jury's verdict in the case of Jane and John? Is it a vivid example of prevalent attitudes based on history? The verdict surely indicates that long held beliefs are not changed overnight. Until the public agrees that violence in the home is criminal behavior, our legal system alone cannot work effectively in coping with the problem.

Pamela House

Conclusion

A problem that has been kept hidden for too long is now beginning to get some public attention. But both the problem and solutions to it are still a long way from universal public support. It may be understandable that those in the legal system differ over the merits or the legality of various options available to battered women. Texas laws governing spouse abuse are in transition and it will take time to get things moving in the right direction. It is less understandable that police and prosecutors are, in some areas of the state, reluctant to proceed vigorously under the revised statutes. It will take intensive efforts by those committed to change to see that these new laws are not bypassed or ignoreed.

The positive outlook is that for the first time, Texas is *officially* making an effort to address the issue. A formidable amount of work remains to be done. The more Texans of every class, regardless of whether or not they have experienced family violence, are convinced the problem is critical, the more light will be focused on the issue. And with light will come enlightenment.

Change in public attitude comes slowly, but it will come.

REFERENCES

1

Murray Straus, Richard Gelles, Suzanne Steinmetz. *Behind Closed Doors: Violence in the American Family* (Garden City, New York: Anchor/Doubleday, 1980).

Texas Council on Family Violence - pamphlet, "The Unreported Epidemic".

"Private Violence", *Time*, Sept. 5, 1983, pp. 18-29.

Diana Russell, *Rape in Marriage* (New York, N.Y.: McMillan Publishing Co., 1982).

William Stacey and Anson Shupe. *The Family Secret: Domestic Violence in America.* (Boston: Beacon Press, 1983).

Murray Straus, Richard Gelles, Suzanne Steinmetz, *Violence in American Families* (New York: Doubleday, 1978).
Richard Gelles, *The Violent Home: A Study of the Physical Aggression Between Husbands and Wives* (Beverly Hills, Ca.: Sage Publications, 1972).

Richard Gelles, "The Myth of Battered Husbands," in *Annual Editions Marriage and Family* (Guilford, Ct.: Dushkin Publishing Co., 1982).

Emerson Dobash and Russell Dobash, *Violence Against Wives: A Case Against the Patriarchy* (New York: The Free Press, 1979).

Susan Schechter, *Women and Male Violence* (Boston: South End Press, 1982).

Michael Bassis, Richard Gelles, Ann Levine, *(Sociology* Random House, New York,1984).
Lenore E. Walker, *The Battered Woman* (New York: Harper and Row, 1979).

Maria Roy, *Battered Women: A Psychosocial Study of Domestic Violence* (New York: Van Nostrand Reinhold).

Terry Davidson, *Conjugal Crime* (New York: Hawthorne Books, 1978).

Del Martin, *Battered Wives* (San Francisco: Glide Publications, 1976).

2

Texas Council on Family Violence, *History of the Shelter Movement,* (Austin: pamphlet).

Senate Committee on Human Resources, *Safe at Home . . . breaking the cycle of violence in Texas families,* (Austin, 1983).

Fojtik, Kathleen M., *Wife Beating—How to Develop a Wife Assault Task Force and Project* (Ann Arbor, MI: NOW Domestic Violence and Spouse Assault Fund, 1976).

3

Texas Council on Family Violence—pamphlet, *The Battered Woman and the Lawyer: A Challenge to Each Other*, (Austin).

Pauline Gee, *Class Action Challenges to the Criminal Justice System's Policy of Non-Intervention and Non-Arrest in Domestic Violence Cases* (National Center on Women and Family Law, Washington, D.C., unpublished paper.)

Melissa Eddy, M.A., *Dynamics of Family Violence*, Volunteer Handbook (Center for Battered Women, Austin 1981).

Lisa G. Lerman, *Elements and Standards for Criminal Justice Programs in Domestic Violence*, RESPONSE, (Center for Women Policy Studies, Washington, D.C., Nov/Dec., 1982).

Laurie Woods, *Litigation on Behalf of Battered Women*, Womens' Rights Law Reporter, v.5 #1,(Rutgers School of Law, New Jersey, 1978).

Joseph M. McNight, Charles P. Bubany, Thomas J. Purdom, J. Andrew Rogers, John J. Sampson, Eugene L. Smith, Ellen K. Solender, Leota Alexander, *Texas Family Code Symposium*, (Texas Tech Law Review, v.8, #3, 1982).

Senate Committee on Human Resources, *Safe at Home . . . Breaking the Cycle of Violence in Texas Families*, (Austin, 1983).

Robert P. Davidow, *The Texas Peace Bond - Can it Withstand Constitutional Attack?* (Texas Tech Law Review v 3:265, Lubbock 1972).

Texas Code of Criminal Procedure, art. 7.01 et seq., 14.03(b)

Texas Family Code, sec. 3.58, 11.11, 71.01 et seq.

Texas Penal Code, sec. 22.01

League of Women Voters
of Texas Education Fund
1212 Guadalupe, #109
Austin, TX 78701

Margie Morrill
[redacted]

5/12/84
at Convention 84
Detroit

IN LEAGUE WITH ELEANOR:

Eleanor Roosevelt
and
the League of Women Voters,

1921-1962

by
Hilda R. Watrous

IN LEAGUE WITH ELEANOR:

Eleanor Roosevelt
and
the League of Women Voters,

1921-1962

by
Hilda R. Watrous

This publication was made possible by funds granted by
New York Council for the Humanities,
and
Hinerfeld Trust.

1921

The hostess graciously poured a cup of freshly made tea for her guest. The etiquette of the afternoon ceremony was anchored in tradition, but the topic of conversation on this February day in 1921 was not. Narcissa Cox Vanderlip, Chairman of the New York State League of Women Voters, was asking her visitor, Eleanor Roosevelt, to accept the responsibility of summarizing and presenting the facts of selected legislation to the directors and members of the fledgling organization.

Both women held noted places in society: Narcissa was the wife of a millionaire, Frank Arthur Vanderlip, who had recently retired as president of the nation's largest bank. Eleanor was the niece of a former president of the United States; a few months earlier her husband, Franklin D. Roosevelt, former New York State Senator and Assistant Secretary of the Navy, had been defeated as Democratic candidate for vice-president. In his new role as a private citizen he was responsible for the New York office of an international investment firm.

Narcissa had been active in the New York State Woman Suffrage Party, and in the organization, in 1919, of its descendant, the New York State League. She had confronted government officials with demands for social reforms—especially those affecting women and children. Eleanor's involvement in political affairs had been as an observer of her husband's career in local, state, and national politics.

A reporter once described Narcissa as radiating vitality and enthusiasm, one whose direct manner of speaking instilled confidence and respect. Eleanor's plea of inexperience was met with a guarantee of expert assistance. Two women, co-editors of a publication devoted to non-partisan presentation of legislation affecting New York City, the state, and the nation, would give Eleanor guidance. *City-State-Nation,* published under the auspices of the League, had been conceived and produced during the suffrage campaign by one of the women—Esther Lape, a teacher and journalist. Her co-editor, Elizabeth Read, was an able attorney. Eleanor accepted the office.

The New York State League (now the League of Women Voters of New York State) met in Albany on January 27 and 28, 1921, for its second annual convention. The League's weekly newsletter maintained that this non-partisan organization of women voters would "work wholeheartedly for good government, for better laws and for higher political standards, without a desire for spoils or office...." Eleanor was presented as Chairman of the Legislative Committee which would provide pro and con arguments as certain bills were introduced in the state legislature.

The convention endorsed support for specific legislative measures: independent citizenship for women, literacy test for voters, state aid for education of new citizens, separate college of Home Economics at Cornell, enforcement of prohibition, eligibility of women for jury services, equal representation of men and women in county committees of political parties, direct primary, and regulation of the meat packing industry. The League also was to continue to work with the Women's Joint Legislative Conference—a statewide coalition of women's groups supporting legislation to regulate conditions for women in industry.

Newly-elected Governor Nathan Miller confronted the convention with the assertion that the League, as a non-partisan organization seeking to exert political power, was a menace to representative government. He also disparagingly discredited their support for health insurance, an eight-hour day, and a minimum wage.

Editorials in most newspapers across the state supported the League's non-partisan position and the legitimacy of issue oriented groups. A full page editorial in a national magazine, *Woman's Home Companion,* described the League as a thinking, agitating minority destined for leadership. An April editorial in *Good Housekeeping* declared the confrontation had strengthened the resolve of members and secured wider recognition for the League.

Eleanor was a member of the State League's delegation to the convention of the National League of Women Voters (now the League of Women Voters of the United States) in Cleveland in April. Also in the delegation were some Democratic Party women who educated Eleanor in subsequent years in both League and Party: Kathryn Starbuck, speaker at the convention on equality of service for women on juries; Florence Canfield Whitney (Mrs. Caspar), a principal funder of the State League and *City-State-Nation* and elected a National League vice-president in 1925; and a Dutchess County neighbor, Margaret Norrie (Mrs. Gordon), prominent in anti-war campaigns, and in the Progressive Party in 1924.

Cornelia Pinchot (Mrs. Gifford), a friend of Eleanor's from dancing school days, was a member of a National League committee. During the convention she also provided hospitality for Republican women lobbying League delegates to join the Republican Party. (The following year Esther Lape organized women in Pennsylvania to support the gubernatorial campaign of Cornelia's husband, a critical factor in his election.)

In the opening address of the Convention, Maude Wood Park, National League President, declared that the work of the League was to help women to become self-directing, conscientious and effective voters. The dinner speaker was Judge Florence Allen of Ohio, first woman judge of a court of general jurisdiction. (In later years, President Franklin Roosevelt appointed her to the U.S. Circuit Court of Appeals, the highest judicial position held by a woman up to that time. She often shared the speakers platform with First Lady Eleanor Roosevelt.)

League positions on social issues were impressed upon the delegates at day-long conferences. The intense convention program wearied even Eleanor. Carrie Chapman Catt—prominent suffragist who first outlined a plan for a League of Women Voters to educate newly enfranchised women

for voting—gave a clarion call to members to consecrate themselves to eliminate war. A resolution was passed urging President Harding and Congress to quickly cooperate with other nations in the reduction of armaments.

A delegation was authorized to visit with the President to discuss disarmament. They also were to express support for the proposed Sheppard-Towner Maternity and Infancy Act, the first federal grants-in-aid to states for social welfare. The Act provided funds for the promotion of the welfare and health of maternity and infancy. After spirited debate, the convention failed to adopt a position on birth control.

Attendance at conventions, in addition to weekly meetings with Esther and Elizabeth, prepared Eleanor for knowledgeable presentations at League Board meetings. In April, for example, she reported on answers from Congressmen in response to League support for the Sheppard-Towner Act. (Its passage in 1921 was the first major impact of the League's lobbying power.) One Congressman asked for information on the League's position, and Eleanor submitted her answer for approval. She reported on three Constitutional Amendments which would appear on the ballot in November. She suggested an educational campaign regarding the Direct Primary, including a simple analysis of the existing Direct Primary law and proposed changes, and distribution of the information by every local League. Esther Lape was appointed to collaborate with Eleanor on the project.

In May Eleanor spoke in her official capacity to nearly 100 women at a League conference in Syracuse—the largest group she had addressed, in her own right, on public issues. A local paper described the assembly as "some of the most prominent and brilliant women of the state." Eleanor declared, "The most important thing for women today is to be interested in what is going on in the political world and in the men who are representing us." She voiced opposition to partial repeal of the primary, since women did not have equal representation in party organizations. Weakening the primary, she asserted, would make it even more difficult for women to affect nominations for state offices.

An August issue of the League's *Weekly News* offered copies of a "comprehensive digest of the main provisions of the Direct Primary Law, with explanations of the 1921 law modifications, and future changes." The digest made clear what ought to be done to preserve the primary, and to combat the tactics of opponents.

Eleanor attended the July meeting of the State Board. In August her husband was stricken with polio. In September her first venture into the field of journalism was published in *Weekly News*—"Common Sense Versus Party Regularity."

"Every voter," she wrote, "should enroll as a member of that party whose broad principles he or she prefers,...such enrollment does not preclude the voter from supporting...candidates of another party....if at any given time an individual nominee of our party appears to us unworthy, then we have an even higher duty to our heritage as American citizens. America must come first, not party."

Although Franklin's illness had severely disrupted her family life, by December Eleanor was once again attending the State League Board meetings.

1922

When the State League held its annual convention in Albany in January, 1922, Eleanor was advanced in office to the Board of Directors. Also elected were: Mary Drier, a wealthy reformer especially interested in women in industry; Katherine Gavit (Mrs. Joseph); Anna H. Whittic (Mrs. Lieber), who a few years later became President of the State Woman's Party, advocates of the Equal Rights Amendment; and Dorothy Whitney Straight (Mrs. Willard), who enlisted Eleanor as a fund raiser for the Women's Trade Union League (WTUL). During the Roosevelts' White House years, she worked closely with Eleanor in the development of Authurdale, a New Deal subsistence homestead project in West Virginia. The President of WTUL, Rose Schneiderman, served as Chairman of the LWV's Women in Industry Committee. The list of attendees at the convention included Nancy Cook, soon one of Eleanor's closest friends.

Among resolutions passed at the convention were: an appeal to President Harding and the Senate to "take immediate steps to unite the nations of the world in outlawing war"; a call to members of the Washington Disarmament Conference to declare in favor of world cooperation, rather than the past practices of alliances and treaties; plaudits to both Governor Miller, a Republican, and the Democratic Party for having gone on record in favor of equal representation of women in party organizations. The convention ordered a study of a revision of the organization's constitution. Eleanor was appointed to chair the responsible committee.

Following the lead of the National League, the State League did not oppose the blanket amendment concerning rights for women, proposed by the Women's Party, but instead promoted passage of separate bills. The League believed the blanket amendment would endanger existing hard-won legislation which protected women working in industry—a position held for many years.

At a women's National Republican Club meeting, held elsewhere at the same time, John T. Adams, a Republican Party official, stated: "Women should recognize their political responsibility and should not organize under the pale banner of non-partisanship or the fanatical standard of a woman's party. Few greater misfortunes could befall our country in these trying times than to have our civic energies frittered away in contests between groups, factions, occupational interests, or social divisions."

In February two members of the State League Board, Margaret Norrie and Rosalie B. Edge (Mrs. Charles Noel), dissatisfied with Narcissa's administration, criticized the convention election administered by Esther Lape. An investigative committee was appointed: Eleanor, Dorothy Straight, and Emily Greene. (Emily's husband, Frederick S. Greene, former NYS Commissioner of Highways, became Superintendent of Public Works under Governor Franklin D. Roosevelt.) The committee reported the dissenters' charges were unfounded. Further discussion was halted by a motion to table. (A parliamentary maneuver suggested by FDR to his frustrated wife.)

At the April Board meeting the dissent again erupted; especially criticized was the establishment of an office separate from the New York City League, as well as separation of the State League's newsletter from that of the City

League. A motion was passed that the two dissenters establish a more harmonious attitude or resign. Eleanor suggested, in order not to hurt the League, that opposing Board members should keep Board differences private, since officers were elected by the convention.

In May Narcissa issued a report to the Board upholding the Board's action with her description of pertinent events, including a meeting called by Margaret Norrie to consider revision of the League's constitution. Narcissa termed this "an unnecessary insult" to the membership of Eleanor's authorized committee. She asked that confidence be accorded the majority of the Board as they proceeded with League business, until the next convention.

Passage of the Sheppard-Towner Maternity and Infancy bill in 1921 had stimulated the formation in New York State of a coalition, United Organizations (UO), to support passage of a state enabling act for appropriation of the necessary matching funds. Narcissa was chosen Chairman in March, 1922. Among funds received by UO was a check from Nancy Cook, representing the Women's Finance Committee of the Democratic State Committee. The Women's Committee included League leaders Emily Greene, Katharine Gavit, Constance Hare (Mrs. Montgomery), Eleanor, and Kathryn Starbuck.

Facing legislative opposition to accepting federal funds, the League switched support from an enabling bill to a bill appropriating the same amount from state funds. According to a State Board of Health official, the League's educational work in support of the federal funds had at least finally procured state funding for which the agency had been lobbying, unsuccessfully, for years.

The State League instituted correspondence courses including a series of citizenship education leaflets: "Direct Primary or Convention: Which?" by Fiorello H. LaGuardia, "Women in Industry" by Rose Schneiderman, "How Women Can Make Their Approval or Disapproval on Legislation Effective" by Esther Lape, "Property Laws of Interest to Women" by Elizabeth Read, "Know Your Own County" by Mrs. Frederick Stuart Greene, and "When a Woman is an American Citizen. When Not. How She Becomes One" by Esther Lape and Elizabeth Read. (One of the major accomplishments of the National League in 1922 was passage of the Cable Act, which granted an American woman married to a foreigner the right to retain her U.S. citizenship.)

In April, Lady Astor, a native of Virginia, and the first woman seated in England's Parliament, returned to the United States. In an address in New York City's Town Hall, sponsored by the League, Lady Astor urged women to take an active part in government. Eleanor was one of those listed as a League patroness of the event.

Lady Astor professed: "I cannot face the future without this hope—that the women of all countries will do their duty and raise a generation of men and women who will look upon war and all that leads to it with as much horror as we now look upon a cold-blooded murder." After also speaking to the Maryland League of Women Voters, she then addressed the National League Convention in Baltimore. She commended them for not forming a

new political party. "You are...right to try to lift and raise and improve the platforms of both the big political parties by joining them." She again spoke of her conviction regarding the special responsibility of women to bring peace to the world.

By August a State League questionnaire had been sent out to national, state, and county candidates. The answers were recorded, and distributed to League members to help them vote "more intelligently". Summer issues of *Weekly News* carried articles by Eleanor: "The Fall Election," and "Organizing County Women for a Political Party."

From May through November a major project of Narcissa and some other Board members was the organization of a League in every upstate county. Previous efforts of using paid organizers had been unproductive. In her quarterly report, in September, Narcissa declared that "consecration" was necessary "to create the League against the indifference and prejudice that exist in almost every county." She also believed that participation in organization by Board members gave them knowledge of conditions throughout the state. Eleanor was later credited as one of those who organized a League in Greene County.

A special item of business in some counties was a report on the results of League-sponsored surveys of the conditions and health provisions in local schools. One purpose of the rural-school survey had been to educate at least one woman in each school district about that school, and to create public opinion in favor of improvements. In November the League report on the statewide surveys stated the chief need, in order to secure better health conditions for school children, was to consolidate small school districts.

Some members of the State Board attended the meeting of the Democratic State Committee in Syracuse later in September as Party delegates. Eleanor, a Dutchess County delegate, and Emily Greene represented the Board's interests at the convention. Women delegates considered four women as candidates for the Democratic nomination of Secretary of State: Eleanor; Caroline O'Day (Mrs. Daniel), active in her local Westchester County League; Harriet May Mills, Democratic candidate for the office in 1920; and Marian Dickerman. Marian had been a close friend of Nancy Cook, secretary of the State Committee, since college days at Syracuse University. She was often engaged as a speaker for the Women's Joint Legislative Coalition at League meetings, and carried League recommendations for planks in the Party Platform to the Platform Committee of this convention.

In the course of the convention, however, the women put aside demand for a place on the ticket "for the good of the party." When Al Smith, who favored many of their welfare reforms, was designated the Democratic candidate for governor, the women delegates were the first to their feet to join in the demonstration.

Planks of the Party Platform incorporated several League positions: an 8 hour day for women and minors, establishment of a minimum wage commission, child welfare legislation, and removal of all unjust discrimination against women through separate specific laws. The State League's "Voter's Bulletin of Information on Candidates," in the fall of 1922, included "View of Issues," authored by Republican and Democratic party members. Franklin D. Roosevelt wrote the Democratic view.

Narcissa, a Republican, caused a "flurry" by addressing a meeting of the women at the Democratic convention. "To make our votes effective we should be identified with a party and have a voice in its management," she said. Eleanor also spoke: "Democratic men...have felt so long that no matter what they do they can't win...that they are out of enthusiasm...Go back to your counties and be enthusiastic. Give the men something to work for..." She called for thorough organization in every county.

On October 26 Eleanor attended the Broome County Convention of the League with Narcissa. Both women spoke: Narcissa—"Why Women Should Join the League"; Eleanor—"Women in Political Parties". They traveled the next day, accompanied by Narcissa's secretary, to the Tioga County League Convention in Owego. Eleanor also accompanied Narcissa on fund-raising visits to individual donors—primarily wealthy men.

In her Annual Report to the State League convention in January, 1923, Narcissa mentioned Eleanor as one of a handful of Board members who had successfully raised funds "by telling the story of the League to people who had practically never heard of it or who had been antagonized by it." (Eleanor, unsure of her usefulness, had initially requested—through Esther—that she accompany Narcissa as a silent partner on fund raising visits.) Narcissa asserted to the convention: "It is only people who are devoted to the League and are proud of their connection with it and the work, who can succeed in raising money."

Late in October Eleanor, Narcissa, Florence Whitney, and other Board members attended the first meeting of the State and City Conference on Unification. Up to this time New York City, in part due to its large and dense population, as well as strong suffrage activities, had originally been given considerable power in the State League. The proposed revision of the State League Constitution was to include provisions for a more equalized distribution of power.

1923

On January 2, 1923, representatives of women's groups interested in a joint lobbying program as an Equal Laws Committee, to remove the legal discriminations against women, met in the State League office. At a previous meeting in October the Women's Party had decided to wage a separate campaign. The League, requested to take charge of the joint lobbying effort, announced that ten pertinent bills had been drafted and would be introduced in the Legislature.

When the League met for its annual convention in Albany later in January, an editorial in the *Albany Times Union* noted that the women were non-partisan, and "as such they discuss public questions and public men with a refreshing independence." Women, the editorial continued, better than men, understood the questions of laws for the benefit of women and children, freeing elections from corruption, and more humane factory laws.

The convention was preceded by a Disarmament Luncheon. Speakers included Carrie Chapman Catt, and Ruth Morgan, Chairman of Disarmament for the National League (also sister of Margaret Norrie). Agnes Brown

Leach (Mrs. Henry Goddard), whose friendship and work with Eleanor extended over succeeding years, chaired the State League's Committee on International Cooperation.

The principal actions of the convention were the adoption of a new constitution, providing for reorganization—primarily the merger of the New York City and upstate Leagues into a New York League of Women Voters divided into regions, and election of officers. Mentioned as candidates for Chairman were Narcissa, Eleanor ("wife of the former Secretary of Navy"), and Caroline Slade (Mrs. F. Louis), a National League official. As with governmental elections, there were petitions submitted, followed by primary and general elections at the convention. Anna Eleanor Roosevelt's signature was one of 700 on petitions for Narcissa Cox Vanderlip. Nancy Cook was one of the election inspectors.

Eleanor's presentation of her committee's recommendations for the revised constitution was the first order of business of the convention. The most highly contested articles concerned (1) election of regional directors and (2) allocation to State League of one-half of local League dues. Previous funding had been primarily by substantial contributions from individuals, including State League officials, as well as $1 memberships. New York City delegates contended they would be over-taxed and under-represented.

The convention voted approval of Florence Whitney's proposal for citizenship training schools throughout the state. She argued that the League was not a political organization, but an educational force. "There is such a lack of understanding among women of the great power which lies in their vote that if they ever come to fully appreciate it, there will be a revolution in American politics...We urge them to remain loyal to their respective parties and to bring into their political unit the clean ideas and ideals which we seek to inculcate...When it becomes universal, there will be no further need for us to function."

Newly-elected Governor Alfred E. Smith, whose first speech to the legislature had included many positions also supported by League, addressed the delegates. A new State League Constitution, with modifications of the committee's version, was adopted. During most of the rest of the day and night, delegates caucused to discuss tactics for response to the constitutional revision during the next session.

At the opening session the next day Narcissa withdrew as a candidate for chairman, "in the interest of harmony"—to facilitate the merger with City League. She opposed the convention's revisions of the constitution. Narcissa demanded "in the name of the same unity and harmony and general welfare of the League," which prompted her withdrawal, that the City forces, led by Mary Garrett Hay, again revise the constitution to include City financial support of the State League. Unanimous consent was necessary; Norrie and Edge remained obdurate. Hay shouted across the room: "Withdraw. I promise you will get what you want in your districts." A dues allocation provision was written into the Constitution.

Eleanor and Katharine Gavit had followed Narcissa's example, and withdrawn as candidates for election. Caroline Slade, elected as the new Chairman, introduced a revision of another article in the new constitution. At her suggestion a more democratic election of local League delegates to

convention was adopted. Eleanor, confident of more equalized representation, then accepted the office of Vice-Chairman. Narcissa, Katharine Gavit, and Margaret Norrie were among those elected as Regional Directors. With the state divided into regions, New York City became one region. Ten Regional Directors were elected, as well as officers and Directors. A new treasurer replaced Rosalie Edge.

The convention recommended that legislative efforts in 1923 be confined to: Sheppard-Towner Enabling Act, Eight-Hour Day, Minimum Wage Commission, National Child Labor Amendment to the Constitution, the Ten Equalizing Bills, Amend the Primary Law to re-establish Direct Primaries, Repeal the Lusk Laws (loyalty oaths of school personnel). They also called on both major political parties to support enforcement of prohibition, and on the federal government to take part in international cooperative efforts to prevent war.

According to *The Knickerbocker Press* in Albany, the League, by this plan of work, "proved itself interested in the development of the citizen from babyhood to manhood, and in the development of citizenship from a narrow-viewed imperfect thing to a broad-viewed, and perfect embodiment of an ideal."

From February 14-28 Eleanor and Esther were in Florida on a houseboat; Narcissa went to her 16,000 acre family ranch in California. Elizabeth Read wrote to Narcissa concerning her dissatisfaction with Mrs. Slade's administration, especially as it reduced the efforts of the Equal Laws Committee. She said that Eleanor "learned a lot" when she challenged Caroline Slade's use of false information to cast aspersions on Elizabeth's work for the Committee. Disillusioned by League passiveness in the lobbying effort, Elizabeth resigned as Chairman of the Equal Laws Committee.

Early in March Esther wrote to Narcissa: "I was happy to be with Eleanor Roosevelt when there was nothing for either of us to do. She is an utterly splendid person. Your letter to her received just before we left Florida pleased her immensely. Mrs. Slade is in Florida now so Eleanor is in charge of the League..." She told of the resignation from the Chairmanship of the New York City League by Mary Garret Hay. (According to Esther, Franklin Roosevelt called her "Charlie Murphy" Hay, after a Tammany Hall political boss.) Eleanor's written protest to Mrs. Slade concerning the second vote by Board members, by mail, on committee chairmen, was described by Esther, who had been "effectively resigned" from her post as Chairman of Legislative Information by the mail balloting.

At a State Board meeting in March Eleanor was acting chair. She asked another member to take that position in order that she might speak regarding the propriety of election of the chairmen of committees through mail ballots. At the February meeting Eleanor had urged a plan to determine local League's pro rata plan of assessment for State League funds. At the March meeting she called for a special meeting between State and City League officials to formulate consolidation procedures.

The Albany County League, under the direction of Katharine Gavit, was lobbying for passage of the state enabling act for the Sheppard-Towner funds. Eleanor, representing the State League in the support coalition, United Organizations (UO), reported at a meeting on March 6 that the

League was giving office space to UO, as well as publishing educational, supportive articles in *Weekly News,* and notices asking for contributions and volunteer workers. The League was also including informative literature in all letters sent out from the League office. Nancy Cook attended UO meetings as a representative of the Women's Division of the Democratic State Committee.

An active upstate opposition campaign charged that the Act was supported primarily by the birth control movement. The Senate defeated the bill on March 21. Eleanor at once sent telegrams—the swiftest, surest means of communication—to local Leagues urging supportive lobbying visits and other contacts with Assemblymen. League responses were telegraphed back to Eleanor. Other UO members acted similarly.

Narcissa returned from California to take charge of the campaign, temporarily residing in the Ten-Eyck Hotel in Albany. She directed and participated in a campaign to interview every Assemblyman. A woman publicist sent out over 3000 articles to newspapers. More than 15,000 letters were mailed.

One press release quoted Narcissa: "The Sheppard-Towner Act arose from the deepest experiences of the women of this country. They have had babies die or lost mothers and sisters from ignorance or neglect or isolation at the time of childbirth. These women inspired and worked for this bill. Thousands of others who have suffered in less degrees...have longed to help others."

Successful lobbying moved the bill out of committee. Confusion erupted when hearings on birth control and support for a federal department of education stimulated Catholic opposition to all three causes. The League spoke in favor of the birth control measure at its hearing—the first on that subject ever held in the State Capitol.

The following day UO countered the opposition to the state-enabling act for Sheppard-Towner funds with an informative letter—including statements of Catholic support—laid on every Assemblyman's desk. The bill passed—104 aye, 35 no. Under pressure from UO, Governor Smith, who had supported the bill's passage in his annual message, demanded that the Democratically controlled Senate pass the bill. The vote on May 4—one of the last acts of the legislative session—was 26 to 22 in favor. According to *Weekly News* of May 7: "No legislation required work such as this, since Suffrage."

Narcissa's final report, as UO Chairman, on May 8, declared: "We believe that every bit of work put on this bill was necessary; that one letter or one telegram, or one interview less, and our bill might not have gone through." (Intensive lobbying maintained the Sheppard-Towner Act until Congress allowed it to lapse in 1929 as being federal interference in state affairs. Similar federal funding was not available until the passage of the Social Security Act in 1935 during Franklin Roosevelt's Administration.)

During that busy month of April Eleanor became a member of the committee for *City-State-Nation.* In a promotional piece for that weekly legislative review her husband stated: "Both [men and women] are equally in need of this particular method of obtaining information in regard to current legislative occurrences and other public questions."

Eleanor also found time to address the League in Queens on "How We Elect Our Presidents". Both she and Narcissa were guests of honor at a Westchester League meeting when Emily Greene led a discussion based on her booklet, "Know Your Own Town." (Still a theme of study for every local League.)

At the March meeting of the State Board Eleanor had reported on the progress of consolidation between the State and City Leagues. At the June meeting she read the agreement entered into by the NYS LWV and the NYC LWV, forming a New York League of Women Voters.

Columbia University, in cooperation with the National League, held an Institute of Government and Politics for several days in July. Eleanor was enrolled, and presided one day. One resource used for a discussion of Federal Aid to the States was a National League publication, "The Acceptance of the Sheppard Towner Act" by Dorothy K. Brown (Mrs. LaRue). Her husband had been a classmate of FDR at Harvard. Eleanor had heard her speak at the National League Convention in 1921.

In July Edward Bok, a retired magazine publisher, chose Esther Lape, who had written for his magazine, to take charge of his American Peace Award Contest. He would award a $100,000 prize for the best practical plan for American cooperation with the rest of the world. Upon winning a yet-to-be-selected Jury's decision as best plan, $50,000 would be awarded to the drafter of the plan. The remaining $50,000 would be awarded when public support was indicated and the plan was implemented by the U.S. Senate.

To establish a non-partisan character for the contest's Policy Committee, Bok instructed Esther to choose a leading woman from each of the two major parties. She chose Eleanor and Narcissa. The three women then chose the remaining Policy Committee members and the Jury. Committee members, announced July 2, included Cornelia Pinchot, Nathan Miller, John W. Davis (Democratic nominee for President in 1924), and Henry L. Stimson. (A Republican, Stimson was appointed Secretary of War by FDR shortly before the 1940 Presidential Campaign.)

Within two weeks the National League had asked all state and local Leagues to enter the Contest. By September 200,000 entry forms had been requested, and the Jury selected. Among groups submitting recommendations for the Jury had been the League. Their list included Carrie Chapman Catt, Maude Wood Park, and Colonel House—intimate adviser of President Wilson, and influential in formulation of Wilson's "14 Points" peace proposal after World War I. House was appointed to the Jury.

Elihu Root chaired the Jury of Award. He advocated U.S. membership in the League of Nations and had helped devise the Permanent Court of International Justice. In 1921 he was a U.S. delegate to the Washington Conference on the Limitation of Arms.

According to Esther, in *Ways to Peace* published in 1924, over a quarter of a million Americans inquired about entering the Contest. She believed that people were disillusioned, that nothing was being done to prevent war, that they wanted a direct way to express their views. Ninety seven of the "most powerful organizations"—including the National League—united with the undertaking. More than 22,000 plans were submitted, including one by FDR. The Policy Committee selected 8000 for consideration.

Narcissa and Eleanor both wrote and made speeches to stimulate interest. "The American Peace Award," by Eleanor, appeared in the October 1923 issue of *Ladies Home Journal. Weekly News* of October 12 also carried an article by her. The plans were to be in by November 15th. The Jury would reach its decision by January first. A popular referendum would be taken before presentation to the Senate in February.

"If we are interested," she wrote, "in making a step forward toward the prevention of future wars, we must, whatever our individual convictions, look upon the American Peace Award as one of the avenues of popular influence, and each one of us must feel her individual responsibility to read the plan and vote upon it as early as possible..."

At the invitation of the Saratoga County League of Women Voters, Eleanor spoke at their annual convention late in October. Kathryn Starbuck, a local League official, reported on national and State League positions. Katharine Gavit gave an outline of the founding and relation of the International Court of Arbitration to the Permanent Court of International Justice. She also defined the relationship between the Court and the League of Nations and explained how it would be possible for the U.S. to join in supporting the World Court without League of Nations membership. (The U.S. never became a League of Nations member.)

Eleanor had been described in earlier articles of *The Saratogian* as "an interesting speaker and a woman of great personal charm," as well as a "well known clubwoman and vice chairman of the NYS LWV." She came to Saratoga Springs from a convention of the Oneida County League. According to a report in the paper on October 24, she explained the American Peace Award, and how it would produce a plan to bring the U.S. in some way into cooperation with the rest of the world for the furtherance of peace. She urged the League to take part in the referendum on the chosen plan.

She also spoke about the LWV, explaining its aims and goals, as well as "the far reaching good it has accomplished and the splendid movements it now sponsored and approved." She stressed the need of women being intelligent women voters. She urged and advocated that women affiliate themselves with a political party since through party government alone could the greatest achievements be reached. Her presentation was described as "of great charm and pleasing individuality."

In November she spoke at a League Citizenship School held in Albany. Her speech on the Peace Award was the final event of the School. In keeping with the League practice of informing the public on both sides of an issue, a Major General of the U.S. Army spoke his views.

The three day School was held at NYS College of Teachers. Students from Albany Law School were also invited. Some of the topics suggested to local Leagues conducting such Schools were: The government's service to the citizen; The citizen's responsibility for the government; Relationship of local, state and national governments; national and state responsibilities. Other topics included information about the League, the direct primary, know your own town and county, legislation concerning women and children, better schools, and topics of local interest. The stated object of the citizenship training was "To interest the homemaker and taxpayer in the great opportunities of citizenship. To arouse the lukewarm and indifferent

voter. To reduce the number of non-voters in every community. To improve the electorate by education."

In December Eleanor addressed a local League in Manhattan—"Do Our Representatives Really Represent?"

1924

The winning Peace Plan advocated United States entry into the International Court of Justice under conditions set by Secretary of State Hughes in 1923, and cooperation with the League of Nations in certain situations specified in the Plan. Narcissa and Edward Bok were among those making speeches over radio January 8, 1924, announcing the Plan and the public referendum which would end February 10.

A million copies of the Peace Plan, and ballots, were sent out to approximately 25,000 cooperating organizations—including local Leagues. The ballots, and a digest of the plan, were printed in 700 daily newspapers, 7000 weekly newspapers, and more than 400 magazines.

Eleanor was to explain the Plan to the annual convention of the New York League of Women Voters, to be held in Utica on January 15. Carrie Chapman Catt was also to address the delegates. The *Utica Daily Press* described the League as a body of women distinguished for public service, and "devoted to arousing the interests of women in public affairs—political, civic and moral."

By January 9, 80,000 ballots on the Peace Plan had arrived in Utica for area distribution. An editorial in the *Utica Observer Dispatch* urged acceptance of the Plan.

Among other matters brought to delegates early in the convention were the urgency of electing women to the State Legislature, passage of a bill to consolidate rural schools, passage of the federal Child Labor Amendment, gaining women's rights to jury service, prosecution of men equally with women in cases of prostitution, getting out 75% of the vote in the forthcoming Presidential election (a national effort of the League in cooperation with women in both major political parties), and getting the U.S. into the World Court as a first step toward international understanding.

Agnes Brown Leach reiterated the National League position, taken a year earlier, of support for the Hughes plan for entry into the World Court. A resolution urging the National League to make its main activity for the coming year work in support of the League of Nations caused heated argument, as did a resolution favoring amendment of the law prohibiting the giving of birth control to a large segment of the population—married women. The National League resolution failed. The birth control resolution passed, recommending local Leagues study ways to amend the law.

A *New York Times* editorial on January 18 declared few of the delegates would learn anything new if the existing restrictions on distribution of birth control were removed, "but their anxiety is for their less fortunately situated sisters who, in their opinion, need that knowledge more than do the many who already possess or can get it for the asking...Whether 'birth control' is right or wrong remains arguable," continued the editorial, "...but when

women like those in the Voters League put themselves formally on record in favor of making knowledge about it available, in proper circumstances, for all, the final result hardly can be doubted."

By a vote of 82-9 the convention voted to exclude men from their ranks. In the debate preceding the vote sometimes ten women were standing at a time to speak. One stated: "We are capable of solving all our problems without other assistance. Besides they wouldn't want to assist. They'd want to manage!" One lady softly wondered, "How would we women like it if we were treated that way by men?" Quick as a shot came the reply from a score of voices, "We are!"

New officers were elected. Both Eleanor and Dorothy Straight retired from office. (Eleanor's action foreshadowed a National League recommendation that in order to preserve non-partisanship, League officials should not be active in partisan politics.)

Mrs. Catt advocated support for the U.S. entry into the World Court, endorsing the Hughes plan. She urged the crowd of 200 to increase their activity in the interest of world peace. She concluded by charging that men, by factory and machine, had taken away women's work. In a ringing challenge, Mrs. Catt urged women to take away man's traditional work—war!

Eleanor began to speak next in the crowded dining hall. Some, on the outskirts of the crowd, unable to hear her, asked her to stand in a chair. "This she did smilingly," according to the *Utica Daily Press,* "and went on...from her elevated position" to explain the origin and method of the Bok Peace Award. She declared the purpose of the Award was not so much to secure adoption of any plan as to arouse the interest of people in peace. She appealed to the women to vote in the referendum; ballot boxes were at hand. Her appeal met with hearty response, "judging by the rustle of paper," said the *Press.*

Among resolutions passed by the Convention was one supporting the Hughes plan for entry into the World Court; a copy was sent to their U.S. Senator. In an interview with the *Press* after the Convention, Eleanor declared the spirit of the convention was enthusiastic and its 1924 program a "mighty fine one."

An *Observer Dispatch* editorial of January 17 stated the dominant note of the convention was a feeling that women were discriminated against by political parties—not nominated for office, nor given opportunity for policy shaping. They were, however, not discouraged, but would go "steadily forward to take the place to which entitled."

In mid-January an antagonistic U.S. Senate committee questioned Esther, Narcissa, and Edward Bok regarding the American Peace Award. The Senators believed the referendum was an effort to control public opinion and legislative matters by purchasing advertising and publicity. *The New York Herald* headlines proclaimed: "Three Women Engineered Bok Peace Prize Contest". *The New York Times* responded: "The crime of engineering a contest is obviously aggrevated if the engineers are members of the female sex."

"Who would have thought these women...would insist on retaining their own notions (contrary to the questioning Senators) as to the best means of avoiding the tears and heartbreak of war, and that they would go about put-

ting their beliefs into practice with such skill as Miss Lape and her fellow conspirators have exhibited?''

The Senate declined to implement the proposed Peace Plan. Although the Plan's author received his initial award in a public ceremony, Bok used the remaining funds to establish the American Foundation which, with Esther Lape in charge, attempted for several years to promote American adherence to the World Court. Esther, Eleanor, and Narcissa were founding directors of the Foundation, which still exists with different goals. (In 1935 President Roosevelt urged ratification of a Court protocol for U.S. membership devised in 1929 by Elihu Root. The Senate once again rejected membership.)

The Fifth Annual Convention of the National League of Women Voters opened in Buffalo, New York, with committee conferences on April 24. The proposed program for 1924-25 included: collective bargaining as a means of giving women workers a share in the control of employment conditions; study of disarmament, the League of Nations and the Bok peace plan; ways of equalizing financing of schools; approval of the federal Child Labor Amendment; and study of the relation of women to government.

The *Buffalo Sunday Times* of April 20 published a headline, ''Buffalo The Mecca For Leading Women of Nation,'' over photographs of ten women, including Eleanor. Each woman's name was followed by a few words of identification—except that of ''Mrs. Franklin D. Roosevelt.''

In addition to more than 1500 convention delegates, the public was invited to three mass meetings: April 26 for addresses by two governors, including Pennsylvania's Governor Gifford Pinchot—whose wife was to speak at a convention session on politics; April 27 for the topic ''Peace—Make the Wish the Will'' with Carrie Chapman Catt as featured speaker; April 29 for a question and answer session with prominent journalists.

A Buffalo newspaper editorial recommended: ''Electors at large can learn an excellent lesson from the activities of the league and the manner in which it conducts itself. Mob hysteria does not upset these women. They are not in a pack that follows hither and thither the demagogue in his quest for votes. They are not content to be fed up with honeyed words from glib tongues. They have picked for themselves the province of molding public opinion and are doing it well.''

A woman columnist for another local paper described the meeting. ''Birth and breeding, commonsense, gumption, courtesy and all the graces are cornered under one hotel roof while the National Convention...is on...They are the fairest body of women, in two senses, I have ever seen come together—fair because they are honestly striving so some of the gravest problems which confront this nation and the world, and fair in the other sense, because they are women of position and influence, who know just how to do the right thing, and to wear the right thing.''

At the opening session on April 25 the President, Maude Wood Park, read a letter of apology from a federal official regarding a government poster which accused various groups of women by name—including the League—of fostering a campaign of pacifism. The poster bore the heading ''The Socialist-Pacifist movement in America''. All existing copies of the poster, distributed by the War Department, had been ordered destroyed by

the Secretary of War. After Park's reading of the letter, there was an outburst of applause which continued for several minutes.

According to the *Christian Science Monitor* of that day, peace was "running away with the convention." One bloc was sponsoring a resolution endorsing the League of Nations, another wanted strong affirmation of the World Court, and another group met to launch a war on war. The latter group met at a luncheon separate from the convention sessions. They decided to invite 75 women's organizations to confer on their common goal of promotion of peace. The luncheon meeting was the origin of Cause and Cure of War Conferences held in subsequent years—frequently attended by Eleanor.

In Park's annual message to the delegates she reflected on the League's growth in her four years in office. She also stressed the distinctive method which the League had developed in preparation and adoption of its program—the discussion and study of a suggested subject for one or more years before urging legislation.

The most spirited and longest debate of the convention centered on the subject of birth control. Proposal of the subject for study was defeated. The proposal of the Committee on Social Hygiene for advocacy of vice control laws that would provide for the equal punishment of men and women was accepted.

The League's program for international co-operation was approved without change. It recommended study of disarmament, reparations, the League of Nations, the Bok plan, and review of American foreign policy. No changes were made in the program for women in industry which provided for shorter hours and no night work for women, and for workers to go among foreign women employed in industry to teach them English and aid in their naturalization.

The topic of introduction and passage of a U.S. Constitutional Amendment to give suffrage to the District of Columbia was placed again in items for study. One reason was that the League was unwilling to push more than one Constitutional Amendment at a time. The House approved the Child Labor Amendment while the convention was in session; delegates were directed to urge their Senators to take similar action. On the final day of the convention a last minute vote of reconsideration resulted in a vote to advance from study to active support for suffrage for the District of Columbia. (It still remains on the League's agenda.)

The program of study of the legal status of women was adopted, including study of changes in uniform laws governing marriage and divorce. The convention declared itself opposed to any blanket legislation to eliminate women's inequalities. (Eventually the League of Women Voters of the United States altered its position and became a supporter of the Equal Rights Amendment.)

At the mass meeting on peace, Mrs. Catt declared the biggest blunder this nation ever made was its refusal to sign the League of Nations covenant. She criticized a previous speaker, a Congressman, for his opposition to the League of Nations, and his support, instead, for disarmament conferences. She declared that the only cure for war was a solemn pledge by nations not to make war, to arbitrate their differences, and to abide by the arbitration. She told the women that peace was attainable, and that they were the ones to

bring it about. "Women must furnish the backbone of the peace movement." The audience of 3000, mostly women, loudly cheered her prediction that world peace was not impossible.

The *Buffalo Evening Times,* on April 19, published an interview with Eleanor, as one of a series in "How Men Have Treated Me In Politics." According to the article, the question was put to "one of the most charming and gracious women attending the Convention," who also had recently been appointed, by the Democratic National Committee, to chair a committee of women to draw up social welfare planks for the Democratic platform. She declared she had mostly pleasant memories of her experiences in politics. "I know a great many men with fine minds who believe women have a real contribution to make...a contribution from a different angle (than men)...This phase of the question that women grasp, men realize has its importance."

During the final feature of the convention, at which six editors and writers discussed American politics, William Allen White reviewed his fight for League of Women Voters' planks in the Republican platform in 1920. He recommended that women make just as much trouble within the parties as they could. "Don't let the men think they own you."

In a column in the *Buffalo Evening News,* one of the journalists, David Lawrence, stated that many of the convention delegates were affiliated with the major political parties and expected to be active in the drafting of platform planks and in the balloting of state delegations. He noted convention support for the World Court, and outbursts of overwhelming applause whenever the League of Nations was mentioned. He stated that neither party could do better than to adopt the set of humanitarian principals proclaimed by the National League.

At a meeting of the newly elected Board of the League on April 30, a special committee was appointed to select and present recommendations for planks to the two major parties. They announced the location of their headquarters in each party's convention city, in order to be on hand to urge their recommendations.

Eleanor was one of 500 Democratic women who celebrated the fourth anniversary of the Democratic Club of 1000 Women following the convention. Their featured speaker was Emily Newell Blair, vice chairman of the Democratic National Committee, who had also addressed the Convention. (She had been a founder of the National League.) Other speakers included: Eleanor; Caroline O'Day, Chairman, Women's Division, NYS Democratic Committee, as well as a local League official; and Patti R. Jacobs (Mrs. Solon) of Alabama, newly elected first vice-president of the National League. Patti Jacobs had been selected by the League's executive committee to present the League's platform recommendations to the Democratic convention.

In 1920 all of the League requests had been in the Prohibition platform, all except one in the Democratic platform, five in the Republican platform, and three in the Farm-Labor platform. More than half of the requests embodied in those planks were carried out in the 1920-1924 period, according to a *New York Times* article of May 26, 1924.

Eleanor's National Platform Committee on Social Legislation was to combine the requests of all women's organizations of the country. Its members were to be experts in social welfare and were to be served by non-partisan ad-

visory committees. League officials included as members of the Committee were Margaret Norrie, Gertrude Ely, Patti Jacobs, Dorothy K. Brown, and Minnie Cunningham (Mrs. Beverly J.). National League files in the Library of Congress contain a reference to Eleanor's assistance in finding alternate accommodations for the League's contingent, since the convention hotel was fully occupied.

By June 24, the opening day of the convention, Eleanor had presented the planks, and the names of women's groups proposing each. The League led proponents listed for funding for home economics in the Department of Agriculture equal to that of agriculture and trades; creation of a Department of Education; civil service reform; removal of inequalities of women by specific legislation; continuation and extension of the Maternity and Infancy Act; support for the Children's Bureau; educational work to prevent venereal disease; support for regulation to protect women in industry including adequate wage, safety and sanitary provisions, eight hour working day, appropriations for the Women's Bureau, and equal pay for equal work.

Caroline O'Day and Josephine Schain presented specific National League planks before the Platform Committee: endorsement of U.S. entry into the World Court; passage of adequate provisions for public welfare agencies in government; creation of a Federal Department of Education; establishment of a merit system rather than political appointments—especially in the Veterans' Bureau and the Internal Revenue Service; and ratification of the Child Labor Amendment. (Child labor standards were not set until the Supreme Court upheld those in the Fair Labor Standards Act in 1941.)

At the Democratic State Convention, held in September in Syracuse, Eleanor again petitioned for platform planks on behalf of a large number of women's organizations. The State platform included a child labor plank, even though the national Democratic platform did not.

In her support for the national Democratic ticket Eleanor spoke to various Democratic women's groups. In Geneva, NY, in October, accompanied by Constance Hare, she urged cooperation with the League in getting women, especially, out to vote. (The women's national get-out-the-vote effort did not achieve the goal of its sponsors. The League attributed this to registration difficulties, and undertook to study that phase of elections.) Echoing League sentiments, she urged women to accept the responsibility of voting. In Syracuse, a few weeks later, she declared, "Women will think things out for themselves on political questions rather than following tradition as men do."

1925-1928

Eleanor's public speeches continued to reflect what she had encountered in League. In an address to students at Syracuse University on February 27, 1925, she urged them to keep open minds on public questions. She declared the chief problem confronting women was how to do away with war.

She continued to participate in League activities: patroness of a State League lecture course on foreign affairs; and member of the lecture/teaching faculty of a Speakers School, sponsored by the Manhattan Borough of the League, which prepared women for public speaking. Late in November she

held the second in a series of 25 World Court teas in her home in New York City, and spoke in support of U.S. entry into World Court.

A State League press release in March 1925 described Eleanor as an outstanding example of the League's tenet that women should take an active share in the work of the parties of their choice. At the Democratic State Convention in Syracuse in September 1926, Eleanor introduced women's planks for the Party platform: a 48 hour work week for women in industry, continuation of the Maternity and Infancy Act, and minimum wage for women and minors. Dorothy Straus, an attorney and adviser to both State and National Leagues, presented similar League planks. In a dinner speech Eleanor called the election of Caroline O'Day as vice chairman of the State Committee "the breaking down of the last barrier" against women in the Party.

Eleanor continued contact with the League. Her letter in support of continuation of the Sheppard-Towner Act, written in response to a League request, was entered in the *Congressional Record* by Senator Royal S. Copeland on January 6, 1927. She also maintained friendships formed within League. Early in 1927, for example, a family dinner party included Esther Lape, Elizabeth Read, Narcissa Vanderlip and her husband.

Throughout 1927 Eleanor also associated with local Leagues. She spoke on political parties at a League meeting in Rhinebeck High School, and on "Woman as Citizen" at a League meeting in Manhattan. The Dutchess County League meeting of August 27, on "Water Power in the State of New York" was held at her Hyde Park home. On October 13 she hosted a State League meeting of Board members, and representatives of Leagues in 13 nearby counties. While the State Board held its meeting in the morning, Dutchess County League held its annual meeting, and re-elected Eleanor vice-leader for the community of Hyde Park. Meanwhile some 300 other Leaguers wandered about the grounds high above the Hudson.

In the afternoon members of the State legislature and Congress addressed the entire group, gathered in the library, on legislation of interest to the League. In addition, Martha Van Rensselear spoke on the need for civic education of rural residents. Carrie Chapman Catt, as final speaker, challenged the League to educate the public in support of the Kellogg-Briand Pact, an international agreement to settle disputes peacefully. (Without powers of enforcement, except world moral opinion, the pact—signed by 62 nations, including the U.S.—became a gesture of futility.)

The first week in December, Mrs. Catt similarly addressed the State League Convention in Albany, which Eleanor attended. Ex-Governor Pinchot of Pennsylvania spoke to the delegates of the risk of natural water power resources being held by a few individuals, while another speaker opposed government ownership. This debate centered around Muscle Shoals facilities on the Tennessee River. From 1928-1933 the League was the only citizens' organization supporting government ownership. (FDR, while governor, established a state power authority. As President he resolved the Muscle Shoals dispute in 1933 with establishment of the Tennessee Valley Authority.)

Eleanor led a roundtable discussion on "How the Two Party System Should Function." She declared that both parties should nominate a woman for state office; that women should choose the nominee rather than accepting

one "handed out" to them by men. She had written her views on the subject for a December issue of *Weekly News*.

Resolutions passed by the convention included support for treaties such as the Kellogg-Briand Treaty, support for U.S. adherence to the World Court, and enforcement of laws—including the Eighteenth (Prohibition) Amendment. The *Albany Times Union* described the Leaguers as "Feminist Standard Bearers." Eleanor was identified as "wife of former Wilson Cabinet member."

In an article in the April 1928 issue of *Redbook*, she again advocated equality for women in politics and suggested women organize within parties to elect "women political bosses" who would exercise real power. An interview, printed in the *New York Times Magazine* of April 8, further detailed her views on political equality.

Belle Sherwin, National League President, in her address to the National League convention, held in Chicago April 25-28, declared there was no contradiction in the League urging members to act through a political party, while discussing, in League, free from party bias, "measures for which women see the need most clearly." There also was, she continued, a need for action of groups, such as League, in the public interest, irrespective of party affiliations.

The "Bulletin" of the convention featured prominent Leaguers in advertisements for products. On the back page was a photograph of Eleanor, with apron, bowl, and sifter, endorsing Gold Medal Flour.

Eleanor attended a League Conference on Public Affairs held in New York City in mid-April. Later in the month, at a League meeting in Manhattan, she presented the Democrats' position favoring government development of water power. Her datebook for 1928 included LWV engagements throughout the year. Her friendship with Esther and Elizabeth, formed in League, continued, as evidenced by appointments with them.

During 1928 Eleanor became Eastern Director, Women's Activities, for the Democratic National Committee in its campaign to elect Alfred E. Smith as President. One of her chief assistants was Caroline O'Day. Dorothy K. Brown was a member of Eleanor's advisory committee. Caroline Slade, former State League President, gave up her National League office in order to lead the national women's committee for the Republican candidate, Herbert Hoover.

Eleanor was frequently a speaker, in her partisan role, at League events. At a Dutchess County League meeting she presented her party's view on foreign policy, while Ruth Morgan gave the Republican view. Eleanor described the Democratic Platform at another local League meeting in Rhinebeck. In August she analyzed the Democratic Platform planks on prohibition during one of the National League's voter information radio broadcasts. She supplied *Weekly News* with responses to League's questionnaire from the Democratic Presidential candidate, Alfred E. Smith. Elsewhere in the same issue were the responses of her husband, candidate for Governor.

Her husband was elected Governor, and Eleanor added another task, mistress of the Governor's Mansion, to her already busy life. Katherine Luddington, a National League official, wrote with pride in *Weekly News* that the League was continuously supplying the parties with League-trained workers like Eleanor.

1929-1932

In March 1929 Eleanor held a tea at the Governor's Mansion in honor of her friend, Agnes Leach, State League Chairman. Guests were women college students who would serve as hostesses for the forthcoming Conference for New Voters—a League sponsored organization for women in college. When the Conference was held in Albany May 3 and 4, unit presidents were guests at the Mansion.

Eleanor traveled to Saratoga Springs early in December to address that League's annual meeting. She spoke of the preparation given women, in League, for public service. She declared that the non-partisan League was a medium through which women could clarify their opinions and beliefs and then decide which political party to join. "Women who have been in League really do the best political work. The League has helped them to be more independent, shown them how to form their own opinions, and made them unafraid, confident and sure of themselves."

On February 21, 1930, Eleanor spoke on disarmament to 250 women at a luncheon of the Onondaga County League of Women Voters. She expressed her belief that only with ratification of the World Court would people be willing to accept disarmament. She declared that if the disarmament conference being held in London failed, "women may do much to secure that world peace which our diplomats have failed to achieve." She asserted that men did not work as wholeheartedly for peace because they feared others would think them afraid to go to war. "Women have no such reputation to sustain."

During 1931 Eleanor spoke to local Leagues such as Westchester County and Orange County. A card party and tea in the Roosevelt home at Hyde Park raised funds for the Dutchess County League. During 1931 Eleanor served on a committee of the State League which raised funds for National League by collecting cash contributions in support of an honor roll of those who led the suffrage struggle. The State League's suffrage memorial tablet, with the names of many women familiar to Eleanor in League, was installed in the Capitol during the State Convention in November 1931. Some of those state suffragists' names were also inscribed on a national tablet installed in National League headquarters. (The present location of the national tablet is unknown.) Some of the national names submitted by other State Leagues were also of women Eleanor had met in League.

Eleanor extended the hospitality of the Governor's Mansion to the League convention, but she was in Warm Springs, Georgia, with her husband. On November 22 she spoke at a luncheon given in her honor by the Atlanta League. She repeated her conviction that men were not going to do much about war, and that "any successful crusade against it must be conducted by the women of all countries." She also admonished the women to help guide the nation through its present economic crisis. "You have got to study, because it is your business to know what is wrong and to lead and guide in these changes."

She continued the theme of League responsibility when she spoke to the New York City League on January 12, 1932, at a luncheon opening their fund raising campaign. She cautioned them that people would excuse

themselves from contributing, because they were giving to emergency relief causes instead. The League studied the problems of government, she said, and government needed all the study, intelligence, and help which women could give.

"We must have women who are not satisfied simply with alleviating suffering temporarily, but who are willing to study the problems of the future and face the fact that we may have to have great changes...We must be prepared to meet things with open minds and go to the roots of questions as they come up."

When her article, "What Do Ten Million Women Want", was published in *The Home Magazine* in March, 1932, she raised issues similar to those engaged by League: women in government, a federal department of education, a solution to the problems of prohibition, and improvement and uniformity in marriage and divorce laws. She mentioned the desirability of having women in the police force. The National League was the only organization gathering and recording information on this subject at the time, under its Social Hygiene program. A major attraction at the 1924 National League Convention had been an English policewoman.

1933-1962

A few months after her husband was elected President of the United States, Eleanor addressed the League of Women Voters of Illinois. Again she spoke of women's responsibility to be active in political affairs, and to interest young people in government. She forcefully declared that the most important work of modern women was to work for the prevention of war.

On January 27, 1933, the New York League of Women Voters held a reception in New York City for Eleanor. According to *Weekly News:* "This is our opportunity to show Mrs. Roosevelt, before she goes to Washington, how much we appreciate her unfailing friendliness to the League of Women Voters, and our confidence and our pride in her wise leadership of women in political thought and action." At the reception, Eleanor praised the League. She commended their non-partisan presentation of government issues so that voters could know each side of every question. "You may be sure that...I shall remain active in the League...even during my stay in Washington."

During her White House years, Eleanor continued her support for the League as (1) a primary source of non-partisan information on government questions, and (2) as a n educational medium to learn the process of collecting and studying facts prior to individual decision making on government questions. Her book for children, *When You Grow Up To Vote,* published in 1933, was somewhat along the lines of League's "Know Your Town."

Her speeches and writings continued to present issues—and positions on those issues—in which she had been instructed in League, especially (1) discrimination against women, and (2) women's role in decision making, and in peacemaking. She maintained friendships and working relationships with many of the women with whom she had worked in League. (Aside from

governmental interests, Eleanor engaged Henrietta Nesbitt, active in her local League, and who had also done family cooking for Eleanor on occasion, as official housekeeper in the White House.)

In October, 1934, national attention focused on Eleanor when she became the first President's wife to campaign for a candidate—Caroline O'Day, Democratic candidate for Congressman-at-large (an office that no longer exists). At a candidates' meeting sponsored by the League of Women Voters in Buffalo the Republican candidate, also a woman, virulently attacked the New Deal; the audience responded with boos. O'Day yielded to Eleanor. The First Lady admonished the audience by stating her own appreciation for meetings which gave an opportunity to hear various points of view "no matter how much we may not agree with them." She systematically defended her husband's politics and declared O'Day as one who would carry them out. O'Day served in Congress from 1935 to 1943.

At a press conference in December 1938, Eleanor blamed the general apathy of women voters for a drop in the number of women in federal and state legislatures, as disclosed by a League study. She said women wasted their energies—that they had not suffered sufficiently to feel that something had to be done and that they had to do it.

In 1939 she recommended the League to a Congressional Class in Public Speaking as a good medium for training and education in government. In answer to questions directed to her through *Democratic Digest,* she recommended the League as a resource for formulation of high school and college programs to study questions of local, state, and national interest.

She addressed the League's General Council, made up of League officials meeting in alternate years from conventions, in 1939, and suggested the word "women" be eliminated from their name. She asserted that ideas women believed in, permeating such an organization, would enable men to more quickly understand the obstacles women encountered. (Men became eligible as members in 1974.)

She told how she advised young people, probing public questions, to go to the League for information on both sides. She commended the League: "You have a trained group of women who can sit down without emotion and analyze. This is really freedom—to keep informed." Her address to National League Convention in 1940 again stressed citizen education on public questions.

Eleanor participated in national and international women's gatherings where League, and her League friends, also took part, such as the Women's Centennial Congress in New York City in 1940, and the International Assembly of Women in rural upstate New York in 1946.

Her continued interaction with the League of Women Voters can be identified throughout her papers in the Franklin D. Roosevelt Library in Hyde Park, in such files as "Memberships-Accepted" and "Invitations-Accepted" as well as her correspondence during the White House Years. References to the League, to women who were League members, and to issues of interest to League, appear in many of her speeches and articles, including her "My Day" newspaper columns.

After her husband's death in 1945, Eleanor was appointed a U.N. Delegate, and elected Chairman of the Human Rights Commission of the

U.N. In 1948 she shared the M. C. Thomas Prize for distinguished achievement in the field of international relations with Anna Lord Strauss, President of the League of Women Voters of the United States. Strauss was appointed an alternate U.S. delegate to the U.N. shortly before Eleanor's resignation from her U.N. posts in 1952 following the election of Dwight D. Eisenhower as President.

The League supported U.S. Ratification of the U.N. Charter in 1945 and in 1948 undertook an intensive program to educate the American people about the U.N. The League continues support for the U.N. as the best existing instrument to promote world peace. In December 1983 LWV US adopted a new position in support of arms control measures.

The League, in addition to other programs, continues to work for justice for women, as in Eleanor's era, as well as for minorities. It also continues to promote political responsibility through informed and active participation of citizens in government, and provides non-partisan voter information.

Eleanor's connections with the League have a silent epitaph in her will, filed after her death in 1962. In addition to bequests to family members she left personal items to a few women, including Esther Lape, her first co-worker in League. Although unwritten in the will, Eleanor Roosevelt bequeathed a legacy to the League of Women Voters: her example of informed and earnest public service.

AUTHOR'S NOTES AND SOURCES

In *Current Biography,* published in 1940, Eleanor Roosevelt gave full credit to the League of Women Voters for grounding her in citizenship and government. In her autobiography published in 1961, she credited, by name, some League officials as opening up many areas of thought and work for her. "In League with Eleanor", a short history of the relationship between Eleanor and the League, is not complete, but could be the basis for more study and a more definitive work on the role of the League, and its leaders, in Eleanor's development as a unique public servant.

My goal has been to illuminate Eleanor's relationship with the League of Women Voters—especially in her early, most active years in League—by selecting from known and new information, and molding it to reveal Eleanor Roosevelt in a new light. I hope this work has faithfully redeemed a portion of the past, and renewed interest not only in Eleanor Roosevelt, but in the role of the League as a shaper of women, and of society.

My primary sources were: League of Women Voters of New York State Collection in Butler Library, Columbia University; League of Women Voters of the United States Collection in the Library of Congress; the Narcissa Cox Vanderlip Papers in the Frank Arthur Vanderlip Collection, Columbia University; and, of course, the Eleanor Roosevelt Papers in the Franklin D. Roosevelt Library, Hyde Park. I mined the microfilms of the *New York Times* and various local newspapers, in libraries across the state, for their coverage. *Eleanor and Franklin,* by Joseph Lash, (New York: W.W. Norton 1971) was a helpful secondary source.

I wish to thank New York Council for the Humanities, and Hinerfeld Trust, for their support. Thanks also to Ruth Shur and Marian Sinek, officials of LWV NYS who read and commented on the manuscript; nevertheless I bear full responsibility for the product.

Hilda R. Watrous
Clifton Park, NY
March 1984

THE LEAGUE OF WOMEN VOTERS is a non-partisan volunteer organization which works to promote political responsibility through the informed and active participation of citizens in government. Although the League does not support or oppose any political party or any candidate, it does support or oppose certain legislation after serious study and substantial agreement among its members. Membership is open to everyone.

THE FOUNDATION FOR CITIZEN EDUCATION is the tax-deductible affiliate of the League of Women Voters in New York State. Established in 1950, the Foundation is classed as a public charitable organization by the Internal Revenue Service. It works closely with the local Leagues of Women Voters in New York State to support their citizen education projects. It conducts the citizen information activity of the League of Women Voters of New York State.

A NUCLEAR POWER PRIMER:

Issues for Citizens

League of Women Voters Education Fund

Printed in the United States of America.

ISBN 0-89959-290-2
LIBRARY OF CONGRESS CATALOG CARD NO.: 81-85984

Published by the League of Women Voters of the United States
1730 M Street, NW
Washington, DC 20036
Pub. #575, $2.50

A NUCLEAR POWER PRIMER:

Issues for Citizens

League of Women Voters Education Fund

Contents

Preface

How safe is nuclear power? Are there less risky energy alternatives? To what degree will nuclear power grow or decline? What forms will it take? Will we have it—or not have it—by decision or by default?

This publication does not resolve such questions. What it does attempt to do is to offer citizens a reliable reading on the state of the art, pro and con arguments on controversial issues and a framework for thinking through their own answers.

A Nuclear Power Primer focuses on the form of nuclear power now in use in all operating nuclear power plants in the world: *the generating of electricity from the steam heat created by nuclear fission.* Fission power is based on the splitting of atoms. This technology, evolved from the atomic bomb research that began the nuclear age, could endure from a few decades to centuries. The uncertainties about those time spans are part of the discussions that follow. (The *Primer* does not discuss the feasibility of generating electricity at some future time by nuclear fusion—the joining of two atoms to form a third.)

The League of Women Voters Education Fund undertook this publication because its board has been acutely aware of the need to raise the quality of the national debate over nuclear power, which is highly charged. It is the hope of the LWVEF board that by offering unbiased information in language accessible to lay persons and thereby enlarging the numbers of citizens who are able to participate in the debate, the *Primer* will move the debate to a better level of information, trust and mutual respect.

It has not been an easy task. It *has* been undertaken in good faith and executed with extraordinary care. Both in planning it and executing it, the LWVEF has been helped by friends from academia, from industry, from many scientific specialties and from the world of citizen activists, all of whom have been exceptionally generous in giving advice and making careful critiques of successive drafts.

The principal author is Marjorie Beane, director of the LWVEF Nuclear Energy Education Program. Paul Hayes of the *Milwaukee Journal* also contributed to the manuscript. □

1
Introduction

Americans are now living at the peak of the petroleum age, and, if predictions of conservative geophysicists are correct, we are perforce groping our way to another energy era. As an earlier LWVEF publication put it: "Societies and cultures not only are in the business of inventing new ways to use energy but, in the manner of a feedback system, are constantly being changed in turn by their uses of energy."[1] This age is no exception.

What *is* exceptional is that we can, if we will, make deliberate choices about the energy base of the coming era, in full awareness that when we choose a source or a mix of sources, we are choosing among values. We are defining not just our energy future but in some degree our social, our political and our economic institutions as well.

After World War II, many predicted confidently that America's energy future would be built on the nuclear know-how acquired in developing the atomic bomb. The nation's first commercial nuclear power plant began contributing to our voracious and growing appetite for electricity in 1957. That Shippingport, PA reactor was financed in part by federal funds. The U.S. Atomic Energy Commission (AEC) was trying to launch private industry into nuclear power—a goal of the federal government since the end of World War II.

For years, the program seemed to be going well, although the anti-nuclear movement was gaining momentum by the early seventies. At the end of 1978, 71 licensed commercial nuclear power reactors were providing 12.5 percent of all the electricity being used in the United States. Shippingport's capacity of 90 MW (megawatts) was far outdistanced by newer plants with capacities up to 1,150 MW. Except for a serious fire at Brown's Ferry nuclear reactor (Tennessee) in 1976, the industry's safety record was good.

A majority of U.S. citizens favored the program, as demonstrated time after time in public opinion polls and occasional state referenda. And the Arab-induced petroleum squeeze seemed at first to reinforce the idea that nuclear power was the great hope for the nation's energy future. But as the decade of the eighties begins, this vision has blurred and receded. What happened, to change prospects so abruptly?

In order to answer that question, it is necessary to step back a decade and scan the evolving energy scene, to highlight the converging forces

that have brought the nuclear industry to its present uncertain state.

In 1970, oil provided 44 percent of our energy, natural gas 32 percent, coal 19 percent, hydropower 4.5 percent and nuclear power .5 percent (Figure 1). And U.S. production filled most of the demand for the first two. But it was in 1970 that domestic oil and natural gas production hit a peak; since then, demand for energy has continued to grow—though at a slower rate than before. To fill the gap between declining domestic supply and growing demand, we have relied increasingly on imported oil. Despite the temporary interruption of the Arab oil embargo and despite multiplying OPEC (oil-producing exporting countries) prices, U.S. oil imports grew from 23 percent of total U.S. oil supply in 1970 to about 48 percent by 1977.

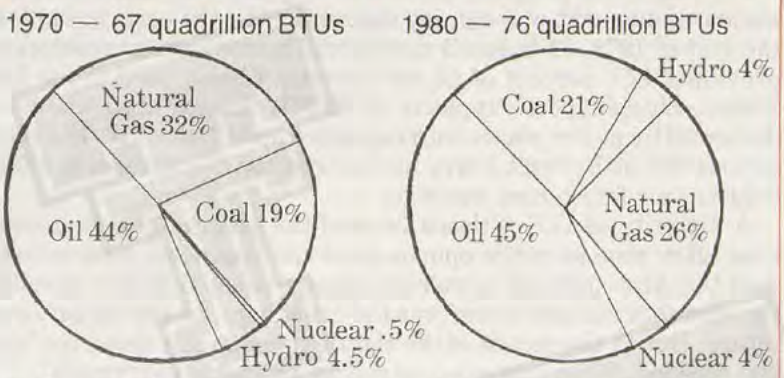
While oil imports have since declined to about 40 percent of total oil use, we are nonetheless still depending on other countries for almost a quarter of all our energy. Two facts, agreed upon by energy experts, make that statistic one of striking importance.

■ No matter what policy reforms may take place, the United States will never again produce enough oil and natural gas from conventional sources to meet current, let alone growing, demand. Even world oil production might peak around the year 2000.

■ Once those two severe limits on supply become the base line for planning, it becomes evident that it is none too soon to start designing a national energy future based on something other than oil.

This was the context in which the major debates began, in the 1970s, over U.S. alternatives: synthetic fuels from coal and oil shale, gas from tight sands and geopressured zones, energy conservation, solar energy, nuclear energy, coal and other energy forms. One strongly promoted strategy to reduce dependence on foreign oil was to substitute uranium

Figure 1: Energy Consumption in the United States



Source: Energy Information Administration: 1980 Annual Report to Congress, Volume Two Data

and coal for oil in fueling the production of electricity, with the prospect of reducing U.S. oil consumption by roughly 10 percent.

Many recommended using uranium over coal, citing its environmental advantages and the favorable economics experienced up to that time. They pointed out that nuclear power plants do not emit the tons of sulfur oxides, particulates or carbon dioxide associated with burning coal. Though nuclear plants, like coal-fired plants, require strip-mining and deep-mining for fuel, with all the environmental and social consequences entailed, the scale is much smaller because it takes so much less uranium than coal to generate the same amount of electricity.

To all appearances, nuclear power was arriving on the scene just in time, as oil and gas, the traditional work-horse fuels, were getting harder to find, more expensive to buy and more uncertain to import. In addition, the environmental consequences of mining and burning coal were proving to be very serious and very expensive and difficult to correct.

Some people backed nuclear power not for the long haul but as a vitally necessary transitional source of energy; that is, to help get the industrial and industrializing world off its oil habit and into a future fueled by some essentially inexhaustible and environmentally benign energy source, such as solar power or nuclear fusion. Others saw nuclear power—through the development of a breeder reactor that would greatly extend uranium supplies—as a long-term option itself, a source of power sufficient for thousands of years.

Yet by 1980 the nuclear industry was in virtual paralysis. Utilities were not ordering any new reactors; they had cancelled about 50 previous orders and they had deferred construction of over 100 plants for five to ten years. To compound the problem, in several cases they were having trouble getting licenses to operate new reactors already built.

What had happened? What had gone wrong? Powerful winds of change had blown across the American—indeed, the worldwide—landscape. Some changes were linked to major shifts in U.S. demand for electrical power in general; others had to do with nuclear power in particular.

■ The Arab oil embargo of 1973 and subsequent OPEC actions had many effects, two of which bore with special weight on the nuclear power industry. On the face of it, quintupled oil prices might have been expected to be a big shot in the arm for nuclear (as well as coal-fired) electricity generation. Instead, when the steep increases in oil prices further accelerated already rampant inflation, all energy costs, not just the price of petroleum products, rose and kept on rising. In a classic marketplace adjustment, demand, especially for electricity, fell in only five short years from a long-time annual growth rate of seven percent (which meant a doubling every ten years) to a rate of less than half that. This precipitate change was bound to make electrical utility companies reconsider their plans for new plant construction of all kinds.

■ In this period of rethinking, nuclear power fared worse than coal. Why? For one thing, nuclear plants, though cheaper to operate, are more expensive to build: they are complex, they have tough safety requirements, and interest costs are high during the long construction and licensing period. As inflation worsened and safety requirements increased, the capital costs of these plants skyrocketed—to several billion dollars each. With demand and therefore revenues declining, utilities had trouble raising the huge sums required to finance nuclear plants; they began to think smaller and to risk less.

Besides suffering from the impacts of inflation and OPEC-bred alterations in energy supply, demand and costs, the nuclear power industry has some special problems of its own.

■ Questions of nuclear reactor safety and regulatory effectiveness, never completely resolved, flared up in 1979 with the accident at the Three Mile Island nuclear power plant near Harrisburg, PA, an accident gravely serious in its political and economic impact.

■ A major piece is missing in the nuclear fuel cycle. There is still no permanent waste disposal system, in part for technical but primarily for political reasons. This serious gap in the cycle has contributed to a lack of confidence on the part of both investors and the public.

■ The 1981 Israeli bombing of an Iraqi nuclear research reactor focused world attention once more on the potential link between nuclear power and weapons proliferation. Although Iraq insisted that its reactor was part of a program to develop nuclear power and other peaceful uses of nuclear energy, Israel claimed that Iraq planned to use the facility to produce plutonium for nuclear weapons.

■ The future of the breeder reactor remains clouded. While Congress has appropriated funds for the construction of a demonstration plant (the Clinch River breeder reactor), it has so far been unwilling to subsidize the reprocessing of commercial spent fuel, a necessary step in the fuel cycle if breeders become part of the nuclear system.

■ Two- to five-year delays in building nuclear power plants have added millions of dollars to the costs of each plant.

■ The public continues to be concerned about the health effects of small releases of radioactivity to the environment from uranium mines, mills and other parts of the nuclear fuel cycle.

■ Nuclear power has faced ever more militant and sophisticated public opposition along a broad front ranging from environmental advocates who raise specific arguments against specific plants to groups or individuals who associate nuclear power with a value system with which they disagree.

This publication traces the evolutionary history of nuclear power and examines these problems, summarizing the major arguments opponents present, on controversial points. It also lays out some questions that are larger that the sum of the separate but interrelated conflicts

over safety, economics and health and environmental risk.

- Do we have a choice about whether to use nuclear power?
- Are there adequate alternatives, both in the short and the long run?
- If nuclear power is part of the nation's energy mix, what kinds of social institutions will be required to safeguard it and assure that the technology is always used in the public interest?

The lack of adequate forums wherein to debate these issues has contributed to the impasse that now prevails regarding nuclear power. Licensing hearings provide one of the few arenas for public discussion of nuclear power. But these hearings focus on specific environmental and safety issues. They do not address broad-gauge questions about America's energy future: about growth, about the kind of world Americans want for themselves and succeeding generations, about the political institutions they want to keep or change in order to make that world possible.

The convergence of forces that have slowed energy growth and reduced the need for new power plant construction offers citizens a time to think through what they really want life to be like in the next century and what part, if any, they want nuclear power to play in that future. □

A roller-coaster ride for the nuclear power industry

Whether it is graphed in terms of number of nuclear reactors or megawatts (MW) of electricity-generating capacity, the nuclear power business—from manufacturers of reactor components to installers of reactors to the electric utilities that use the reactors—has had some startling ups and downs. Or rather, more accurately, *a* startling up and down.

The upswing occurred in the 1960s and to a lesser extent the early 1970s, when the demand for electricity was steadily climbing. U.S. commitment to nuclear power peaked in 1975 at 236,000 MW: 236 plants in all, of which 62 were in operation and 174 others were either under construction, ordered or announced.

The first sign of a downswing came when Consumers Power Company of Michigan cancelled its order for a twin-unit 2,300-MW nuclear plant in 1974. Soon after, other utilities started to delay or cancel construction of nuclear units.

From 1974 to 1980, about 77,000 MW of nuclear capacity were cancelled. (Faltering demand has also caused utilities to cancel more than 10,000 MW of coal-fired capacity.) In October 1981, U.S. commitment to nuclear power stood at 163,000 MW: 171 plants, of which 78 were in operation and 77 had construction permits (but had not necessarily been started), 2 had construction permits pending and 14 had been ordered. Nuclear power provided 11 percent of the nation's electricity and about 4 percent of total U.S. energy use.

2
The dawn of a new age

Mankind's successful transition to a new age, the Atomic Age, was ushered in July 16, 1945, before the eyes of a tense group of renowned scientists and military men gathered in the desert lands of New Mexico to witness the first end results of their $2,000,000,000 effort.

This first sentence from the old War Department's news release about the explosion of Trinity, the first atomic bomb, at Alamogordo Air Base, New Mexico, suggests something of the awe that accompanied the birth of the atomic age.

Three weeks later the atomic bomb was exploded twice against Japan. Soon afterward, President Harry S. Truman wrote with prescience about the import of the new technology, when he asked Congress for legislation that would set policy covering the use and development of atomic energy:

"The discovery of the means of releasing atomic energy began a new era in the history of civilization. The scientific and industrial knowledge on which this discovery rests does not relate merely to another weapon. It may someday prove to be more revolutionary in the development of human society than the invention of the wheel, the use of metals or the steam or internal combustion engines."

Some saw from the start, as President Truman did, the potential this new technology carried for changing society. They knew it demanded a new institutional structure to match that potential, one that would channel its beneficial uses without unleashing its destructive power. What was not clear was what kinds of political institutions, domestic and international, were needed.

History

After the end of World War II, the United Nations General Assembly established an international commission "to deal with the problems raised by the discovery of atomic energy." The UN Atomic Energy

Commission (UNAEC) spent three years discussing proposals for the international control of nuclear energy. The most famous one, the Baruch plan, called for an international agency that would own all nuclear materials and facilities and conduct all nuclear operations. The plan would have given all nations access to the benefits of peaceful nuclear energy without allowing them to use this technology for hostile purposes. Neither this nor any other UNAEC plan could muster the needed international consensus.

The United States, which was the sole possessor of a nuclear capacity between 1945 and 1949, participated in these international discussions but at the same time set about creating an institutional framework for the domestic development and use of nuclear technology. As a first step, Congress passed the Atomic Energy Act of 1946, which took control of nuclear technology out of the hands of the military and placed it under the regulation of a unique five-member civilian commission, the Atomic Energy Commission (AEC). This regulatory body had unprecedented power and autonomy, with exclusive control over the production, ownership and use of fissionable materials for both military and peaceful purposes. The AEC was also charged with safeguarding the secrets of atomic energy, which at the time were known only to a few select American scientists.

Because of the cloak of national security that enveloped the work of the AEC and the technical complexity of the subject, other government officials and the general public in particular had an extremely difficult time getting a handle on the activities of this powerful agency. The main body to which AEC was accountable was a new congressional committee also formed by the Atomic Energy Act, the Joint Committee on Atomic Energy (JCAE). A close partnership soon evolved, however, between the AEC and the JCAE, and the committee tended to encourage the work of the AEC rather than to check on it.

The AEC spent its first years mostly on military applications of nuclear energy, but in 1954 Congress amended the Atomic Energy Act to permit privately owned utility companies and manufacturers to build, operate and own nuclear facilities, based on AEC research and information and subject to AEC licensing and regulation. Most private companies and utilities did not leap at the opportunity; nuclear power was new and still evolving, and industry preferred to leave the development risks to government. But the AEC (and the JCAE, as well), believing that national prestige and economic security required that the United States forge ahead, began promoting the technology it was responsible for regulating.

The AEC relied primarily on two carrots—government assistance programs and reports on the potential of nuclear power plants as clean, safe and cheap sources of energy. Such reports were accepted almost uncritically, even though their cost estimates were based primarily on experimental and/or extrapolated data. The JCAE for its part shepherded through Congress in 1957 a statute (see box: The Price-

Anderson Act) that limited the liability of the nuclear industry to $560 million in the case of a catastrophic power plant accident.

AEC and JCAE efforts brought results. In 1963, Jersey Central Power and Light Company bought a nuclear plant without government assistance, calling it the cheapest available source of electricity. This landmark decision signaled the start of commercial nuclear power development; within four years, U.S. utilities had ordered 75 nuclear power plants with a total generating capacity of over 45,000 MW.

Lost in the general optimism about the potential for nuclear power was the fact that it was, indeed, potential. Many of the plants ordered were still experimental—they would be much larger, and more complex than anything in operation. In addition, many questions about reactor safety, waste disposal and other aspects of nuclear power had surfaced but not been resolved. Yet, once the AEC had won the industry over, it

The Price-Anderson Act

This amendment to the Atomic Energy Act has two purposes: to ensure that the public would be compensated in the case of a nuclear accident and to protect the nuclear industry from a potential accident liability so large that it would threaten the future of nuclear power. When first enacted, the Price-Anderson Act was generally regarded as a necessary antecedent to the development of commercial nuclear power, but it has since evolved into a major source of controversy.

First passed in 1957 and renewed for 10 years in 1966 and 1975, Price-Anderson sets up a three-tier "no-fault" system of insurance against nuclear accidents, with a current $560-million ceiling. The first layer a utility buys from private insurance firms; it is currently $160 million. The second layer is a pool fund into which each utility would have to put up to $5 million per operating nuclear reactor for compensation in case of a major accident where damages exceed $160 million. As of 1981, there are 78 operating reactors, which means that utilities would pay up to $390 million in such "retroactive assessments." Until there are enough reactors to generate $400 million in this second-layer pool fund to meet the $560-million ceiling, the government would contribute the third layer—the money necessary to make up the difference.

In exchange for this limited liability, the Price-Anderson Act imposes what is known as "strict liability" on the utility involved in an accident that is determined by the NRC to be an "extraordinary nuclear occurrence" (ENO). Strict liability means that the utility must waive normal legal defenses against paying claims (up to the ceiling), relieving victims from proving the utility was negligent or "at fault." The public need only show that their losses were caused by the ENO to recover damages under this provision.

Many nuclear critics have vehemently opposed the Price-

dropped much of its own research on light water reactor (LWR) technology and moved on to what it saw as the "next step" in nuclear development—advanced nuclear reactor design, such as the liquid metal fast breeder reactor (see box: Nuclear Reactors: A Short Course).

The AEC found itself swamped by its own successful sales job, ill prepared to regulate the burgeoning industry. Many of its experienced staff left for higher-paying jobs in private industry, and the agency could not process the license applications that began to pour in. By 1967, the AEC had a backlog of 31 unreviewed license applications.

By the early 1970s, the AEC was beseiged with complaints from all sides. The industry and the JCAE were distressed by the licensing morass. Then, in a 1971 case, the court sharply criticized the commission for its slowness in complying with the new National Environmental Policy Act (NEPA). That same year, the commission was embarrassed

Anderson Act for several reasons.

- By not making the nuclear industry assume the full costs of a major nuclear accident, the act introduces an indirect subsidy or bias for nuclear power, keeping the price of nuclear electricity artificially low.
- Removing nuclear power from the normal market forces for liability reduces the industry's incentive to ensure plant safety.
- The $560 million ceiling is much too low for an accident that, according to government estimates, could cause damages totaling billions of dollars. Thus, without additional federal assistance, victims of a major nuclear accident might get as little as three cents of compensation for every dollar lost.

Many nuclear advocates stress that this act protects the public interest by spelling out the rights of those damaged by nuclear accidents, simplifying the procedures for recovering losses and providing an immediate pool of money. They maintain that if damages run higher than the maximum it would be a national catastrophe that would warrant government assistance to the victims. They also maintain that without Price-Anderson, a utility involved in a major nuclear accident could easily go bankrupt, in which case the victims of the accident might receive much less than $560 million. Most of all, however, they point to the nuclear industry's excellent safety record; it has had to pay only about $4 million in public claims for damages from nuclear facilities (although a $25-million lawsuit is still pending from TMI). Since there has not been a single ENO to call into play the full provision of the act, they dismiss charges of subsidies as unwarranted and dire claims of uncompensated losses as speculative.

Though Price-Anderson does not expire until 1987, Congress has already started a reevaluation and plans to hold public hearings on the level of liability and other issues over the next several years.

when test results on the emergency core cooling system deviated significantly from predictions, adding to growing public doubts about nuclear reactor safety.

The public started to raise its voice. People wanted more information about decisions relating to nuclear power development and more of a chance to participate in those decisions. But the AEC, with its background of secrecy and accountability to only a select few, was poorly equipped to respond to such demands. Gradually, opposition to nuclear power evolved from localized, site-specific protests to a sophisticated national movement that assailed the AEC for its "conflict of interest" in simultaneously promoting and regulating nuclear power.

Today's institutions

Congress tried to allay public distrust of both nuclear power development and nuclear power regulation by abolishing the AEC (and the JCAE) and dividing its functions between two new agencies. The Energy Reorganization Act of 1974 assigned responsibility for nuclear research and development to the Energy Research and Development Administration (ERDA), which was absorbed into the Department of Energy (DOE) in 1977. Responsibility for regulating the nuclear industry was assigned to the Nuclear Regulatory Commission (NRC), a five-member civilian board appointed by the President.

The new NRC found that it had inherited a lot of the AEC's old problems. Torn between industry's complaints about strangulation by regulation and public fears over safety, the NRC has attempted to improve safety regulation of operating plants, open up the process to public input, and speed up licensing, with very limited success on all three fronts.

But the severest test of the NRC's performance—and that of the nuclear power industry as well—began at 36 seconds after 4 a.m., March 28, 1979, when an electric pump shut down on an island in the Susquehanna River a few miles downstream from Harrisburg, PA. The pump failure was the first of a cascading sequence of events that has been perceived as the worst accident ever at a nuclear power plant.

For almost a week, the outcome was in doubt. Would there be a massive radiation release? Would the reactor melt down? What was a meltdown? Pregnant women and children were advised to leave the area. Schools were closed. Thousands of nearby residents left their jobs and homes and drove out of the area for a few days. Offsetting some of the exodus was a reverse flow of humanity—nuclear technicians from private companies and the government, federal and state bureaucrats and the international press. Before the accident ended, President and Mrs. Carter had arrived to alleviate public fear and tension. By the end of the week, Three Mile Island (TMI) had gained its place in the history of the twentieth century as a watershed event.

TMI prompted the nation to reconsider the role of nuclear power in our society. In particular, it underscored some fundamental questions about our institutions and their capabilities to manage and regulate nuclear power: Can the federal government regulate nuclear power effectively and respond aptly in times of emergency? Or is nuclear power just too complex and dangerous for some utilities to manage? Are new management and regulatory institutions for nuclear power needed?

President Carter appointed the Kemeny Commission and the NRC commissioned the law firm of Rogovin, Stern and Huge to investigate the causes and consequences of the TMI accident and to recommend ways to avoid such accidents in the future.

Both groups' reports were very critical of the Nuclear Regulatory Commission, calling it poorly managed and agreeing on these major points.

- A "promotional philosophy" left over from AEC days tended to overshadow the commission's concern for public safety.
- The collegial set-up of the commission was incapable of providing the strong managerial direction and overriding commitment to public safety that was needed.
- The President should restructure the NRC as an independent executive agency headed by a single administrator with direct control over staff and resources and with a mandate to concentrate on safe operation of nuclear reactors.

Some interest groups viewed this recommendation with alarm, arguing that having a single adminstrator would give that person too much power and claiming that the agency's management problems could be solved by less drastic reorganization. President Carter's 1979 reorganization order seemed to accept this point of view. It did not dissolve the NRC's collegial structure, but it did invest the chairman with greater powers, particularly over agency staff and in emergency situations. Carter also established a presidential commission, the Nuclear Safety Oversight Committee, to monitor and evaluate the NRC's work in nuclear reactor safety.

Public doubts after TMI about the efficacy of federal oversight were equaled by severe doubts about utilities' management capabilities. The Rogovin report found a "wide spectrum" of capability and warned that "some utilities, because of their limited size, limited technical staffs or limited capital, simply will not be able to meet the increased demands we think the Three Mile Island accident demonstrates must be made upon them by the NRC," for a technology that is "more dangerous, more sophisticated and more demanding of advanced management, maintenance and quality control"[1] than the traditional energy technologies.

Some individuals have proposed a drastic reform, whereby the federal government would construct and operate all nuclear reactors,

just as it controls all enrichment, reprocessing and high-level waste disposal facilities. They reason that federal control would have several advantages over private utilities in ensuring public safety.

- The government would not worry about the cost of safety measures.
- It could more easily and quickly standardize reactor operations.
- It could more effectively assimilate information on safety-related incidents.

Critics of this alternative point to past accidents at government-owned facilities and cite the self-interest a private corporation has in making sure that nothing goes wrong. The Rogovin report recommended a middle road: let larger utilities with greater technical and financial resources continue to run their nuclear plants but establish a public corporation or industry-wide consortium to manage and operate nuclear plants for utilities judged by the NRC to lack the requisite managerial sophistication.

The debate over the need for unique institutional arrangements for nuclear power was, of course, under way well before TMI. As early as the 1960s, Alvin Weinberg (former director of Oak Ridge National Laboratory and current Director of the Institute for Energy Analysis, Oak Ridge Associated Universities) proposed forming a "nuclear priesthood" to safeguard nuclear power. He still maintains that the safe use of nuclear power requires a cadre of technically elite and uncommonly qualified and dedicated managers, similar to the military "priesthood" we now rely upon to maintain and, if necessary, use nuclear weapons. Weinberg suggests that such personnel could manage "nuclear parks"—a cluster of nuclear reactors and support facilities (such as reprocessing and waste disposal) sited together in remote locations. The parks, Weinberg argues, would gather nuclear expertise in a few specific places, reduce the danger to the population from nuclear accidents, particularly by minimizing transportation of nuclear materials, and give nuclear operations the special institutional longevity needed to keep dangerous nuclear materials from being released into the environment in future years.

Others disagree. David Lilienthal, the first chairman of the Atomic Energy Commission, spoke against the nuclear park idea, when it was proposed, for two reasons: remote nuclear facilities would be inefficient and, more important, we need to "demystify" nuclear power by making the lay population more familiar with it, not hand it over to a technical elite.

To evaluate the merits of these different institutional approaches, one needs to understand the types of risks nuclear power poses to society and the steps taken by the NRC and utilities to ensure public safety. The next two chapters outline those risks and the safety systems used to minimize them. □

3
Risk assessment: Comparing energy sources

Life entails risks. There is some danger in almost every activity we undertake—driving a car to work, smoking a cigarette or jogging for exercise. What is being debated in society over and over again is not whether risks shall exist nor even whether risks shall be tolerated, but which risks are acceptable and which are not.

The question of acceptable risk lies at the heart of the nuclear power controversy. Many believe that nuclear energy entails too many dangers to society to be pursued any further; others contend that the risks of doing without nuclear power are even greater. This debate has spawned a number of attempts to analyze and compare objectively the dangers of nuclear power vis a vis other energy sources. This burgeoning new discipline, which can be applied to many other technologies, is called "risk assessment."

Measuring risks

Risk assessment is determining the probability that an individual, a group or society as a whole will experience a measurable adverse effect as a result of the existence of a hazard. There are four stages to assessing the risks associated with energy sources.

1. Identify the different hazards each source presents: What risks arise from extraction and processing? from transportation and storage? from using the source to produce another fuel (e.g. to turn coal into liquid fuels) or to produce electricity? from disposing of waste? and finally from end use?

2. Estimate the magnitude of each risk (e.g., tons of pollutants discharged): How does it impact or stress the immediate environment (e.g., changes in surrounding air quality)? How the environment responds (e.g., expected deaths and cases of disease, damage to land, fisheries and other natural resources)?

3. Evaluate the severity of the damages resulting from each risk: Is the damage irreversible? Is it concentrated or dispersed?

4. Estimate the cost of the damages to society.

While this process appears very straightforward, it is an extraordinarily difficult task. Complete information on which to base the assessment is simply not available for most energy technologies. Despite these limitations, scientists have attempted some comparisons.

Resources for the Future, in *Energy in America's Future*, estimated that the following fatalities would result from supplying energy for one year: .8 to 14 for a coal-fired electricity plant; .2 to 3 for a nuclear power plant; and .2 to 1 fatality for solar home heating.[1]

Herbert Inhaber, a former adviser for the Canadian Atomic Energy Control Board, has calculated the risk of energy sources in terms of worker-days lost (days that individuals could not work because of injury, illness or death attributable to the production and use of an energy source). He found that the total worker-days lost per MW each year over the lifetime of an energy system will range between 100 and 3,000 for coal, between 100 and 120 for solar space heating, between 1 and 3 for nuclear power. He concluded that solar and other nonconventional technologies have risks somewhat comparable to coal and oil because of the large amount of materials they require, the risk associated with back-up energy (assumed to be coal, nuclear or natural gas), and the risks associated with energy storage.[2]

Both studies suggest that the risks associated with nuclear power are comparable to or less than those associated with other energy technologies. Critics, however, point to some major flaws in these and other risk analyses.

- Most risk analyses do not include increased energy-efficiency measures, a major alternative to both coal and nuclear power.

- They are based on incomplete health data. For instance, the great bulk of the health effects that appear in occupational statistics are injuries, and these occupational illnesses typically account for only five percent of the total worker-days lost.[3] Yet occupational exposure to toxic substances at low concentrations may produce over a period of time additional illnesses that are never recorded as job related. Even fewer figures are available on the health effects of small quantities of pollutants on the general public.

- Certain health risks are better known than others and thus may skew the overall risk figures. It is fairly easy, for example, to project worker injuries and deaths during construction. Since manufacture and installation for renewable energy systems are more materials- and labor-intensive than for conventional technologies, the Inhaber study showed *worker* health risks for renewables that were as great as for coal. When it comes to *public* health risks, however, which are harder to quantify and trace, renewables would probably fare better than coal, if

data were available.

■ Occupational and public health risks are often lumped together to obtain total damages to health, a practice some scientists find highly objectionable. They point out that occupational risks are assumed voluntarily, at least in part, in exchange for the benefits of a job, while risks incurred by the public in the course of energy production and use are very different in that they are far less a matter of individual choices.[4]

■ Most quantitative risk assessments focus primarily on health effects, without taking account of important environmental and sociopolitical risks. While difficult if not impossible to quantify, these risks pose some of the gravest and least tractable threats to society.

The burning of coal and petroleum-based fuels presents two of the most significant environmental risks. These fuels release large quantities of carbon dioxide (CO_2) raising atmospheric levels of this substance, which plays a key role in climate determination. Assuming continued growth in the use of fossil fuels, some scientists project that increasing CO_2 levels could cause a perceptible increase in average global temperature by 2030, with massive environmental, social and economic effects from polar melt and other shifts in climate conditions.[5]

These fuels also release other chemicals that interact in the atmosphere to form acid rain, which according to many scientists has already caused extensive property damage—for example, corrosion of buildings—and destroyed or damaged life in lakes and other ecosystems throughout the world. New pollution controls on coal plants will significantly help reduce this risk.

In comparison, routine operation of nuclear power plants poses fewer and less severe direct environmental risks. While a catastrophic accident at a nuclear facility could result in severe ecological damage and thousands of deaths, some experts believe the greatest risk associated with nuclear power is sociopolitical: an augmented chance of nuclear war, through the use of the technology and materials associated with this energy source to make nuclear weapons (see Chapter 7: Proliferation: The Weapons Connection).[6] Scientists seem to be divided, however, on how close a connection actually exists between nuclear power development and the threat of nuclear hostilities.[7] Some argue that any assessments of the risk of war should weigh the risk of *not* developing nuclear power—a choice they believe could lead to energy shortages that in turn would cause regional wars (most likely involving conventional rather than nuclear weapons) over energy supplies. In either case, decisions about nuclear power have direct implications for world peace and regional stability.

Another sociopolitical risk associated with nuclar power is one inherent in all large-scale energy systems: the operation and control of these systems are necessarily centralized and out of the reach of the

ordinary citizen. Those who favor numerous self-sufficient energy systems at the household and neighborhood level argue that these decentralized systems would be more flexible and responsive to local needs and less susceptible to interruption. Supporters of large-scale energy systems counter that our electrical and gas-distribution systems are working well today and that decentralized systems are an untested alternative for a country the size of the United States.

Risk assessment, therefore, is a very inexact and incomplete science. The value of this type of analysis is that it can help give background information to policy makers who must decide whether risks associated with a particular energy source are acceptable.

Judging risks

Even if scientists could appraise and quantify all risks, the acceptability of those risks is a social and political judgment, not a scientific one. Each of us, alone or in concert, constantly makes decisions to opt for or decline a particular risk.

William Lowrance of Harvard University has identified the following factors that individuals take into consideration in evaluating risks:[8]

Risk assumed voluntarily **Risk borne involuntarily**
Individuals are usually more willing to accept voluntary risks, such as smoking and driving, than involuntary risks such as industrial air pollution.

Effect immediate **Effect delayed**
People tend to be more concerned about the immediate effect of a risk than about chronic (long-range) effects. The chance of injury or death today is more frightening to most people than the chance of dying of cancer 30 years from now.

No alternatives available **Many alternatives available**
If no practical alternatives are in sight, people seem to accept a risk, perhaps grudgingly or fatalistically; witness those who live in polluted industrial centers in order to be close to their jobs.

Risk known with certainty **Risk not known**
Risks that are familiar, such as motor vehicle fatalities, seem to cause less revulsion and concern than strange, new or unfamilar risks such as radiation exposure.

Exposure is an essential **Exposure is a luxury**
Individuals are more willing to give up luxuries, such as cosmetics, that pose health risks than "necessities," such as aspirin.

Encountered occupationally **Encountered nonoccupationally**
Traditionally, people have been willing to assume greater risk on the job than at home or in their community. The assumption is that people get paid for taking certain risks.

Common hazard **"Dread" hazard**

People seem resigned to the recurrence of some accidents such as auto collisions and house fires. While they find these accidents regrettable or anguishing, their response to these events can be distinguished from the sort of inordinate dread or horror that might attend news of the destruction caused by a tornado or of sickness from a silent invisible beam of radiation.

Affects average people **Affects especially sensitive people**

The U.S. government has tried to reduce certain pollutants to levels that don't adversely affect public health. However, people more sensitive to these pollutants generally have to assume greater risks than the average person.

Will be used as intended **Likely to be misused**

Misuse of machines and other products is one of the most important causes of accidents. If the probability of misusing a product is high, society is less likely to accept the risk associated with that product.

Consequences reversible **Consequences irreversible**

People are less likely to accept a risk whose consequences are irreversible. This was an important consideration in the decision in the United States to ban certain pesticides which, once released into the environment, spread irretrievably through air and water and persist for many years.

Describing risks in terms of these considerations can help clarify the nature of the controversy over a product or a technology. This is how Lowrance described the hazards associated with nuclear power:

Nuclear power plants are thought to be essential by those who believe that the alternative ways of generating power will not meet energy demands. For the general public, the risks are inescapable once these expensive plants are in operation. What the risks really are is quite controversial. The risks will be both to those who work in the plants and to the general public. Effects will be both immediate, in the event of a catastrophic accident, and delayed, with any radiation exposures. There is a possibility, even if slight, of misuse such as sabotage. Both the radiation hazards and the unlikely-but-horrible explosion hazards carry overtones of dread.[9]

The news media influence public understanding of risks and the intensity of concern over them. In general, sensational events such as airplane crashes make good "stories" and thus tend to get more coverage than less dramatic but more probable hazards, for example, such common illnesses as diabetes. As a result, public concern over certain dramatic events may be out of proportion to the overall risks these events pose to society. A recent study of nuclear energy news coverage on television between 1968 and 1979 concludes that the media have encouraged people to fear it out of proportion to its risks.[10]

Risk decisions are rarely made on the basis of a single factor. Risks

are weighed against benefits, and the combined risks and benefits of one choice are weighed against alternatives. For example, people who support nuclear power generally believe that it will provide necessary benefits—electricity at reasonable prices—that cannot be provided by less risky alternatives.

When policy makers attempt to formalize this process, it is called "risk-benefit" analysis: quantifying as many benefits and risks associated with a technology as possible and then calculating the balance or optimum for the situation. For example, they may assign a dollar cost to the harm that might be done persons and things, then weigh that cost against the economic benefits that a technology or product may tender to the rest of society. A major problem with this approach is that it is difficult, if not impossible, to put a price tag on human life, the beauty of surroundings and other intangibles. Like the risk-assessment process based on probabilities described earlier, risk-benefit analysis is a primitive art at best. It can help identify the issues and establish grounds for rational debate, but it cannot offer a solution.

Neither technique takes into account the *distribution* of risks and benefits of a public policy decision. Who will be exposed to the risks? Will those who benefit also be the ones who are at risk? It is possible to get objective answers to these questions, but, in the end, decisions about the distribution of risks and benefits are political. This being the case, public officials generally make such decisions after consulting not only with the scientific community but also with their constituents and with special interest groups. They may ask for scholarly studies on the impact of technologies and products in society and hold hearings to solicit information and viewpoints from the public. Some jurisdictions give citizens a chance to vote on a particular technology through a referendum (some of them binding, some advisory). For example, California, Maine and other states have held public referenda on whether to construct or operate nuclear power plants.

Citizens' insistence on having a voice in deciding to spread the use of a product or a technology has grown in recent years for several reasons. For one thing, as people have become less vulnerable to diseases and other *natural* hazards, they have become more concerned about reducing the risks from man-made hazards. For another, people better understand the environmental and social impacts of large-scale technology, and at the same time they know that the complexity and scale of modern society robs individuals of the power to estimate, appraise and reduce their own risks.

Has our society become too preoccupied with reducing technological risks? Some people think so. They point out that it was willingness to accept risks in the past that made this country a world innovator and industrial leader, and they characterize many citizen demands for risk reduction as totally unrealistic. Others contend that

such an interpretation of history is misleading. They point out that in the past the people who had the power to decide to take a risk often did not have to experience the risk: the millowner lived and worked well away from the noxious vapors that the millworkers had to breathe. They argue that society has changed and that now those who would incur the risk should have a say in whether to do so or not.

In sum, energy systems have different types of risks, many of which are not really comparable. How can you compare the hazards of acid precipitation with those of nuclear war? Nor can most of these risks be easily quantified. Thus, any evaluation of risks will inevitably involve value judgments. Scientists can provide information on the potential impacts of some risks, but in the end it is the public that will have to determine which risks are preferable, from which energy sources, and at what cost.

Because nothing can be absolutely free of risk, nothing can be said to be absolutely safe. There are degrees of risk; consequently, there are degrees of safety. The next chapter will take up the safety questions surrounding nuclear power. □

4
Safety first: Reducing risks

How safe is nuclear power? This complex question has to be broken into several parts.

- Will long-term human exposure to very small routine releases of radioactivity from the nuclear industry result in increased numbers of cancers, genetic diseases or degenerative diseases in the future?
- Can nuclear facilities—not just power reactors, but other parts of the nuclear system—be designed, built and operated in ways that protect the public from sudden massive releases of radioactive materials?
- Can government and industry regulate nuclear power adequately to ensure public safety?

The sections that follow take up these questions and examine them in considerable detail.

Low-level radiation: Routine operations

The controversy over the health effects of low-level radiation persists because it is virtually impossible to detect immediately any measurable harm to humans at very low levels of exposure. This leaves open the question of whether *any* radiation exposure, no matter how small, will take its toll years later in cancers, leukemias or genetic effects.

People are exposed daily to low levels of radiation from natural sources (cosmic rays from outer space; radioactive materials present in the earth) and man-made sources (medical applications, such as X rays; fallout from nuclear testing; consumer goods such as color televisions). This ionizing radiation is of three kinds—alpha, beta and gamma radiation. While they differ greatly from one another in their penetrating power, all may damage or kill living cells. The most feared types of cell damage lead to cancer and genetic mutations.

That radiation can cause cancer or genetic mutation is not ques-

tioned. What is questioned is the relationship between the dose and the number of resulting cancers or mutations — particularly when doses are below one rem.* The time between exposure and effect can be long. It may take 10 to 15 years for cancer to appear and several generations for genetic damage. For both cancer and genetic mutations there are other possible causes (chemical carcinogens, for example)—a fact that confuses the issue.

Since the effects of very low doses are not known with certainty, the official radiation exposure limits have been based on the *linear nonthreshold hypothesis*. The phrase is more difficult to master than the two assumptions that underlie it: first, that there is no threshold below which radiation is not harmful; second, that the extent of harm is in direct proportion to dose.

For years, many scientists have challenged the validity of this hypothesis in relation to cancer. The 1980 report of the National Academy of Sciences' Committee on the Biological Effects of Ionizing Radiation (BEIR) concluded that this hypothesis is likely to *overestimate* the carcinogenic risks of the type of low-level radiation most frequently encountered (gamma).[1] Most members of the committee as well as many other scientists believe that cancer incidence is somewhat lower at low doses than at high doses, in part because body cells may repair themselves more easily at low doses.

Another, though apparently smaller, group of scientists maintains that this hypothesis may *underestimate* the carcinogenic risks of low-level radiation exposure, citing a government study on radiation exposure from the atomic blasts at Hiroshima and Nagasaki, released in 1981, in support of their position. This study found that most cancer caused by these bombs came from gamma rays—not neutron radiation, as had been assumed before. These findings suggest that gamma radiation may be more hazardous than the BEIR report stated. Thus, the controversy over the effects of low-level radiation continues.

This controversy relates to commercial nuclear power in that mining, milling and other parts of the nuclear fuel cycle result in the release of small amounts of radioactivity to the environment. For instance, uranium mill tailings emit radon gas, and nuclear power plants routinely discharge small amounts of radioactive gases and liquid effluents.

Federal standards limit the amount of radiation a member of the general population can receive from all phases of the nuclear fuel cycle to no more than a 25 mrem whole-body dose per year. With the exception of one or two uranium mills, nuclear facilities are in compliance with this standard.[2] The Nuclear Regulatory Commis-

---

*rem - a measure of the energy delivered to human tissue from a dose of ionizing radiation. 1 mrem is equal to 1/1000 of a rem.

sion (NRC) has set an even more stringent design objective for nuclear power plants: a person living near the boundary of a nuclear plant should receive a whole-body dose of no more than 5 mrem each year as a result of the operation of the plant. The actual exposure of those living near nuclear power plants operating under routine conditions averages only 1 or 2 mrem per year. (Unplanned releases during the 1979 TMI accident may have exposed some nearby residents to between 40 and 100 mrem.)[3]

Unless citizens live near a nuclear facility, they receive virtually no radiation from the nuclear fuel cycle. Of the approximately 160 mrem of radiation the "average" person living in the United States is exposed to every year, less than one mrem comes from the nuclear fuel cycle. Thus, it is fair to say that normal operations of the nuclear industry contribute very little to the average radiation dose rate of most Americans.

More controversial than public exposure is occupational exposure. Uranium miners, power plant personnel and other workers actually exposed to radition in the nuclear fuel cycle receive an average whole-body dose of 630 mrem a year.[4] Federal standards allow a worker to be exposed to up to 12,000 mrem in a year as long as the average annual dose is less than 5,000 mrem over the worker's lifetime.

For many years, some labor and environmental groups have argued that these standards, which are several hundred times the radiation dose permitted a member of the general public, do not adequately protect workers against potential health risks. They also assert that some individuals incur even higher radiation doses than are allowable because they fail to report their dose accurately or because of the way the dose is measured.

In 1980, after an extensive review of occupational exposure and of existing guidelines, the U.S. Environmental Protection Agency (EPA) concluded that occupational risks from radiation do not appear to be unreasonably high for the average worker; nevertheless, it has proposed reducing the maximum allowed dose in any one year from 12,000 mrem to 5,000 mrem. EPA also plans to take a second look at radon exposure guidelines for mines and miners.

High-level radiation: What risk do nuclear accidents pose to the public?

Each light water reactor (LWR) produces large quantities of highly radioactive material. Should a massive release of this material occur from a power plant, a reprocessing facility or a waste disposal site or

in transit between these facilities, it would exact a high toll on the exposed population. On this point, there is no disagreement. The controversy arises over whether safety systems thus far developed and the regulatory discipline thus far exercised are adequate to keep this intensely radioactive material confined away from vulnerable populations or biological systems for thousands of years.

Nuclear power plants themselves house most of the high-level radioactive materials produced in the commercial nuclear fuel cycle. These materials are contained primarily in the reactor fuel—both fuel in use and spent fuel. Most spent fuel is presently stored at the plant site in special pools of water though some is transported between power plants or to other storage facilities (see Resources: *A Nuclear Waste Primer*).

The main source of this high-level radiation is the radioactive isotopes produced in the fuel during the fission process. Many of these fission products such as strontium-90 and cesium-137 produce high intensity, penetrating radiation and a lot of heat. Since they are also active biologically, they are easily taken up by the human body. Strontium-90 and cesium-137 have half-lives of about 30 years; that is, it takes 30 years for their radioactivity to be reduced by half. Another family of hazardous isotopes created in the reactor is "transuranics"—literally, new elements that are heavier than uranium. Though the particles they emit, unlike the first-mentioned group, are relatively low in penetrating power and heat generation, most are very long lived. For example, plutonium-239 has a half-life of 24,400 years. If transuranic radioactive isotopes were to escape into the environment, they could pose health hazards for generations.

How could these radioactive isotopes escape from a nuclear power plant? It is not a nuclear explosion that is feared, because neither uranium-235 nor plutonium is present in an LWR reactor in sufficient concentration or in the proper geometry to create a runaway chain reaction. The danger is that a reactor core could lose its cooling water through a pipe break or other mishap, overheat and melt through the building and into the ground, where radioactive fission products could enter the groundwater and eventually the atmosphere. Another possible scenario is that a gas or steam explosion in the reactor would fracture the building, releasing radioactivity directly to the atmosphere.

To prevent just such an accident, a nuclear plant has a series of safety barriers. (For a refresher in pursuing the outline of LWR safety features, see box: Nuclear Reactors: A Short Course.)

1. The first line of protection is the cladding, the metal cylinder around the fuel. This cladding, which traps and holds the radioactive materials produced in the uranium fuel pellets, is made of metals, such as zirconium, that can withstand high temperatures.

2. The second barrier consists of the reactor vessel and, for pres-

surized LWRs, the closed reactor coolant system loop. The steel pressure vessel is about eight inches thick and is surrounded by concrete and steel shields several feet thick, which absorb radiation and neutrons emitted from the reactor core.

3. Finally, all this is set inside the containment building, a steel reinforced concrete structure several feet thick. These buildings are designed to withstand tornadoes, direct collisions from light aircraft, and earthquakes.

4. In addition to these physical barriers, a nuclear power plant has redundant and diverse safety features. Each of its major systems has an automatic back-up system to replace it in the event of a failure. This strategy is known as "defense in depth." For example, in a loss-of-coolant accident (LOCA)—that is, an accident in which the reactor's primary cooling system fails—the emergency core cooling system (ECCS) is designed to use existing plant equipment automatically to ensure that cooling water covers the core.

To date, these safety barriers and systems have worked remarkably well. A full-scale meltdown has never occurred. When there was LOCA at Three Mile Island Unit II in 1979, the ECCS did work, though when operators turned it off prematurely the fuel core was damaged. A small hydrogen gas explosion (not the large bubble that received so much media attention) also took place in the containment building, but this structure was not breached. At Browns Ferry in 1975 an electric cable fire in one unit disabled parts of the ECCS and other safety systems, but the reactor kept on functioning properly, so the back-up systems were not needed. In these, the only two major tests of the safety systems of commercial nuclear plants to date, no major high-level radiation was released.

Even so, these accidents did reveal some deficiencies.

- First, the very combination of equipment failures and human errors that led to both accidents had been clearly identified before the accidents, yet the safety problems were ignored or lost in bureaucratic red tape. This failure to learn from past experience was identified by the Kemeny Commission as a key problem in those organizations responsible for nuclear safety (see Chapter 2, p. 15).
- Another safety problem that surfaced was poor training of nuclear power plant personnel.
- Both accidents also pointed up flaws in nuclear power plant design and instrumentation.
- The TMI accident also suggested that regulators and industry have been so preoccupied with large-break accidents, involving the break of a huge pipe carrying cooling water to nuclear reactors, that the less dramatic accidents involving a combination of minor equipment failures have received short shrift. Since small accidents are likely to occur much more often than the huge accidents, the Kemeny

Commission called for more extensive and thorough study of them.

Improving safety systems

In response to TMI, the nuclear industry has made changes in power plant equipment and has also established new research and management organizations. In 1979, the industry created the Nuclear Safety Analysis Center (NSAC) to study safety problems—in large part through a study of plant accidents or equipment malfunctions—and to devise solutions and distribute this information to nuclear utilities. The industry also established an Institute for Nuclear Power Operation (INPO), charged with establishing "benchmarks of excellence" in the management and operation of nuclear power plants. INPO will conduct periodic evaluations of operating practices at nuclear plants, in order to help utilities meet high standards, and will offer new improved training programs for nuclear operators.

While the nuclear industry believes its initiatives have significantly improved plant safety, the Union of Concerned Scientists (UCS) and other nuclear critics disagree. They charge that industry has so far implemented very few design and operational changes. USC also believes that there is no way to assess whether INPO and NSAC are doing what they claim since many of their activities and findings are kept secret from the public.

Regardless of how effective industry initiatives are, the NRC must still resolve a set of *generic* safety problems—those problems the NRC has identified (some as long as a decade ago) as being common to all operating reactors or to all plants manufactured by a particular company. Among the most significant: 1) the ability of a plant's safety systems to operate effectively in the event of a fire or under the severe conditions of high temperature, pressure and radiation existing during an accident; 2) the effectiveness of the emergency core cooling systems; 3) possible damage to safety equipment from "turbine missiles" in the event that the main turbine generator accidentally breaks apart; and 4) the vulnerability of plants to sabotage.

A generic safety problem that has received renewed interest of late is the reactor vessel's material toughness. Engineers have long known that radiation from the reactor core causes steel to become brittle over the years. Recent data, however, suggest that the rate of embrittlement may be greater than originally anticipated when the nuclear reactors were built. Some engineers fear that older reactor vessels could crack under certain temperature and pressure conditions, leading to a loss of coolant and a fuel meltdown. The NRC is taking a fresh look at this problem.

Nuclear critics claim that many of these generic safety problems exist because the government and industry pushed the development of commercial plants too fast during the 1960s and 1970s. They

How safe is safe enough?

Given the present design of most nuclear power plants, just what is the probability that a major accident will release a significant amount of radioactive material? That was the subject of a study on reactor safety commissioned by the NRC and directed by Professor Norman Rasmussen of the Massachusetts Institute of Technology.[5] Issued in 1975, this study—WASH 1400—estimated the probabilities that various combinations of plant equipment and safety procedures might fail; that all these different possible events could lead to a core meltdown or another serious accident; and that such accidents would expose nearby populations to possible health risks.

WASH 1400 predicted that the chance of a core meltdown is one in 20,000 per reactor per year, but that the chance of a core meltdown causing deaths or injuries to the public is much less—one chance in three million per reactor per year. The consequences would depend on how much radioactive material got outside the reactor, on weather conditions, on how many people lived in the affected area and on what public safety measures were employed.

The worst case accident in WASH 1400 was predicted to kill some 3,000 people immediately by acute radiation sickness, kill some 45,000 others over a period of years by radiation-induced cancers and require decontamination of several thousand square miles. But the yearly probability of such an accident's occurring in any one reactor was predicted as being only one chance in 200 million. Thus, in a world containing 200 operating reactors, the report predicts the chances of a worst-case accident to be one in a million in a given year.

Critics attacked the study for failing to address all the health and environmental effects of radiation releases. They argued that WASH 1400 greatly understated the risks of nuclear power because it could neither identify all possible accident sequences nor deal with the adequacy of reactor design and, even more important, could not deal with certain types of human error. The TMI and Browns Ferry accidents, which occurred after WASH 1400 was completed, do suggest that the role of human error is important. TMI is, after all, classified as a very serious accident with a correspondingly very low probability of occurring. But it did occur.

In 1978 a group of scientists chaired by Professor Harold Lewis of

contend that not enough time was taken to test reactor ideas and designs and that safety considerations were sacrificed to economics. In particular, they feel that the size of nuclear plants outstripped engineering experience, with average plant size under construction growing from 200 MW in 1960 to 1,000 MW in 1970.

In response, the nuclear industry points out that despite rapid

the University of California, Santa Barbara, conducted an independent review of WASH 1400 for the NRC.[6] Their conclusion supported the critics: that while the study was a substantial advance over previous attempts to estimate the risks of the nuclear power option, it understated the uncertainties surrounding the probability estimates of reactor accidents. In particular, they noted, the numerical estimates of overall risks in WASH 1400's Executive Summary were not reliable. Consequently, in January 1979, the NRC decided that the WASH 1400 estimates should not be used uncritically to justify regulatory or policy decisions in the future as they have been in the past.

That puts government back to square one, without a credible estimate of the overall risk to human health and safety presented by nuclear reactors. NRC officials still believe strongly, however, that the probability of a nuclear power plant accident causing deaths or injuries to the public is very small. They hold that, while the Rasmussen data may not be good enough by itself to make statements about the overall safety of nuclear power, they are good enough to be useful in verifying that a specific nuclear power plant is safe.

Of course, the root question in the controversy is "How safe is safe enough?" The NRC is now developing safety goals that will define more clearly the degree of safety needed to protect public health and property. The goals will probably include quantitative limits on the frequency of accidents or individual risk of death as well as qualitative objectives such as improved operator training or remote siting. In establishing such goals, NRC will be examining not only the risks of nuclear power but those of alternative energy sources and other social endeavors.

While the nuclear industry is generally supportive of NRC efforts, the Natural Resources Defense Council, the Union of Concerned Scientists and other groups have some grave reservations about whether quantitative safety goals are verifiable. They contend that assessing risk on a probabilities basis as NRC plans to do is far too imprecise to form the basis of regulatory decisions. They also question whether NRC will be able to make the risks associated with nuclear power "consistent" with the risks of other energy technologies since these risks vary dramatically in nature and are very difficult to quantify.

development (which is in any case not unique) the safety record of large nuclear plants is equal to or greater than that of other technologies. They also contend that most generic safety problems are for the most part resolved and that only minior aspects of these issues will require further research or study. They argue that managerial and procedural problems at NRC are preventing a timely

disposition of these issues.

Industry is not alone in criticizing NRC's handling of generic safety issues. The Kemeny and Rogovin reports (see Chapter 2, p.15) pointed out that NRC has resolved only two generic safety issues in the past decade and has not implemented these solutions. The Rogovin report also observed that NRC has little incentive to resolve generic safety problems promptly since it can continue to license individual plants, reasoning that the probability of a serious accident's happening before a generic problem is resolved is low.

Regulatory reform

Resolving nuclear hardware and design problems will improve nuclear power plant safety. But equally important is having a strong regulatory program to ensure the implementation of technical fixes and to enable the public to cope with any future nuclear accidents. The Kemeny and Rogovin reports urged the NRC to make reforms in three major areas of regulation: the licensing of new plants, safe operation of existing plants and plans for dealing with accidents and other emergencies at nuclear power facilities. Each of these areas has important ramifications for public safety.

Licensing

The licensing process now in place pleases almost no one. Industry claims that it's an unbearable drag on the growth of nuclear power. Others protest that it is not nearly strict enough to protect public welfare and safety. A utility wishing to add a nuclear power plant to its system must get two licenses from the NRC, one to build it and one to operate it.

The NRC grants a *construction* permit, after a mandatory public hearing, once it determines that a nuclear power plant can be built at a proposed site without endangering public health and safety or severely impacting the environment. The NRC issues an *operating* license if the completed plant meets all safety regulations and is in compliance with NEPA.

Nuclear power proponents from industry and government claim that the dual-licensing approach draws the process out needlessly, by allowing duplicative arguments over the same points. They also claim that current licensing procedures are so unpredictable both in time and content and so protracted as to make it virtually impossible for the nuclear industry to function.

A study by the Atomic Industrial Forum (the nuclear industry trade association) found that the licensing process and required design changes add about three years and $260 to $450 million to the cost of a nuclear power plant. (That means about $40 per year on the average family's electric bill over the plant's 30-year life-span.)[7] The

time can be significantly longer in individual cases. Extended delays such as those experienced at the Seabrook and Diablo Canyon plants can make nuclear power a very risky investment in the eyes of financial institutions. The report concludes that nuclear power's continued survival depends on getting a licensing process with "reasonable and predictable" time frames.

Nuclear critics point out that other industry and government studies show that construction and procurement problems, lower electric demand forecasts and financial constraints are greater sources of delay than the licensing process.[8] They maintain that in cases where licensing delays have occurred, intervenors were raising legitimate and important safety questions. For example, the safety implications of new seismic data delayed the licensing of Diablo Canyon Unit One (the plant is located near major earthquake faults).

Some citizen activists do, however, question the value of the dual licensing approach on different grounds. They argue that at the initial hearing, on the construction permit, there is not enough information to evaluate the safety and environmental impacts of the proposed plant and that by the time of the hearing (if one is held), for the license to operate, the plant is a *fait accompli*. Many people on both sides of the nuclear power fence agree that the licensing proceedings are long, expensive endeavors, mired in legalities rather than geared towards exchanging information on technical points and tending to promote combativeness rather than compromise. Significant support, including that of the Kemeny and Rogovin reports, is building in favor of a one-stage licensing process.

Other citizen activists are firmly convinced that two safety checkpoints are essential. They cite the very sketchiness of the preliminary designs at the construction permit stage as reason enough for a second full review of the safety issue.

In contention also is the scope of the licensing process, particularly the tendency of the NRC to concentrate on the potential for single, large-scale failures rather than on the more common small-scale problems and on human factors such as operator training and utility management that also affect safety (see "Operation" below). Citizen activists also argue that they should be allowed to raise broad questions about the desirability of nuclear power in the energy mix, rather than be forced to be site specific.

Following TMI, the NRC put an 18-month moratorium on issuing new licenses, to allow time for review. In that period, it made several changes in its licensing procedures, including stronger safety regulations, to address some of the equipment and operator deficiencies mentioned earlier, and more authority for its Atomic Safety and Licensing Board. The ASLB can now raise questions not raised by any of the parties to the licensing proceedings.

Many of these changes drew fire from the nuclear industry, which

claimed that the new rules would further lengthen the licensing process, making an already intolerable situation worse. Some now say their fears were justified. In the two-and-a-half years since TMI, NRC has granted only six full or partial operating licenses and no construction permits.

In response to industry concerns, the Reagan administration has instructed NRC to step up the licensing pace. In March 1981, Acting NRC Chairman Joseph Hendrie outlined a plan to meet this goal: shorten NRC safety and environmental review periods; cut the public hearing process from 18 to 8 months; and, with the end of the one-year licensing moratorium, shift NRC staff from other programs to licensing. Hendrie also asked for legislation that would allow the NRC to issue "interim operating licenses" (through 1983) before the conclusion of public hearings on a plant and to issue license amendments that pose "no significant hazard" to public health and safety without holding public hearings prior to the ruling. In addition, NRC has proposed eliminating nonsafety issues, such as the utility's financial status, from licensing procedures.

The NRC and its supporters maintain that these changes will not impair public participation and a full consideration of safety issues. Many citizen activists disagree. They claim that proposed rule changes would severely curtail citizen participation and that interim licenses prior to public hearings would make a mockery of the whole licensing process. Finally, they believe that NRC has unfairly blamed the public—intervenors—for licensing delays; they point instead to the NRC staff's slowness in reviewing applications and preparing testimony as the most important source of delay. This slowness is in turn attributable in some cases to the utility's tardiness in furnishing information and answering questions.

Who knows what the long-term effects of accelerating the licensing process would be? The nuclear industry hopes that some changes will inspire investors and that, in a year or two, utilities will begin to order new nuclear reactors, something they are not doing at the moment.

NRC Commissioner Victor Gilinsky and others warn that, by putting too much pressure on the NRC to speed up licensing, industry may be doing itself a disservice. They point out that NRC work on safety issues fell far behind schedule during 1980 because of staff shifts to licensing. They also emphasize that one of the reasons for emerging safety problems in existing plants is that these plants went through the licensing system at a time (the early 1970s) when there was great pressure to crank out licenses.

Operation

Once nuclear plants are licensed, the NRC and utilities are responsible for their safe operation. Both the Kemeny and Rogovin

reports were very critical of NRC's regulation and utilities' management of existing plants. The NRC, they charged, had lost sight of the forest for the trees by concentrating on issuing numerous safety regulations rather than developing safety goals. Other problems identified were:

- deficient training programs for plant personnel;
- poor communication between NRC field inspectors and headquarters; and
- an ineffective penalty program.

The Union of Concerned Scientists has also criticized NRC for not demanding retrofitting of existing plants with safety equipment required in new plants or at least considering whether each existing plant incorporates an equivalent level of protection.

However, the nuclear industry complains that too much retrofitting is required already on partially constructed plants—changes that are very expensive and may even interfere with overall safety systems design, thus actually detracting from reactor safety.

After TMI, the NRC moved to correct some of the failures of its enforcement program. With its licensing moratorium in force, the agency temporarily transferred staff from licensing into enforcement and redoubled efforts to evaluate long-standing safety questions. It also increased fines and penalties for infractions of regulations and revamped the inspection program and other procedures to enhance attention to safety questions. Although the NRC's inspection program still falls short of its goals, according to a 1981 House Government Operation Committee report, the agency has re-tilted staffing back toward licensing new plants, in keeping with the new priority on speeding up the licensing process.

Emergency planning

The TMI accident illustrated another problem area for nuclear regulatory and management institutions: emergency preparedness and emergency response. At the time of the accident, the state emergency preparedness plan for the TMI plant did not meet the NRC guidelines; the county had a sketchy plan; and none of the local communities had any emergency plans at all. The plans that did exist were not coordinated: they contained different accident classifications and different procedures for notifying government authorities.

Consequently, when an emergency did arise, federal, state and local agencies were ill prepared: confusion over "who's in charge"... conflicting signals and reports from different sources of authority... no head agency or chief spokesperson directing the federal government's actions...a five-member collegial set-up of the NRC ill suited to crisis management...three conflicting "authoritative recommendations" from the NRC regarding evacuation...lack of com-

munication and coordination between the national, state and local governments, which stymied planning and decision making, particularly over the crucial issue of evacuation.

Industry's performance was likewise flawed. Technical experts who had experience with nuclear accidents couldn't reach plant personnel to help them bring the problems under control. The utility tended to downplay the seriousness of the accident, which led to suspicions of a "cover-up," compounded by handling of news reporters' questions.

In the wake of TMI, government and industry have made improvements in emergency preparedness. The NRC requires utilities to develop more extensive evacuation plans for approximately 10 miles surrounding their plants before receiving an operating license. The NRC also requires the state and localities to draw up plans for a nuclear emergency. President Carter created a new agency, the Federal Emergency Management Agency (FEMA), to coordinate federal response to disaster, including radiological accidents. FEMA is currently helping states and localities draft their own management plans to respond to nuclear accidents.

Utilities operating nuclear plants now have rooms with monitoring and communication equipment outside the reactor control rooms to manage future emergencies; with this equipment, utilities can directly contact and get assistance from the plant's vendor, the NRC and the industry crisis management organ, the Nuclear Safety Analysis Center.

On the other hand, many utilities have not met the NRC's July 1, 1981 deadline for having basic warning systems (e.g., sirens) in place. Emergency plans developed so far vary greatly in their quality and detail, and many do not effectively spell out what must be done by whom in an emergency. Thus, it's still not clear whether institutions will be better able to cope with any future nuclear accident.

Because safety is a highly relative condition that can change from time to time and be judged differently in different contexts, there are no definitive answers to the questions posed at the beginning of this chapter. As knowledge of nuclear risks has evolved, so have standards of safety. For example, radiation doses thought safe 40 years ago are now deemed too risky. Some of the safety equipment installed in the first nuclear plants is now obsolete. Thus, safety evaluation and standard setting is an edifice, the construction of which is never completed. Safety decisions are never absolute. When they are made, they should be the products of the best scientific data and experience available; they should also reflect public expectations and values. □

Nuclear reactors: A short course

Light Water Reactors (LWRs)

The LWR uses a uranium oxide fuel consisting of roughly 3 percent uranium-235 and 97 percent uranium-238. The fissioning (splitting) of uranium atoms (primarily uranium-235) in the reactor releases large amounts of energy and one or more neutrons. These neutrons hit other uranium atoms and cause more fissions, creating a chain reaction.

The energy released in this chain reaction fits into a conventional process for making electricity: it heats water and produces steam, which turns a turbine shaft connected to a generator. The generator converts the mechanical turbine energy into electric energy that can be distributed over an electric power grid. The overall conversion process is nuclear energy ➧ thermal energy ➧ mechanical energy ➧ electrical energy.

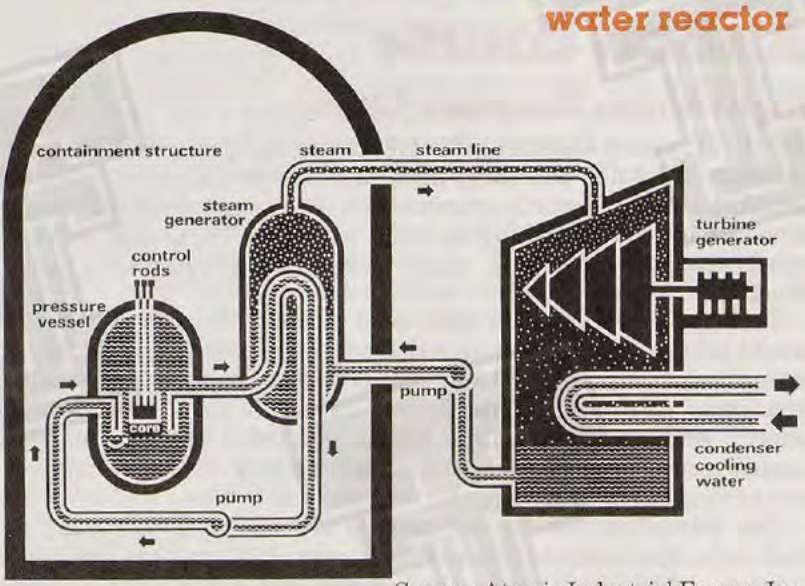
The important reactor components are the *core*, consisting of fuel rods, the control rods and the moderator; the *heat exchange system*, which both cools the reactor and transfers the heat produced to the steam system; and the *turbine generator*, which is similar to those in steam power plants burning coal, oil or gas.

The core is made up of several hundred fuel assemblies, each of which is a bundle of several hundred fuel rods—long, thin metal cylinders (about ten feet long and one-half inch thick) filled with fuel pellets. Interspersed between the fuel assemblies are control rods. These rods, containing materials that capture neutrons, can be moved in and out of the core to regulate the rate of the fission process and, as a result, how much power a plant produces. When the control rods are all inserted into the core, fission stops.

Water circulating between the fuel rods and between the assemblies serves as the moderator, i.e., the agent that slows neutrons, thereby increasing their chances of hitting other fuel atoms and continuing the chain reaction. It also has two other functions: it keeps the temperature of the fuel rods well below that at which the core materials would begin to melt, and it carries the heat energy out of the core and into the heat exchanger.

It is in the details of the heat exchange system that the two main LWR types differ. In the more widely used of the two types, the Pressurized Water Reactor (PWR), the water circulating through the core is under high pressure (2,250 lbs. per square inch) and reaches a relatively high temperature (300°C or about 600°F) without boiling. The PWR requires a separate heat exchanger loop that extracts the heat from the primary system and uses it to

Figure 2 : Pressurized water reactor



Source: Atomic Industrial Forum, Inc.

generate steam. Only steam from the secondary loop gets to the turbine (see Figure 2).

In the Boiling Water Reactor (BWR), the operating pressure is lower. Boiling and the formation of steam occur within the reactor vessel, and this steam goes directly to the turbine (see Figure 3). In both PWRs and BWRs, the nuclear reactor and the primary coolant systems are attached to a large, steel pressure vessel, which is housed in a concrete containment building.

After each year of operation, one-third of the reactor fuel must be replaced. At this point, the spent fuel contains roughly 1 percent uranium-235 and 1 percent plutonium (a new element created from reactions of neutrons with uranium-238). Both the uranium-235 and the plutonium can be separated out through reprocessing, then refabricated into fresh fuel elements. Thus LWRs both *consume* fuel in the course of producing power and *produce* fuel. The ratio of fuel created to fuel consumed is called the conversion ratio. The ratio for most LWRs is .6—that is, about six new fuel atoms are produced for each ten consumed.

Breeder Reactors

If a reactor can make fissionable isotopes faster than it uses them up, it is known as a breeder, i.e., it "breeds" more fuel than it consumes. A breeder reactor uses different combinations of fission-

able materials and fertile materials. (Fertile materials are those capable of being converted to fissionable materials.)

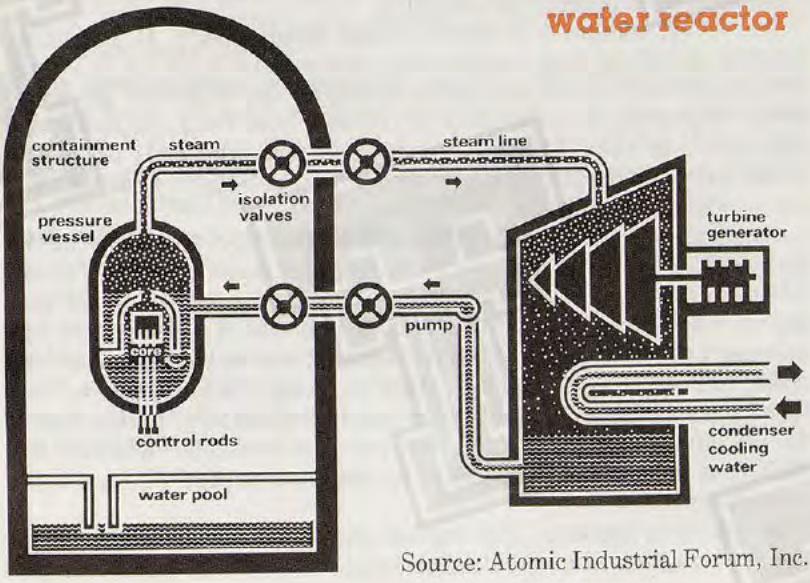
The combination with the greatest commercial potential is fissionable plutonium and fertile uranium-238—the mix used in the Liquid Metal Fast Breeder Reactor (LMFBR).

In the LMFBR (see Figure 4), the fuel core contains a mixture of plutonium and uranium oxides. It is surrounded by a blanket of natural or depleted uranium-238. This ensures that some of the neutrons produced during the fission process will hit and be absorbed by fertile uranium-238 atoms, converting these atoms into plutonium. The fuel conversion ratio for the LMFBR is 1.1 to 1.3, that is, for each 10 fissionable atoms used up in the reactor, 11 to 13 new fissionable atoms are formed.

While LWRs operate with low-energy neutrons, the LMFBR uses high-energy—"fast"—neutrons; therefore, unlike an LWR, an LMFBR does not use a moderator to slow neutrons. Instead, liquid sodium, a nonmoderating material, flows through the core extracting the useful heat.

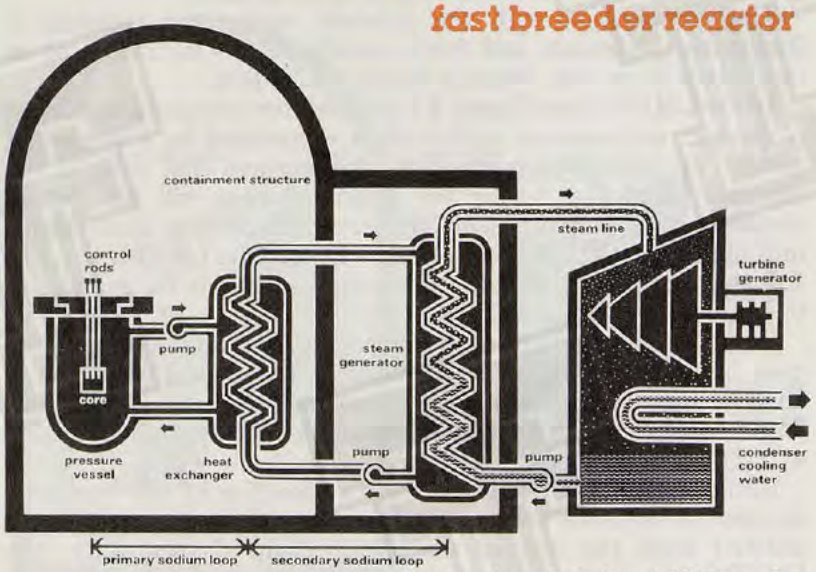
Because sodium is made intensely radioactive by the enormous number of neutrons present in the reactor core, it must be kept isolated from the rest of the power plant. Consequently, the LMFBR has a primary sodium loop that exchanges heat with a secondary loop of sodium. The heat from the secondary loop is used to generate steam for electricity in a third loop.

Figure 3: Boiling water reactor



Source: Atomic Industrial Forum, Inc.

Figure 4: Liquid metal fast breeder reactor



Source: Atomic Industrial Forum, Inc.

Sodium is an excellent heat-transfer fluid, and the LMFBR can operate at high temperature (around 500°C) and low pressure (1450psi). It can achieve a thermal efficiency of about 40 percent compared to 32 percent for an LWR.

However, sodium does have a major disadvantage. It is a highly volatile metal: at high temperature, on contact with air, it burns; on contact with water, it creates hydrogen and explodes. Since the whole object of the process is to transfer heat from the sodium to the water in the breeder's steam generator, the LMFBR needs much more elaborate leak prevention and detection systems than are necessary for LWRs.

Another safety problem is related to the high reactivity of the breeder's core fuel. This fuel is far more enriched than fuel for an LWR, containing from 10-to-30 percent fissionable material versus 3-to-4 percent in an LWR. This means that if breeder fuel was damaged in an accident, it would release more uncontrolled energy more rapidly than LWR fuel. Such an event, classified as a "core disruptive accident," could occur after a meltdown; and, while it would never equal the explosive force of a nuclear weapon, the NRC has required that breeders be designed to cope with a reactor explosion.

In addition, because of its higher plutonium content and because the fuel is exposed in the reactor longer than LWR fuel, there is a

high concentration of fission products in breeder fuel, creating a correspondingly greater potential radiation hazard. This is true particularly during reprocessing, where the dissolving of breeder fuel releases fission products and other highly radioactive wastes. Thus, in the breeder fuel cycle (see Figure 8) more stringent controls of radioactive releases in both normal and accident conditions are required than in the LWR once-through fuel cycle (see Figure 6).

Experimental breeders have been operated in this country since 1951. England, Russia and France have all run pilot or test breeders; France, whose Phoenix (250 MW) has been in operation for several years, is now constructing a 1250 MW Superphoenix. West Germany and Japan are each constructing a 300 MW experimental breeder. The United States is operating a Fast Flux Test Reactor in Richland, Washington, which will be used to develop breeder fuel and other technology and is constructing an experimental LMFBR on the Clinch River in Tennessee.

Alternative Reactors

Canadian deuterium uranium (CANDU) reactor This reactor, now in commercial use in Canada and other countries, operates with natural uranium. The CANDU can use natural uranium because it employs heavy water (the oxide of deuterium, the heavy isotope of hydrogen), which is a more efficient neutron moderator than the water used in LWRs. The reactor requires some 20-percent less uranium than present LWRs; by using slightly enriched uranium (about 1.2 percent uranium-235), it could use 40-percent less uranium.

High temperature gas-cooled reactor (HTGR) Helium is used as the heat transfer medium and graphite as the moderator, allowing HTGRs to run at much hotter temperatures than other reactors and increasing their efficiency. A prototype is operating in Colorado, but there is little commercial interest at present.

Fast-mixed spectrum reactor (FMSR) A variation of breeder reactor technology, the FMSR can be fueled with low-enriched uranium. After a large initial load of uranium, this FMSR and successor reactors would create and burn plutonium in their fuel without any reprocessing, reducing uranium requirements by more than 90 percent. FMSR has been identified as the "most promising" of the advanced concepts, but its technical feasibility has not yet been proved. □

5 Generating electricity: The economics of the case

An AEC official once commented that nuclear power as a source of electricity would be "too cheap to meter." That prediction illustrates all too well how hard it is to be a prophet. Over the past decade, the cost of building a 1,000 MW nuclear power plant has increased from several hundred million to more than a billion dollars. While the costs of all goods have skyrocketed, the average capital cost of nuclear plants has risen far more than the general rate of inflation. As a result, state regulatory authorities are taking a hard look at the effects of nuclear generation costs on electric bills. They are asking two basic questions: Why the dramatic increase in the cost of nuclear power? Is nuclear power still economically competitive with other energy sources?

Bargain basement prices

In the early and mid-1960s, nuclear reactor manufacturers, notably the General Electric Company and the Westinghouse Electric Corporation, encouraged utilities to order light water reactors (LWRs) by offering "turnkey" contracts to deliver a completed power plant at a fixed price. Utilities bought 17 reactors, with a capacity of 10,000 MW, under this type of contract arrangement.

Since most of these plants experienced large cost overruns, the suppliers lost hundreds of millions of dollars on these contracts, but they did accomplish their main objective: to develop markets for LWRs and build the utilities' confidence in nuclear technology. By 1968, utilities had ordered a total of 62 reactors with a capacity of approximately 50,000 MW.[1]

This nuclear market boom came about despite the fact that the

technology and its operating performance (i.e. reliability, repair and maintenance) were almost untested. In 1965, the first commercial-scale reactor, Dresden 1 (200 MW), located in Illinois, had been operating for only five years, and utilities were ordering much larger reactors—up to 1,000 MW in size—before any intermediate-size units were operating. Furthermore, the impact of the regulatory process on costs was still an unknown, and inflation had not yet taken its full toll. As a result, the final price tags—taking into account design changes, unforeseen operating costs and regulatory delays—for reactors ordered in the late 1960s greatly exceeded the manufacturers' estimates. But on this round, it was the utility—hence, the consumer—and not the supplier that paid. Had manufacturers priced LWRs more realistically from the start, it is unlikely that utilities would have made such a large commitment so quickly to this new technology.

Rising construction costs: The key factors

Nuclear power is not the only energy technology buffeted by inflation, mismanagement and unexpected retrofitting costs. The costs of building coal plants, installing solar collectors and using other energy sources have also increased. But the cost increases for building nuclear plants are astronomical. The percentages run from a few hundred to over 1,000 percent, and the dollars run in the billions. For example, in 1980 the Philadelphia Electric Company raised the estimate for its still unfinished two-unit Limerick plant (1,150 MW) from a 1972 figure of $375 million to $3.1 billion—a jump of more than 725 percent. Why has there been such a dramatic escalation in costs?

Rampant inflation and interest rates

When plant orders were placed in the early 1970s, utilities assumed an inflation rate of about 4 percent a year and interest rates of 3 to 5 percent. But by 1981 the inflation rate had almost tripled, and interest rates, with their geometric effects on the "rent" paid for money, had raced up—as high as 18 percent. Finance charges accounted for 30 to 35 percent of total construction costs—even 50 percent in cases where there were major delays during construction. In short, they actually doubled the total cost of the plant.

Construction and licensing delays

Construction and licensing delays have intensified the effects of inflation on the cost of labor and materials and have caused interest charges to mount.

A 1978 Congressional Budget Office (CBO) study estimated that utilities have experienced an average 10-month delay in obtaining a

construction license. The resolution of safety and environmental problems was the major cause of this delay.

The longest delays, however, have occurred during the actual construction period. These delays have averaged about two years. According to CBO and other studies, declining demand and financing problems were the principal causes. When demand for electricity declined in the mid-seventies, regulators began questioning the need to construct new power plants, complicating utility efforts to raise capital for these projects. As a result, many utilities had to slow down or postpone their construction projects. Other sources of delay included labor strikes, low productivity, late delivery of materials and management problems. CBO found that changes in federal regulation caused only 20 percent of all delays during construction. (Recently, a few utilities have experienced delays in obtaining operating licenses: NRC's post-TMI licensing pause delayed the operation of three reactors for more than a year.)

Both advocates and critics of nuclear power find fault with the CBO study. The Atomic Industrial Forum (AIF) contends that government regulation has been a much greater source of delay than CBO indicated. It believes that shortening the licensing process, in particular, could substantially reduce the overall costs of building a nuclear plant. In contrast, the Union of Concerned Scientists argues that very few utilities have experienced delays because of the licensing process. They contend that a major reason why many nuclear plants are not being completed on time is that most utilities have consistently underestimated lead times.

The impact of delay on consumer costs is considerable. A one-year delay can boost the cost of a nuclear power plant by about $90 million, according to a 1978 NRC report; it could also cost consumers an additional $100 million if utilities have to purchase an alternative source of power in the interim.

Design changes

Design changes (including retrofits) required to improve safety, environmental features and operating reliability increased the *real* cost (minus the impact of inflation) of nuclear construction between 1971 and 1979 by 100 to 140 percent. This rate of increase in real cost is twice that for the construction of coal plants; it is also much higher than the rate for the construction industry as a whole.[2]

As more nuclear plants came on line during the 1970s and operating experience increased, regulators and the public began to question the adequacy of many safety and environmental features of these plants. The AEC investigated these questions and, in cases where defective equipment was discovered, ordered utilities to make costly improvements.[3] Between 1973 and 1976, for example, the NRC issued approximately 180 new environmental and safety regulations.[4] Furthermore,

manufacturers made design changes on their own initiative to improve operating reliability.

These design changes and the increased size of reactors have more than doubled the amount of material and labor needed to build a nuclear plant over the past decade, significantly adding to construction cost.

Present costs

If a utility decides to build a new nuclear power plant (1,000 MW) and have it operational by 1995, DOE's Energy Information Administration

Calculating generating costs

Utilities divide production costs, as manufacturers do, into fixed costs and variable costs.

Fixed costs, which include plant construction costs plus interest charges on borrowed capital, are stable once incurred. *Variable costs*, which include fuel, wages and material costs incurred in operating and maintaining the plant, fluctuate because they are sensitive both to inflation and to the amount of electricity produced by a plant over a year.

A generating station's total electricity costs are computed by dividing the sum of fixed and variable costs for a certain period of time by the amount of electricity produced during the period. The result is expressed in tenths of a cent, or mills, for each kilowatt-hour of electricity produced and delivered to the nearest point on the utility's distribution network, normally on the plant's grounds.

The relation of the fixed costs to the variable costs determines which of the three types of service, outlined below, each power plant is best suited to provide.

Base-load plants are designed to operate at full capacity for prolonged periods. They generally have high fixed costs and low variable (i.e., operating) costs. Nuclear power plants and large coal-fired units (above 500 MW) fall into this category.

Cycling plants can operate at less than full load without a great loss in efficiency and with flexibility to respond to hourly fluctuations in daily load requirements. Coal-, oil- and gas-fired plants in the 200-600 MW range are used for cycling.

Peaking plants generate electricity a small portion of the time, when maximum or peak generating capacity is needed (for instance, during a heat wave). Relatively small gas- or oil-fired turbine units in the 25-50 MW range are ideal for peak load units.

To optimize production costs, utilities will have a mix of these three types, with base-load plants providing 65-70 pecent of the generating capacity in most cases.

estimates it would cost about $1.59 billion in constant 1980 dollars.* Since the dollar will not remain at its 1980 value over the 12- to 15-year time period it takes to license and construct the plant, allowance must be made for inflation. If the inflation rate were 10 percent per year, for example, the actual cost of a new nuclear plant would be about $5 billion. Other estimates range from $4 to $8 billion per plant.

The capital cost (see box: Calculating Generating Costs) of a new reactor, however, varies widely among different regions of the country. For example, it costs about 15 percent less to build a nuclear plant in the south than in New England. These regional variations stem from differences in site conditions, wage rates, taxes, financing costs, and so on.

Of the total cost of generating electricity from a nuclear power plant, capital costs account for about two-thirds and fuel, operation and maintenance costs account for the other third. Operating costs, like construction costs, have been increasing faster than the general rate of inflation because of new safety and environmental regulations, unanticipated equipment problems, and increases in the number of personnel needed to run a nuclear plant.

Comparing the generating cost of nuclear and coal-fired plants

If a utility needs a new source of **base-load** electricity (see box: Calculating Generating Costs), it has only two realistic options: a coal-fired plant or a nuclear power plant. Figure 5 compares the total costs of generating electricity from these two types of plants for 1980. According to these DOE estimates, nuclear plants generated base-load electricity slightly cheaper on the average than coal-fired plants. Of course, this cost advantage for nuclear does not hold for every region. Nuclear plants are less expensive in the north central region; coal plants are cheaper in the far western (when sited near low-cost coal) and in the southern and the middle Atlantic regions.

Many nuclear critics contend that averaging generating costs from all plants camouflages the rapidly deteriorating economics of nuclear power and that the more significant cost comparison is between *new* coal and nuclear units. A 1979 AIF survey showed that for those units entering service in 1975 and later years, power from nuclear plants was more expensive than power from coal-fired plants.

Charles Komanoff, an independent energy consultant and long-time critic of the nuclear industry, predicts that by the late 1980s electricity

*This estimate is based on a national average capital cost of $1,585 (constant 1980 dollars) per kilowatt on installed capacity.

Figure 5: National averages of U.S. private and public utility nuclear and coal-fired power plant generating costs for 1980

Cost category	Average unit costs mills per kilowatt-hour	
	Nuclear	Coal
Fuel cost (actual)	4.77	12.69
Operation and maintenance cost (actual)	5.35	2.52
Capital cost (estimated)	13.11	8.13
Total generating cost (estimated)	23.23	23.34

These cost estimates are for a typical LWR pressurized water reactor (over 400 MW) and a coal-fired power plant (over 500 MW), both operating at about 60 percent of their capacity. A mill is a tenth of a cent. A kilowatt-hour is a thousand watts used for an hour.

Source: *UPDATE: Nuclear Power Program Information and Data*, prepared by Office of Coordination and Special Projects, Office of Nuclear Reactor Program, U.S. Department of Energy, May/June 1981, p. 32.

from new nuclear plants will be at least 25 percent more expensive than electricity from new coal plants, with most of the increased costs in nuclear power stemming from new safety regulation. The AIF strongly disagrees with this assessment, arguing that the 1970s was a decade of nuclear regulatory change unlikely to be duplicated in the 1980s. Consequently, the AIF does not anticipate a significant number of new and costly safety requirements.

Komanoff and the AIF also clash on another subject—at what percentage of full capacity each type of plant will operate. No power plant ever operates at full capacity, that is, produces energy all the time. It is periodically shut down for maintenance and repairs. In general, the more expensive a plant, the more it needs to operate, to be cost efficient. Given that the capital costs of a nuclear plant are much higher than for coal, nuclear electricity costs are more sensitive to plant outages.

During the seventies, nuclear plants over 400 MW and coal plants over 500 MW both averaged about 60 percent of capacity.[5] Komanoff's study assumes that improvements being made in newer coal units will enable them to achieve a 70-percent capacity eventually, whereas he sees no similar trend for nuclear power plant performance, because most units are experiencing more mechanical problems than anticipated and are often shut down for repairs. In addition, the new larger nuclear plants over 800 MW are averaging only 55 percent capacity.

The AIF points out that nuclear plants averaged 65 percent of their

capacity in 1977-78 and regards the decrease to 60 percent in 1979-80s as temporary—traceable to TMI-related events. They expect nuclear capacities to return to 65 percent or more and doubt that large coal plants will achieve 70-percent capacity in the near future, given the pollution-control backfitting and upgrading they will have to do.

In sum, when the two types of plants are compared, the average costs of generating electricity are about the same, if all operating plants are included; but if only new operating plants are considered, nuclear power is a more expensive source of electricity than coal. Whether this trend will continue will depend on regulatory activities, equipment performance and other factors.

Financial constraints

In deciding whether to build a nuclear or coal-fired plant, a utility must weigh the separate elements that together produce a generating cost for a particular plant. One important element is initial capital costs.

At present, electric utilities are encountering difficulties in raising funds for new construction projects, because of high interest rates and the inability to recover adequate revenues to meet the inflation-driven costs of construction, fuel and general operations. Thus, many utilities are tending to favor intermediate-sized coal units (450-750 MW) because of their lower initial capital cost and shorter, more predictable construction and licensing lead times.

Utilities get money to build by selling common stock (shares) in their company or by selling bonds (long-term debt). Over the last decade, escalating construction costs, declining demand for electricity and lagging rate relief have lowered the market value of utility stocks. Most utilities must now sell stock at a discount from its book value. As for bonds, because of the utilities' weakened financial condition, the business community now perceives utility projects as more risky than heretofore and thus will buy utility bonds only if they get a higher-than-normal rate of return on their investment.

The accident at TMI Unit 2 further disillusioned investors about utility stocks and bonds, especially for companies operating and/or constructing nuclear projects. The owner of the TMI plant, the General Public Utilities Corporation, was pushed almost to the brink of bankruptcy overnight. The corporation had only $300 million in insurance to cover on-site damage estimated at $1 billion; in addition, it had to buy replacement power to meet customers' needs. Even more devastating was the fact that the NRC would not permit the operation of TMI Unit 1 after the accident. The Pennsylvania and New Jersey State Public Service Commissions then removed this operable reactor and the damaged TMI unit from the rate base, so the utility could not earn a return on these facilities to pay for the cost of money invested in them.

To ease investor concern over the financial risks posed by nuclear

power, the nuclear industry has since set up insurance pools that cover the cost of on-site damage (up to $1 billion) and of replacement power, should another nuclear accident occur. While some investors are still reluctant to buy securities from utilities heavily committed to nuclear power, such insurance efforts have helped stabilize investor concerns. Most financiers are willing to invest in these utilities as long as they receive a high rate of return to compensate for the high perceived risk.

Most utilities, however, aren't earning enough to offer this inducement. Most are earning an average rate of return of 12 to 13 percent—several percent below the ceiling permitted by their state public utility commissions. In comparison, oil and chemical companies are earning 15 to 20 percent. The other financing option is to sell bonds at very high interest rates—15 to 18 percent; but for a regulated utility to borrow money at interest rates higher than its rate of return is not generally a good business practice.

Another problem is that the sums utilities must borrow to construct power plants, especially nuclear plants, are so huge. For example, the two-unit Midland nuclear plant in Michigan will ultimately cost Consumer Power Company about $3 billion, over 50 percent of the utility's existing assets as of the end of 1979. If a utility's ratio of debt to net worth becomes too great, its credit standing will suffer and the value of its stock will further decline.

For these and other reasons, utilities have had to postpone or cancel construction projects. And nuclear power plants have been among the first to be delayed, because of their high initial capital requirements and long lead times over which interest charges are levied.

As a rule, public utilities commissions do not permit utilities to bill customers for a new power plant until it has begun to supply electricity, but some utilities have asked state PUCs for permission to add a Construction Work in Progress (CWIP) surcharge on customer billing, to be used to pay interest on money borrowed to construct a power plant. (At present, many utilities have to borrow money just to pay interest on their debt.) Proponents say that CWIP would hold down future increases in customers' bills because utilities would have already paid part of the capital cost of a new plant before it enters service.

Since interest charges account for about one-third of the total construction costs of a nuclear plant, utilities building these plants are especially anxious to have CWIP. Commonwealth Edison (Illinois) has already been allowed to charge its customers for one nuclear plant still under construction.

But many consumer groups strongly oppose this surcharge, because CWIP shifts the investment risks from stockholders to rate payers; that is, it guarantees that the utility will generate enough income to cover its interest expenses regardless of whether the investment was a wise one. They also believe that current customers should not have to pay higher rates so future customers will have a break. Finally, they point out that

The impact of subsidies

The cost of nuclear electricity would be higher if federal subsidies to the nuclear industry were included in the estimated fixed cost. According to a 1981 DOE study, the U.S. government invested about $14.6 billion (1980 dollars) in the research and development of commercial nuclear power between 1950 and 1979. If billed directly to utilities, this subsidy would raise by about 10 percent the fixed costs on the 160 nuclear plants operating or under construction.

These figures do not take account of future federal subsidies, which could add up to another $10 billion (1980 dollars) by the year 2000 if they continue at past rates. And the reckoning would be substantially higher—closer to $40 billion—if past and projected federal research and development funds for the breeder reactor and nuclear waste management, as well as federal expenditures for military nuclear programs that have benefitted civilian nuclear power, were added in.

The nuclear power industry is not alone, however, in enjoying federal assistance. Fossil fuels—oil, natural gas and coal—have benefitted for years from government subsidies, tax benefits and trade restrictions. For example, a 1980 DOE study estimates that coal has received about $14.3 billion (1980 dollars) in cost incentives and oil over $146 billion (1980 dollars). Of course, coal and oil have much broader uses than just generating electricity, and the percentage of electricity generated by coal is about four times greater than that generated by nuclear power. It could be argued, therefore, that the coal subsidy dollar has produced a much larger benefit to date.

money will be worth less in the future anyway.

Some observers believe that an outmoded regulatory structure is a fundamental problem for utilities. When state PUCs were set up to regulate utilities more than 30 years ago, the cost of electricity was constant or declining. Utilities were a high-growth, low-risk business capable of accepting a low yield. Now electricity demand has waned, costs are rising rapidly, and utilities have become a high-risk venture; yet PUCs have made few policy changes to reflect this new reality. Some economists have recommended either major reforms in PUC operation or complete deregulation of the utility industry. The merits of these ideas are being closely scrutinized by government and industry officials.

Cheaper alternatives for utilities and for the public

Future investment may not be in coal-fired or nuclear power plants. High financing costs, fluctuation in demand, and the long times required

to build a plant have made large nuclear power and coal plants much less attractive than they were ten years ago when demand was higher.

Some utilities are starting to promote conservation as a low-cost source of new energy, to install equipment designed to decrease demand, and to invest in small-scale generating stations. Southern California Edison, for example, reorganized its capital investment program to accelerate small-scale and renewable resource projects. By 1990, the company expects to generate 30 percent of its new electrical capacity from wind, geothermal, solar, hydro and cogeneration facilities. These alternative diversified energy projects are easier and quicker, although not necessarily cheaper, to build than nuclear or coal plants. For example, it takes two or three years for a windmill or geothermal station to begin service, compared to ten to twelve years for a nuclear plant. Herein lies the financial benefit: money borrowed to pay for construction can be repaid sooner, and this accelerated rate of cash flow makes the business a more attractive investment.

New England Electric has adopted a similar approach. It has about a dozen alternative fuel projects in the works, including two plants that burn solid waste and a low-head (small) hydroelectric generation station. The company is also aggressively promoting conservation. It expects to obviate the need for one 1,000 MW nuclear power plant and to reduce its investment budget by $2.6 billion over the next 15 years.

Other utilities are maintaining a more traditional approach, planning for at least a four-percent growth in electricity demand each year. They believe that too great a reliance on conservation and small-scale technologies could lead to power shortages in the future. In general, these utilities are likely to opt for new coal-fired plants in preference to new nuclear plants as long as coal plants have more predictable licensing environments, shorter construction lead times and lower total costs.

On the average, the nation has a 35-percent surplus of electric generating capacity (twice the recommended reserve margin); thus, most utilities can postpone commitment to new generating facilities for at least a few years. Whether utilities will resume building nuclear power plants will depend on many factors, including the rate of inflation, the costs of financing, the length and uncertainty of the licensing process, how electric rates are calculated (whether CWIP is allowed) and the demand for electricity. Nuclear power will have a difficult time competing economically with other energy sources if inflation and financing costs remain high and electricity demand low. □

6
The nuclear fuel cycle

The commercial nuclear power system that exists today in the United States is dominated by one kind of reactor, the light water reactor (LWR), and by a fuel cycle based on once-through uranium use. ("Once-through" means that only fresh uranium oxide fuel is used; spent fuel is being stored until a method of permanent disposal is established.) If this system were the only one available and were not at least gradually improved, a limited uranium supply would bring an end to nuclear power throughout the world sometime in the next century.

But that is a big *if*. Neither long-term use of LWRs nor a once-through fuel cycle was originally contemplated. The AEC expected to shift to two technologies that could extend the nuclear age thousands of years into the future: the *reprocessing of spent fuel* to recover usable uranium and plutonium and a *breeder type of reactor* that would need only small infusions of fresh uranium oxide to keep going indefinitely.

Why hasn't the United States developed this more elaborate system? The answer is a mixture of politics and economics. Reprocessing of some commercial spent fuel did take place in the early 1970s but soon ceased because technical problems made the operation uneconomic. In 1976 and 1977, President Ford and President Carter put reprocessing and the commercialization of the breeder reactor on indefinite hold because—unlike the existing system, which employs uranium fuel in a form that cannot be used for nuclear weapons—the new technologies would both produce and use plutonium, and plutonium is the stuff of which nuclear weapons are made.* Thus, the "plutonium fuel cycle," as it is called, could facilitate the proliferation of nuclear weapons.

In 1981, President Reagan lifted the moratorium on reprocessing of commercial spent fuel and directed government agencies to proceed with the demonstration of the breeder reactor. The economic barrier,

*The fissioning of the uranium fuel in LWRs creates plutonium that in turn fissions and helps generate energy, but if this plutonium is never separated from the fuel by reprocessing, it never appears in a form accessible for nuclear weapons.

however, remains. Private industry in the United States has no immediate plans to build either kind of facility because of the huge investment costs required and the availability of cheaper alternatives.

Before laying out the advantages and disadvantages of the two different nuclear power systems, a brief review of the two fuel cycles is in order.

Once-through uranium fuel cycle

The main ingredient of the once-through uranium fuel cycle (Figure 6) is uranium-235, a naturally occurring substance that can sustain a chain reaction. Uranium-235 is found as a rare component of uranium at a richness of only .7 percent, the rest being chiefly uranium-238 (99.3 percent).

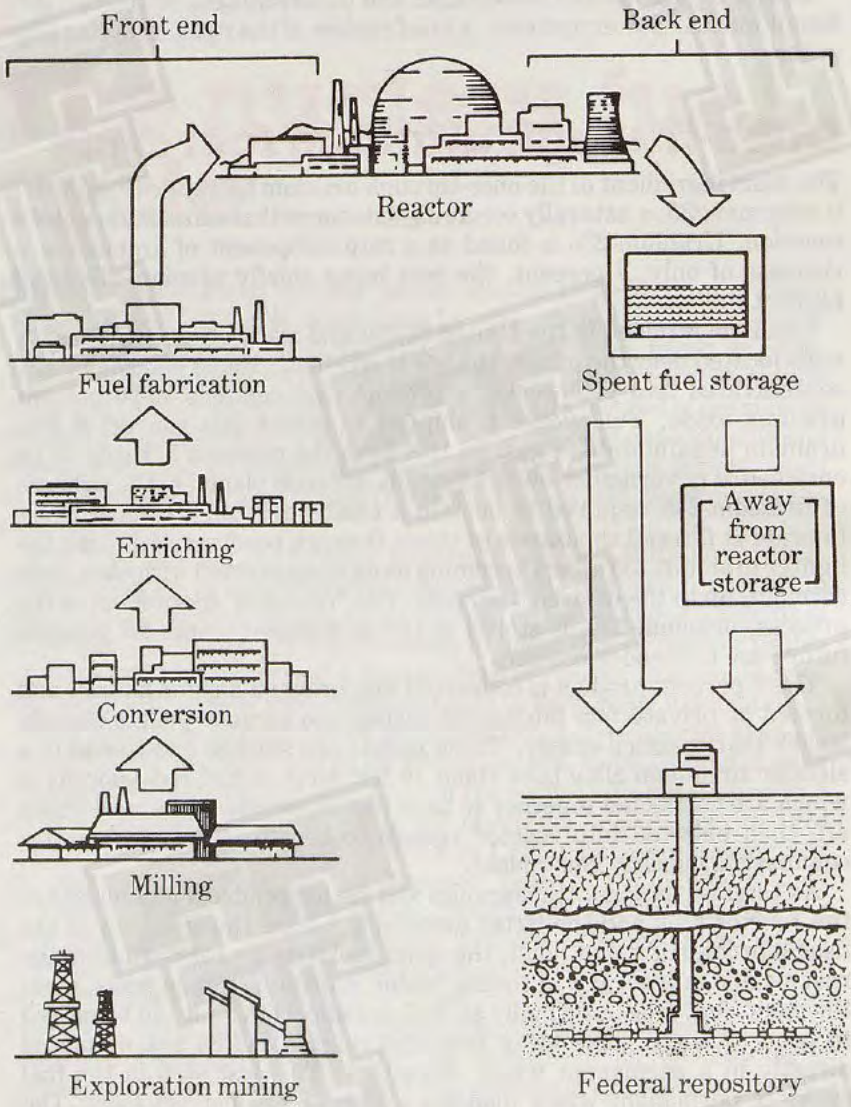
Uranium is mined in the United States and many other countries. In mills located near the mines, the ore is crushed, ground and chemically concentrated into yellowcake, a product that contains 70-90 percent uranium oxide. Yellowcake is shipped to plants that convert it into uranium hexafluoride, a gas. In this form the uranium is ready to be enriched at government-owned gaseous diffusion plants, to the richness of uranium-235 required to sustain a chain reaction. Uranium hexafluoride is filtered thousands of times through porous metal, with the lighter uranium-235 atoms becoming more concentrated with each pass-through, up to the desired 3 percent. The "depleted" by-product of the process, uranium-238, is stored at the enrichment plants for possible future use in breeder reactors.

The 3-percent product is converted into uranium dioxide powder and formed at private fuel fabrication plants into ceramic pellets slightly larger than a pencil eraser. These pellets are stacked end-to-end in a slender zirconium alloy tube about 10 feet long—a fuel rod—dozens of which are connected together to form fuel assemblies. The assemblies are then inserted into reactor vessels to become the fuel core of a commercial nuclear power plant.

As the fuel fissions, transuranics and fission products accumulate in the reactor fuel; and the latter eventually reduce the efficiency of the fission process. At that point, the spent fuel rods are removed from the reactor and submerged in cooling water in on-site storage pools. Once the spent fuel cools, thermally as well as radioactively, it can be moved to other storage pools away from the reactor (AFR) site or placed directly in a permanent waste repository. This last step in the fuel cycle—a permanent waste disposal system—does not yet exist. The United States and other countries are considering burial of these wastes in deep geologic formations, but to date no permanent facilities have been built. (See Resources: *A Nuclear Waste Primer.*)

Compared to possible alternative fuel cycles, the once-through uranium fuel cycle is relatively inefficient in its use of uranium. Indeed,

Figure 6: LWR once-through fuel cycle



proponents of other processes call it the throwaway cycle. A 1,000 MW nuclear power plant requires about 6,000 tons of uranium oxide for its 30-year lifetime. Modest improvements in fuels and reactor operating methods, now being tested here and elsewhere, can reduce these requirements by about 20 percent. Other improvements in reactor design can produce another 10-percent savings for a total of 30 percent. A more efficient enrichment process could bring aggregate savings of up to 50 percent. In comparison, however, the plutonium fuel cycle with breeder reactors has the potential of providing a 98-percent savings in uranium consumption.

Plutonium fuel cycle

The plutonium fuel cycle (Figure 7) could be used for LWRs. If it were, the front end of the cycle would be similar to that for once-through uranium. There would be, however, a distinct difference in the handling of spent fuel. Instead of being placed in a waste repository, the spent fuel would be sent to a reprocessing plant where usable uranium and the plutonium that was created by the reaction process would be recovered, then sent to a refabrication plant to be recycled into commercial fuel. The new fuel, called mixed oxide (MOX), would contain a mixture of uranium and plutonium oxides (not just uranium oxide as in present LWR fuel). This cycle could be repeated *ad infinitum*.

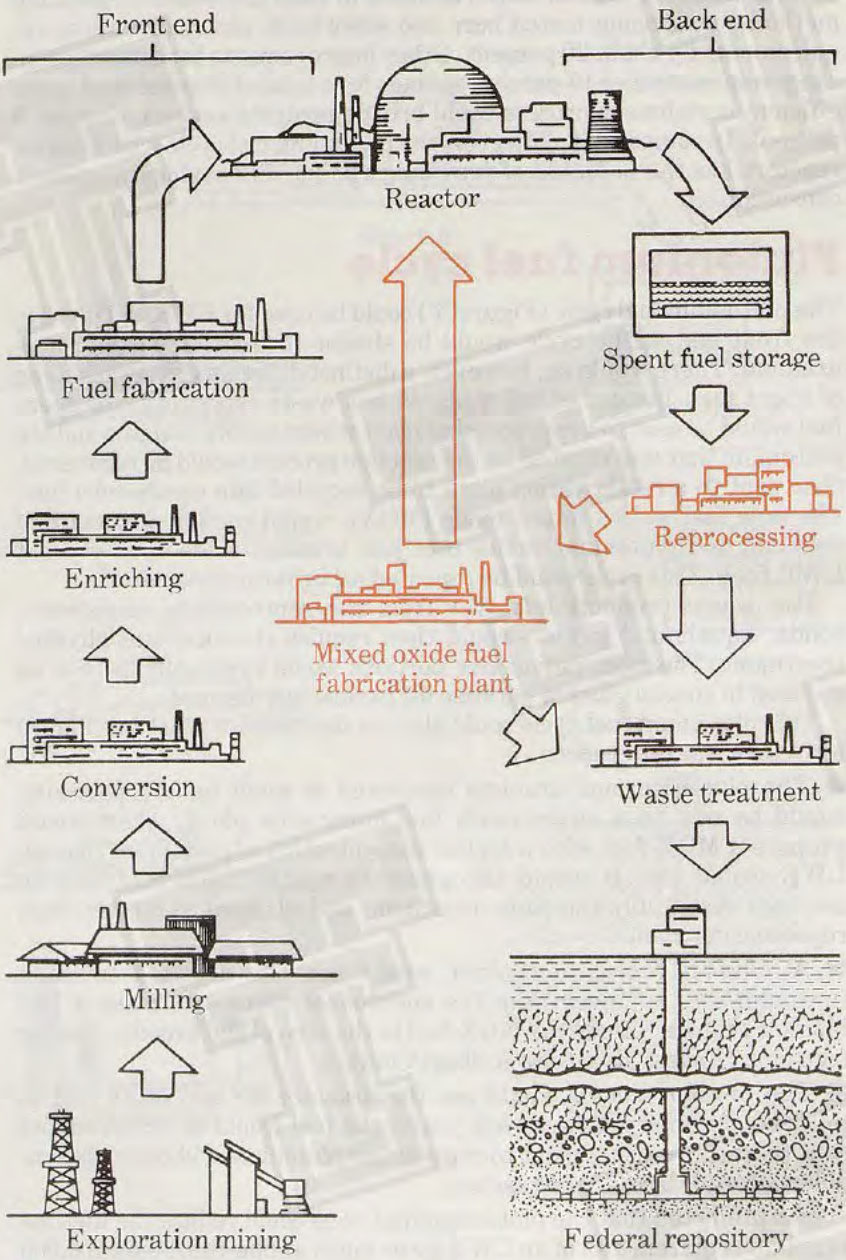
The waste products left over from the reprocessing operation—solids, liquids and gases—would then require chemical and physical treatment. The most radioactive portions would eventually have to be encased in special glass or ceramic for permanent disposal.

This plutonium fuel cycle could also service breeder reactors (Figure 8) with these differences.

- The plutonium and uranium recovered in spent fuel reprocessing would be sent to a *mixed oxide fuel fabrication plant*, which would prepare a MOX fuel with a higher concentration of plutonium than an LWR would use. It would also generate wastes that would have to undergo essentially the same treatment and disposal as wastes from reprocessing plants.
- A *blanket fabrication plant* would use the depleted uranium (uranium-238) left over from the enrichment process to make a fuel blanket that surrounds the MOX fuel in the core of the breeder reactor (see box: Nuclear Reactors: A Short Course).
- The *breeder reactor* would use the uranium-238 and MOX fuel to produce electricity. After a few years, the fuel would be removed and sent to a reprocessing plant to recover the plutonium and other fissionable materials bred in the reactor.

It is predicted that the plutonium fuel cycle could reduce the lifetime uranium requirements of an LWR by as much as one-third—from 6,000 to 4,000 tons—about the same level of efficiency as is projected from the

Figure 7 : Plutonium fuel cycle for LWRs



■ Readily accessible plutonium usable in weapons on short lead-time.

use of uranium in an "improved" (advanced) once-through cycle. However, a breeder of equal size requires less than 200 tons over the same 30-year period. Furthermore, there is already in storage enough uranium-238 left over from the enrichment process for today's LWR technology to fuel a large breeder economy for centuries without any further uranium mining. Thus, from a resource-supply point of view, the use of breeders is the most attractive version of the plutonium fuel cycle for most countries.

How do the uranium and plutonium fuel cycles compare?

Beginning with the Ford administration, a number of studies have examined how once-through uranium and its offspring, plutonium, compare as sources of nuclear energy. These include:

- the CONAES Report (Committee on Nuclear and Alternative Energy Systems) of the National Academy of Sciences, *Energy in Transition, 1985-2010;*
- DOE's NASAP (Non-proliferation Alternative Systems Assessment Program) study;
- the INFCE (International Nuclear Fuel Cycle Evaluation) study; and
- a series of reports commissioned by the Department of State and conducted by Pan Heuristics, a private consulting firm.

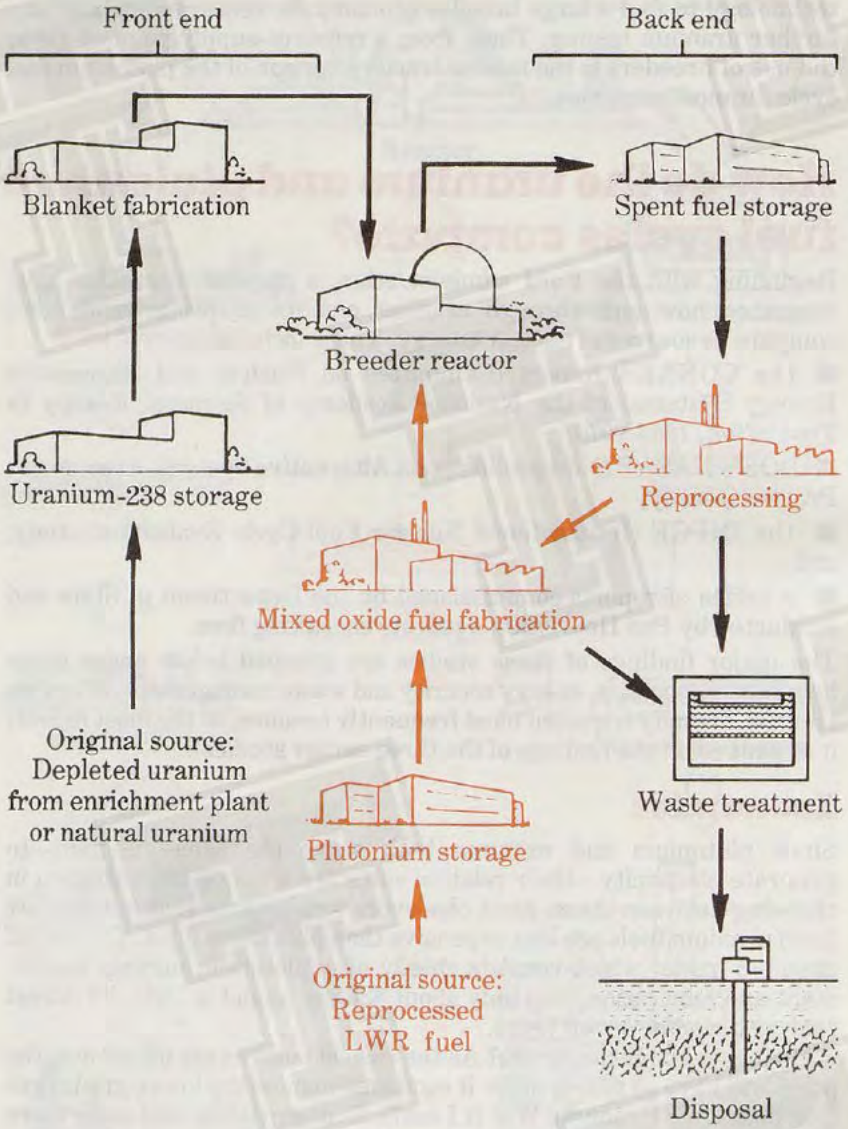
The major findings of these studies are grouped below under three headings: economics, energy security and waste management. (The Pan Heuristics study is quoted most frequently because, as the most recent, it expanded on the findings of the three earlier studies).

Economics

Since plutonium and uranium both serve the same function—to generate electricity—their relative costs are a major consideration in choosing between them. Most observers would agree that in the short term uranium fuels are less expensive than plutonium fuels. The cost of uranium oxide, which consists chiefly of exploration, mining, enrichment and fabrication, was only about $25 per pound in 1981, its lowest real cost in some seven years.

But what about the future? As the richest sources are mined out, the price will have to rise to make it economic to mine the lower-grade ores (see box: U.S. Uranium: Will It Last?). Rising prices would make more efficient LWR technologies and enrichment operations and technologies economically feasible and attractive. For example, DOE estimates that new technologies now being developed could reduce the cost of enrichment by more than half. The NASAP study found that the use of

Figure 8: Breeder reactor fuel cycle



■ Readily accessible plutonium, usable in weapons on short lead-time.

unreprocessed uranium fuels in breeder-type reactors (see fast reactor in box: Nuclear Reactors: A Short Course) could potentially cut uranium consumption by more than 90 percent.[1]

Plutonium fuel costs for use in LWRs compare unfavorably. Its costs lie chiefly in reprocessing spent LWR fuel and refabricating fresh fuel. The nuclear material recovered from the spent fuel would reduce the amount of additional uranium that would have to be mined and enriched. The greatest expense would be the construction of a large facility to reprocess and refabricate the fuel—a cost of $2 to $3 billion. This means spending $200 to $500 to reprocess a pound of spent LWR fuel to recover uranium and plutonium worth less than $100 at today's prices. Clearly, the price of uranium must rise substantially—by at least a factor of 2 to 5—before reprocessing/recycling in LWRs becomes economical. Even then, it is unlikely that reprocessing/recycling could reduce the cost of nuclear electricity by more than a few percent.[2]

Plutonium fuel costs for breeder reactors, on the other hand, present a different picture. While the cost of constructing and operating a reprocessing/refabrication facility would be somewhat greater, there would be no further need to mine or, for that matter, enrich uranium, since the breeder can use the depleted uranium left over from past enrichment operations for a long time. While the fuel cost picture is rosy, the high capital cost of constructing a breeder reactor is a counterbalancing factor. France, the country most advanced in demonstrating breeder reactor technology, estimates this would be some 75 percent higher than the capital cost of an LWR of comparable capacity.[3]

Given the difficulties that electric utilities are encountering in financing the current generation of LWRs, the price of uranium and alternative fuels—coal, oil and natural gas—would have to rise dramatically to justify the extra outlays for a breeder reactor. Estimates suggest that current uranium prices would need to multiply more than ten times—to $300-$400 per pound—before breeder reactors would become economical.[4] The Pan Heuristics study concludes that breeder reactors would probably not be economical before the year 2030.[5]

What has been discussed so far is the direct (out-of-pocket) cost of the uranium and/or plutonium fuel cycles to the electric utilities and their customers. The taxpayer would have to bear the additional costs of research and development, costs that could range anywhere from several hundred million dollars for LWR improvements to some $20 billion to bring the breeder reactor to the stage of being ready to go commercial.

Energy security

The United States is rich in uranium resources and has so far produced virtually all of the uranium it has consumed. Other countries, especially Japan and some European countries that depend mostly on imports, are acutely aware of their vulnerability to cutoffs. Consequently, they have

U.S. uranium: Will it last?

Are uranium supplies sufficient for the long-term future? The answer depends upon many factors, including the amount and price of uranium reserves, the future demand for nuclear power and the uranium efficiency of the nuclear fuel cycle.

Each year, DOE has published estimates of conventional U.S. uranium resources in two major groupings:

- the high-confidence categories: "reserves" (known to exist and believed by industry to be producible at a specific price) and "probable" resources (estimated to occur in known productive uranium areas);
- more uncertain resources: the "possible" and "speculative" categories in which the presence and cost of uranium is based on geological evidence and inference.[6]

DOE's 1980 estimate of U.S. nuclear capacity projects a high of 350,000 MW in the year 2020—a level that would require 3 million tons of uranium oxide for the life of the LWRs installed to that time.[7] With advanced technology, only two million tons would be needed.

Figure 9 presents the median estimates of uranium available at different price ranges. Uranium has averaged $30-$60 a pound between 1974 and 1980 (although the price fell below this range in 1981). In this price range, available resources using present LWR technology would not support the high DOE projection for 2020. But rising prices could produce more uranium oxide, not only from conventional sources but from phosphate, shale and seawater.[8]

The upshot is that the uranium resources to support a large nuclear industry well into the next century are there—at a price. Is it a competitive price? That depends on the future costs of alternative energy sources.

Figure 9 : Uranium supplies

Uranium oxide price (1980 dollars) per pound	Uranium resources (millions of tons)	
	High confidence*	High confidence* & uncertain
$30-$60	1.8	2.5
$60-$100	2.7	3.8
$100-$200	3.5	5.2
$200-$400	5.4	8.5

*includes 0.3 million tons of unconventional uranium oxide produced as a by-product of the phosphate industry through the lifetime of reactors on line in 2020.

Source: *An Assessment Report on Uranium in the United States of America*, Report GJO-111(80), 1980.

a strong interest in the plutonium fuel cycle as insurance against loss of uranium supplies. The question is: Can the use of plutonium be an effective means of achieving nuclear energy security?

The Pan Heuristics study looked at six countries (United States, United Kingdom, West Germany, Japan, South Korea and Brazil) and concluded that—at least prior to 2025—plutonium's contribution to energy security could be only minimal. In a "worst case" uranium supply interruption, plutonium fuels in LWRs could replace no more than 4 percent of the pre-interruption electricity supply and in breeders, no more than 1 percent.[9] Why? Because nuclear energy will supply such a small percentage of overall electricity production in those countries before 2025, and commercializing reprocessing and breeder reactors requires long lead times.

This study concludes that over the next several decades the most economical way for a country to achieve nuclear energy security is to stockpile uranium—just as the U.S. government has stockpiled minerals for many years. To illustrate, $900 million (the capital cost difference between a 1,000 MW breeder reactor and the same size LWR) spent on uranium at present prices could buy enough to fuel a current-design LWR for 75 years—2½ reactor lifetimes. Moreover, the nuclear energy security would be immediate, not decades in the future, and for all nuclear reactors, not just the reactors geared to plutonium fuels. At present, most uranium-importing nations do have modest stockpile programs.

Nuclear waste management

Virtually all major studies agree that from the point of view of safe nuclear waste management there is no substantial distinction between the uranium and plutonium fuel cycles. Both cycles would generate wastes that are initially about equal in radioactivity.

The chief waste resulting from the once-through uranium fuel cycle is spent fuel. The waste from the plutonium fuel cycle would be solidified high-level waste containing fission products—plus spent fuel cladding, transuranic wastes and other highly radioactive materials recovered or contaminated in the reprocessing/refabrication operations.

It is sometimes asserted that the plutonium fuel cycle would simplify the waste management process since the volume of solidified high-level waste would be less than 20 percent of the volume of spent fuel. However, when one takes into account the other materials that must be disposed of in a plutonium fuel cycle, the volume of waste—even after the best compaction technology is employed—rises several fold above the volume of spent fuel.

A more important consideration than volume is the heat generated by these wastes. Since high-level radioactive wastes generate heat for thousands of years, they must be packed in canisters that are carefully spaced in a repository to prevent overheating. On the criterion of annual

waste heat generated per megawatt of electricity produced, there is only a four-percent difference between the uranium and plutonium fuel cycles—with the uranium fuel cycle generating slightly less heat in its nuclear waste.[10]

U.S. policies

As indicated earlier, Ford and Carter administrations deferred making commitments to the plutonium fuel cycle for the following reasons: (1) plutonium fuels pose proliferation hazards, (2) the use of plutonium fuels does not result in a clear economic advantage in the near term, and (3) the United States should set an example of restraint to encourage other countries to exercise similar restraint.

As part of this policy, the Carter administration:

- imposed a moratorium on commercial reprocessing;
- suspended construction of the Clinch River (Tennessee) breeder reactor, a $3 billion breeder demonstration facility (although Congress never agreed to terminate the project completely); and
- funded several programs to develop an advanced once-through uranium fuel cycle as an alternative to the plutonium cycle.

The Reagan administration, however, is moving in the opposite direction. It has lifted the ban on commercial reprocessing, has initially proposed its largest nonmilitary budget increase for the Clinch River Project and has planned to phase out DOE research to improve the uranium efficiency of the LWR.

To provide a stable market for the commercial reprocessing of spent fuel, Reagan officials are exploring the feasibility of having DOE buy plutonium from the private sector for use in the breeder program. Some have also proposed that the Defense Department purchase this plutonium for use in nuclear weapons. Arms control advocates, however, have objected to this second proposal on the grounds that to breach the distinction between civilian and military nuclear programs, the basis of the Atoms for Peace Program, is to invite other countries to do the same. Proliferation concerns are discussed in more detail in the next chapter.

For the near future, the United States and other countries will continue to rely on the once-through uranium fuel cycle. It is not at all clear how soon and to what degree countries will develop the plutonium fuel cycle. □

7
Proliferation: The weapons connection

To what extent does the development of nuclear power on an international scale increase the risk of nuclear war? During the past decade, the United States has expressed increasing concern over the proliferation risk associated with nuclear power, citing reasons that fall mainly under two headings.

- By 1985, 25 nonweapon countries will have nuclear power reactors in operation, most generating enough plutonium to manufacture a score or more bombs annually if a country chose to separate it from the spent fuel. More important, some of these countries do in fact plan to build reprocessing facilities that will enable them to extract the plutonium from spent fuel. Other countries have or are building enrichment plants that could be used to enrich uranium to bomb-grade levels.
- Several countries attempting to expand their civilian nuclear industry are in the world's most politically volatile regions—the Middle East and South Asia. These include Israel, Libya, Iraq, Pakistan and India. Furthermore, some of these countries have acquired or are seeking nuclear weapons because they feel threatened by their neighbors. Wars have broken out in these regions every few years, and the introduction of nuclear weapons into these wars could result in millions of additional deaths.

While most experts agree that commercial nuclear materials and facilities could be diverted for weapons development, they disagree on just how likely this is to occur. The controversy centers around two basic questions: Are commercial nuclear fuel cycle materials usable in the manufacture of nuclear weapons? Are there cheaper and easier routes to nuclear weapons than the use of the commercial nuclear power programs, thus rendering concern about the weapons link pointless?

Commercial nuclear fuels: Are they suitable for weapons?

The short answer to the first question is yes. But there has been

confusion because the "best" plutonium for nuclear weapons is an almost pure plutonium-239 isotope. The plutonium-239 in commercial nuclear fuel is not pure because it is contaminated with other isotopes.

In the mid-seventies, a U.S. government weapons lab that reviewed this question concluded that all plutonium isotopes, even those created through long use in power plant reactors, are weapons usable and can reliably produce a nuclear yield in the kiloton range (a kiloton is the explosive yield of one thousand tons of TNT). In fact, the United States has exploded at least one nuclear device employing plutonium of the isotopic composition found in spent LWR fuel. Fuel can, of course, be removed from a nuclear reactor while the burn-up and therefore the level of contamination is still low. Finally, breeder reactors would produce plutonium with a much higher concentration of plutonium-239 than LWRs.

Alternative routes to weapons development

The answer to the second question is more complicated.

A country wanting to develop nuclear weapons can take one of three routes.

- It can build "dedicated" facilities, especially designed to produce weapons materials, as the United States and others have done.
- It can develop a nuclear power program based on the once-through uranium fuel cycle.
- It can develop a nuclear power program based on the plutonium fuel cycle.

The route chosen would depend on cost, ease of access to the technology, time required and the number of nuclear weapons desired. (Of course, a country can develop a nuclear power program without any intention of producing weapons.)

In general, the first approach is quicker and less costly than the other two. With a few years' effort and hundreds of millions of dollars, a moderately sophisticated country could build, first, a small reactor not intended to produce electricity but designed solely to create plutonium and, second, a reprocessing plant to recover the plutonium for nuclear weapons. Or for a comparable investment of time and money, it could construct a small enrichment plant and produce highly enriched uranium for weapons. In contrast, commercial power reactors, reprocessing and enrichment plants would cost billions and require as long as 10 years to construct.

The dedicated-facilities approach cuts total costs but increases risk. If other countries discover that a nation has gone this route, they may take diplomatic or even military action to halt the program. For instance, in June 1981, Israel did bomb and destroy an Iraqi research reactor because it believed that Iraq was planning to use the reactor to produce

plutonium for nuclear weapons.

On the other hand, commercial nuclear power programs—or, more explicity, the reprocessing or enrichment facilities linked to them—can supply the option to develop nuclear weapons without the specific commitment. Thus, a country could embark on a nuclear power program with no intention of developing weapons but, should its intentions change later on, it would have most of the needed ingredients on hand. It could become a member of the nuclear weapons club at small additional costs and in short order. How short depends partly on which fuel cycle it used.

Highly enriched uranium and separated plutonium are not normally present in the once-through uranium fuel cycle. Most nonweapons countries have no enrichment plants. They depend on nations such as the United States, France or the Soviet Union to supply them with low-enriched uranium fuel for their LWRs. Nations that do have enrichment facilities can upgrade them to produce highly enriched uranium. Several enrichment processes currently being introduced promise to be both cheaper and quicker to convert than the gaseous diffusion enrichment plants now in use. If they become widely available, they could provide an attractive route to weapons development in the future. Another option would be to construct clandestinely a small reprocessing plant and divert spent fuel from LWRs to this facility. But this approach would require almost as much time as building dedicated facilities and would involve the same risk of detection and censure by other nations.

In contrast to the once-through uranium fuel cycle, weapons-usable material is present (see Figures 7 and 8) in the plutonium fuel cycle. The material in fresh plutonium fuels and in reprocessing plants can be readied for use in nuclear weapons in less than a week. In fact, fresh breeder reactor fuel has such a high concentration of plutonium that fuel pellets can be used to make a nuclear explosive without any further chemical processing.[1] Each breeder reactor contains in its annual fresh fuel reload enough plutonium for hundreds of nuclear weapons. Thus, a plutonium fuel cycle could provide a nation with far quicker access to bomb material and the potential to develop a much larger nuclear arsenal than the once-through uranium fuel cycle.

To summarize, a nuclear power program, especially one using the plutonium fuel cycle, can give a nation:

- access to weapons-relevant technology;
- a cover for weapons research;
- a commercial activity to pay most of the cost of a weapons program;
- a variety of physical sites from which weapons-usable material can be diverted; and
- the potential for developing large numbers of nuclear weapons quickly.

The route chosen

To date, no country has used (commercial) nuclear power plants or materials to make nuclear weapons. The United States, the Soviet Union and China used the dedicated facilities approach to develop nuclear arsenals; their weapons programs have had no connection with civilian nuclear power. France and the United Kingdom also built dedicated facilities, but each gained access to the underlying technology through a joint military and civilian research and development program on nuclear energy.

India's recent entry into the weapons club was much more closely tied to its civilian nuclear power program. To make its first nuclear explosive, India used plutonium produced in a research reactor and recovered in a pilot reprocessing plant that was built to support the development of nuclear power and other peaceful uses of nuclear

Proliferation: It could be much worse

The nuclear weapons club now consists of only six countries—the United States, the Soviet Union, France, United Kingdom, China and India (just barely). What would be the implications for world peace and stability if Pakistan, Iraq, Libya, Israel and other nations seeking nuclear weapons openly joined this club?

First, the acquisition of nuclear weapons by even one more country could trigger the spread of these weapons into other nations in an international chain reaction. For example, if South Africa gets the bomb, Nigeria will want it. If Iraq gets the bomb, Saudi Arabia and Syria will want it.

Second, nations with only a few nuclear weapons may be more likely to use these weapons than countries with large nuclear arsenals. The United States and the Soviet Union have spent hundreds of billions of dollars to develop large nuclear forces that cannot be knocked out in a surprise attack. Small nuclear forces are not likely to be so "survivable." Consequently, a nation with a small, vulnerable nuclear force may feel the need to make a first strike in a crisis—quickly driving a localized conflict to high levels of destruction.

Third, most of the countries now seeking a nuclear weapons capability are politically unstable; they have a history of military takeovers or other internal crises. It is conceivable that mutinous military forces or terrorist bands in these countries could get their hands on nuclear weapons, use them to threaten or destroy the existing government, and kill hundreds of thousands of people in the process.

Fourth, small nations that acquire nuclear weapons could eventually develop the technology (e.g., missile systems) to deliver these weapons to distant parts of the world, broadening the stage for nuclear conflict.

energy. Thus, while India did not use a (commercial) nuclear power plant to make this explosive, it did use *civilian* nuclear facilities.

Other countries have or plan to start civilian nuclear power programs that could be turned to weapons applications. Israel has a research reactor designed to support civilian nuclear research but capable of producing plutonium. (In fact, political analysts generally contend that Israel has already manufactured nuclear weapons.) Iraq plans to rebuild its research reactor and has a facility capable of some level of plutonium reprocessing; but how it will use these facilities is still not clear, since it has yet to buy a nuclear power plant. Pakistan is attempting to acquire both a uranium enrichment plant and a reprocessing plant; however, its one nuclear power plant does not require an enrichment facility, and reprocessing would be especially uneconomical for a program of Pakistan's size and fuel characteristics. South Africa is beginning to operate a commercial enrichment plant that might have weapons applications. Argentina, Brazil and other countries are also interested in obtaining reprocessing and/or enrichment facilities as part of their civilian nuclear power programs.

Thus, there is concern that while dedicated facilities have been the chosen route to nuclear weapons in the past, civilian nuclear programs may become an attractive route in the future.

Measures to control proliferation

The recognition of this fact has led the United States and other countries to seek out ways to guard against the use of nuclear power programs to develop nuclear weapons. Under the Non-Proliferation Treaty (NPT) of 1968, weapons states agreed to help nonweapons states develop civilian nuclear power programs if they placed all their nuclear activities under a system of safeguards administered by the International Atomic Energy Agency (IAEA). Such NPT parties must:

- submit designs for nuclear facilities to the IAEA upon request to check their potential use in weapons programs;
- maintain accurate accounting of nuclear materials open to IAEA perusal, to ensure that uranium and plutonium are not being diverted to weapons development; and
- allow inspection of nuclear facilities by IAEA officials to verify that they are being used for peaceful purposes only.

Most countries' nuclear energy activities are operated under IAEA safeguards.

How effective are IAEA safeguards? The verdict is mixed. In the first place, a "safeguards" system acts not as an absolute barrier, but more like a burglar alarm designed to deter international violations by the threat of early detection. Some covert activities are easier to detect than others. Inspectors can periodically count the number of spent fuel assemblies being stored at a nuclear reactor to verify that none of this

fuel is being diverted. On the other hand, there is no accounting procedure that enables inspectors to determine, with zero error, the amount of plutonium in a reprocessing plant. A nation operating a reprocessing plant could divert some percentage of that plant's plutonium—enough for a "few" bombs per year—to weapons use without detection by international inspectors.

Another weakness is that IAEA safeguards cover only facilities and materials declared by the inspected nation. For NPT parties, this is supposed to include all materials more refined than natural uranium oxide and all facilities containing these materials. The aftermath of the Israeli raid on Iraq revealed that IAEA rules allowed Iraq to amass large amounts of natural uranium oxide (especially suitable for producing plutonium) and to acquire a facility capable of reprocessing—both of which were not yet safeguarded. Furthermore, the NPT and IAEA rules would have allowed Iraq to produce and separate plutonium as long as the activity was subject to safeguard inspections.

IAEA critics also cite the infrequency of inspections. Most are made only at intervals of several months; yet, a country using plutonium fuels or otherwise possessing plutonium could divert this material and fabricate it into weapons within a week.

While the IAEA safeguard system may be flawed, several international leaders would argue that the system has been an effective barrier against weapons proliferation. To date, no NPT parties have developed nuclear weapons from commercial nuclear facilities and materials.

The IAEA safeguard system is not the only tool available to control proliferation. Other management and institutional measures for making nuclear power more proliferation resistant are discussed below.

"Technical fixes"

Of the fuel cycles now available, the once-through uranium fuel cycle is the most proliferation resistant because it does not use or produce materials that can be quickly made into nuclear weapons. The United States has therefore considered developing more efficient LWRs and enrichment processes, so that they would be attractive alternatives to other fuel cycles that lend themselves more readily to weapons production.

As for the plutonium fuel cycle, scientists have studied the possibility of "denaturing" plutonium, that is, mixing it with other substances that render it unfit as weapons material. No effective version of this idea has yet emerged.

Scientists have had more success "denaturing" uranium-233, another man-made fissionable isotope that can be used as fuel in both LWRs and breeders. By mixing uranium-233 with uranium-238, this fuel can be rendered unfit for weapons use. Thus, the uranium-233 cycle is an alternative that would be less of a proliferation hazard than the plutonium fuel cycle.

Export restrictions

After several years of intense negotiations, major nuclear suppliers finally agreed in 1977 on common rules for the transfer of nuclear materials and technology. Of particular significance is the rule that any country buying certain nuclear materials and equipment must place these items under IAEA safeguards. Suppliers also agreed to exercise restraint in the transfer of "sensitive" technologies, such as enrichment and reprocessing plants.

Over and above this agreement, many countries have developed their own restrictive export policies, among which that of the United States is one of the most severe. It prohibits transfer of all reprocessing and enrichment technology. Furthermore, the United States will not export nuclear fuel or equipment unless the recipient country agrees to allow international inspection of all its peaceful nuclear activities. In comparison, some supplier countries require IAEA safeguards only on the nuclear material and equipment they have exported.

Domestic restraint

If a country believes a nuclear technology poses a significant proliferation hazard, it can refrain from developing this technology and call on other nations to exercise similar restraint. Of course, domestic restraint is likely to have the greatest impact if it is exercised by a major nuclear power. To date, the United States is the only major country to have used this approach (see box: The U.S. Example: Does it Count?).

Strengthening the NPT

Besides requiring nonweapons states to accept IAEA safeguards on all their nuclear activities, the Non-Proliferation Treaty requires weapons states to work toward nuclear disarmament, nonweapons states not to acquire nuclear weapons and all parties to cooperate in developing nuclear energy for peaceful purposes.

Three nuclear weapons states, the United States, the Soviet Union and the United Kingdom, and 111 other states have ratified the NPT. Two nuclear weapons states, France and China, and two states in a borderline status, India and Israel, have not. Several states with significant existing or potential nuclear capabilities—Argentina, Brazil, Pakistan, South Africa and Spain—have also chosen not to ratify the NPT.

Numerous measures could strengthen the NPT:

- inducing more countries to ratify the treaty;
- tightening the safeguard agreements negotiated between IAEA and nonweapons state parties;
- funding more inspectors to enforce the safeguards;
- adding sanctions to be imposed on violators;

■ getting nonweapons state suppliers of nuclear technology to adopt the same restraints as weapons state suppliers;

■ bringing the behavior of parties into line with the spirit of the nonproliferation provisions of the treaty (that is, having them show restraint in the trade of sensitive technologies that bring nations close to nuclear weapons).

The U.S. example: Does it count?

How effective has the U.S. example of restraint been? It is difficult to show cause and effect in international relations, but it is possible to compare "before" and "after." Before the Ford/Carter deferral of the commercialization of the plutonium fuel cycle, most major nations planned to commercialize the use of plutonium fuels in LWRs by the 1980s and breeder reactors by the 1980s or 1990s. Where do they stand now?

England has no plans for plutonium recycle in present generating reactors, and the completion date of a reprocessing plant has slipped from 1986 to 1990. It will defer until at least 1985 the decision on whether to build a breeder demonstration plant.

France has the most advanced program for commercializing plutonium fuels. It has a reprocessing plant and the world's largest breeder reactor under construction. However, it has no plans to recycle plutonium in LWRs and has deferred until the mid-1980s any decision on whether to construct commercial breeder reactors. The newly elected Socialist Party has urged a major slow-down in the breeder program.

West Germany has no plans for plutonium recycle in LWRs and has deferred plans for a large reprocessing plant because of public opposition. A small breeder reactor demonstration project has been under construction for many years but may not be completed because of a threefold increase in costs.

Japan has a small reprocessing facility for research and development programs. It plans to build a larger reprocessing plant but is having trouble finding a politically acceptable site. It has deferred use of plutonium fuels in LWRs but plans to begin construction this year on a small demonstration breeder reactor.

The Soviet Union, once a strong proponent of plutonium recycle, now says that the technology "is difficult to justify." Some Soviet authorities claim that breeder commercialization will not occur in the USSR before the 21st century.[2] The Soviets recently halved the size of their next planned breeder reactor.

Was it the U.S. example of restraint that affected these countries? Or was it the high cost of and public opposition to reprocessing plants and breeder reactors? Or was it a combination of factors?

What specifically could the United States do? Among the initiatives that have been suggested are the following: contribute expertise and money to achieve some of the measures noted above; refuse nuclear expertise and materials to nonsignatory nations; use U.S. influence to encourage other supplier nations to do the same; and upgrade efforts to make real progress toward nuclear disarmament.

Nuclear weapons-free zones

When adjoining countries form a nuclear free zone, they agree not to develop or acquire nuclear weapons. The 1967 Treaty of Tlatelolco set up a nuclear-free zone in Latin America, but it was never ratified by all the countries involved. Nuclear-free zones have also been proposed for the Scandinavian countries, the Middle East, South Asia and Africa.

New international agreements and institutions

If countries had a reliable, secure supply of nuclear fuel for peaceful uses, they might feel less need to construct enrichment and reprocessing facilities. Three ways of assuring fuel supplies would be: to develop international guarantees (e.g., an agreement that when one supplier stops selling to an importer, the other suppliers would make up the deficiency); to create national fuel stockpiles dedicated to meeting specific emergencies; and to establish an international nuclear fuel bank that would supply fuel to a country whose normal source of supply had been interrupted.

Countries could also jointly build and operate spent fuel storage facilities, to reduce the tendency of each country to build up large inventories of spent fuel—a potential source of plutonium. The United States and Japan have discussed the possibility of establishing such a facility in the Pacific. Similar international depositories for "excess" stocks of plutonium, not needed for use in power or research programs, could be created, if the plutonium-based technology comes into use. An international agency such as IAEA could have legal custody over these depositories, a number of which could be kept small in order to keep weapons-usable material confined to a few locations. (There is no guarantee, however, that a nation using plutonium fuels would not divert plutonium for nonpeaceful uses while it is in transit to or from depositories.)

Finally, the most sensitive parts of the fuel cycle could be placed under international control. For instance, multinational operation of enrichment plants and reprocessing plants could help assure that these facilities were not misused for military purposes. Furthermore, locating these facilities in international fuel cycle centers would reduce the problem of surveillance. These facilities would still have proliferation hazards if they exported weapons-usable material to locations

Terrorism: Nuclear blackmail

The growth in terrorism is one of the more disturbing new social phenomena of the past decade. Not only are terrorist acts becoming more frequent, terrorists themselves have become more sophisticated and are organizing on an international scale. Some even have patron nations that fund their activities. For these reasons, there is concern that some terrorists may now have the resources and skills to penetrate nuclear compounds, steal nuclear materials and use these materials against society.

Various scenarios have been scripted. One pictures terrorists taking over a nuclear power plant or hijacking nuclear materials in transit, then blackmailing authorities into meeting their demands by threatening to release radioactive poisons into the environment.

Another postulates terrorist sabotage or bombing of nuclear power plants. Such terrorist activities might not succeed in breaching the many redundant safety systems that protect nuclear power plants; in fact, some nuclear facilities have already been bombed with relatively minor effects.

A third speculates that terrorists could steal weapons-usable material, either from a reprocessing-refabrication plant or in transit, and make a crude nuclear bomb. Since college students in the United States have used unclassified information to prepare detailed designs for nuclear weapons, it is likely that terrorists could do the same. Of course, terrorists would have to be able to fabricate the weapons without blowing themselves up—the fate of many an underground bomb maker.

Some experts believe that terrorists are not likely to use nuclear

under national control.

All these approaches suffer from the same major drawback: such agreements and institutions would require a degree of cooperation between nations that heretofore has been very difficult to achieve.

Frank discrimination

Since plutonium fuels present the toughest proliferation problems, nuclear weapons states or major industrial states could deny other nations access to these fuels. An even more discriminatory approach would be to deny plutonium fuels to certain nations that pose a "proliferation risk" or did not have a "legitimate need." This approach runs counter to the NPT, which entitles all participating countries to peaceful uses of nuclear energy "without discrimination" and commits the United States and many other nations to "facilitate the fullest possible exchange" of peaceful nuclear technology consistent with the overall purposes of the NPT.

explosives or poisons because they can find a dozen far easier ways to cause mass panic, disruption and death. This argument may be correct, but it is hard to imagine a more dramatic or terrifying threat than that of a nuclear weapon. If a nuclear bomb actually exploded in a city, it could kill over 100,000 people and contaminate a large land area.

What would the effects of nuclear terrorism be on our society? Some think that the worst effect might be that nuclear terrorism would force our country to adopt more characteristics of a police state. For example, in the event of a nuclear bomb scare, police might have to search large areas rapidly for nuclear devices, and civil liberties could suffer.

What precautions can society take against nuclear terrorism? Over and above normal surveillance of terrorists, a country could take the following measures to avoid nuclear blackmail.

- Set up tight security systems at nuclear facilities.
- Support the international agreement on the physical protection of nuclear materials that now exists.
- Upgrade the technology of physical security by building nuclear facilities and transport vehicles that would be more difficult to penetrate or sabotage.
- Select nuclear fuel cycles in which weapons-usable material is not present—for example, stay with the once-through cycle and convert research reactors to use low-enriched instead of highly enriched uranium.
- Rely on nonnuclear sources for commercial energy.

The proper U.S. role: What should it be?

The Ford and Carter administrations believed that the United States could exercise influence against proliferation through its position on exports of nuclear technology and through the character of its own nuclear energy program. This viewpoint rests on three premises. The first is that the U.S. share of the world nuclear export market is substantial enough to constitute leverage over other countries—both buyers and sellers. The second assumption is that the United States can influence nations that use our nuclear services, through persuasion and through exercise of political and economic incentives and disincentives. And the third assumption is that the United States is still a model that influences the behavior and aspirations of many other countries.

Critics of this viewpoint argue that all three premises are either outmoded or unsound. Some argue, further, that if the United States

wants to control proliferation, nuclear power is the wrong target. They contend that the desire for nuclear weapons exists independent of the desire for nuclear technology. Since driving forces behind proliferation are the regional hostilities, tensions and inequalities that lead to war, they argue, the spread of commercial nuclear power could actually help alleviate two sources of tension among nations—poverty and energy shortages.

The Reagan administration has indicated that it will rely more on broad political and diplomatic initiatives to prevent the spread of nuclear weapons than did the Carter administration and less on efforts at direct control of nuclear fuel and technology. Its nonproliferation policy will focus primarily on reducing the security concerns that motivate some nations to seek nuclear weapons capability, by supplying conventional arms or offering the protection of the U.S. nuclear umbrella.

President Reagan also wants to reestablish the United States as a predictable and reliable supplier of nuclear technology. To help achieve this goal, he has instructed the NRC to expedite action on nuclear export licenses. Some members of Congress have been highly critical of this initiative, charging that an aggressive nuclear commerce policy is what has enlarged the nuclear weapons club to its present membership.

While experts disagree on how significant the contribution to proliferation nuclear power makes or can make, most agree on one point: stopping the spread of nuclear power or limiting its evolution to forms considered more proliferation resistant cannot by themselves stop proliferation. Countries with sufficient determination can get bombs by other routes.

Those who nonetheless want to make nuclear power more proliferation resistant make these claims for the strategy: It can limit the number and size of nuclear weapons that nations can produce from commercial nuclear materials. It can increase the costs—both economic and political—of using this route to a level that few nations can afford. It can also buy time for slowing the spread of nuclear weapons (see box: Proliferation: It Could Be Much Worse). And national leaders can use this time to fashion institutions capable of deterring the use of nuclear weapons by however many nations possess them. □

8
Conclusion

The last five years have been trying ones for the U.S. nuclear power industry. The accident at TMI and government inertia on the nuclear waste disposal problem have eroded public support for nuclear power. Operating plants have been plagued by equipment problems. And utilities have had to cancel over a hundred orders for nuclear plants, as a result of decreasing demand for electricity and spiraling construction costs. Unless utilities start placing orders for nuclear power plants in the next few years, the nuclear industry could go under. The question is: Can nuclear power make a comeback?

At present, the political climate for nuclear power could hardly be better. The Reagan administration views nuclear power as one of the best potential sources of electrical energy. While federal funding for coal, solar, conservation and many other energy sources was slashed in fiscal 1982, the budget for nuclear power was left virtually intact. The investment climate for nuclear power got a boost when Congress passed tax legislation that will enable utilities to attract new capital for power plant construction. The Administration has also instructed agencies to streamline the nuclear power licensing process; to proceed with the commercialization of the breeder reactor; to encourage commercial reprocessing; to ease restrictions on nuclear exports; and to get going on the permanent storing and disposal of commercial high-level radioactive waste. All these initiatives are expected to breathe new life into the nuclear industry.

Congressional and public response to these initiatives has been mixed. Everyone agrees that solving the nuclear waste disposal problem is a worthy objective, despite disagreement over the best approach. The Administration would like to establish a demonstration nuclear waste disposal facility within a few years. Others prefer a comprehensive, step-by-step R & D program that would provide opportunities for extensive private-sector involvement and lead to a full-scale, licensed permanent geologic repository by the end of this decade.

The Administration has had a more difficult time mustering support for its breeder reactor and commercial reprocessing goals. Critics contend that the breeder does not make economic sense at this time because uranium is plentiful and the number of reactors expected to use it is diminishing. They also point out that there is really no market for reprocessing without the breeder program. Some have suggested that

federal R & D funds would be better spent on designing a safer and more efficient version of the LWR—one that could be standardized and more quickly licensed.

Still others argue that the government should spend less money on all nuclear R & D—that nuclear power should not get preferential treatment over coal, solar and other energy options. Supporters of the Administration program maintain that investments in the breeder and reprocessing are needed now to help ensure future energy supplies.

The Administration has not tackled other problems plaguing the nuclear industry. It has not taken an active role in the cleanup of the damaged TMI reactor, although some federal funds will be made available. Nor has it proposed new insurance programs. It expects utilities and nuclear vendors to take the lead on these issues.

For two decades, the federal government has been perceived to have the sole authority to regulate nuclear power. The state laws that have been passed limiting the siting of nuclear power plants and waste disposal facilities have been challenged in court. In October 1981, a federal appeals court ruled that a state does have an "inherent" power to prevent construction of nuclear plants "inconsistent with its need for power" or "with its environmental or other interests." If the Supreme Court chooses to review the appeals court ruling and upholds its decision, states could have a significant impact on whether nuclear power does make a comeback.

If states block nuclear construction or utilities fail to purchase new nuclear units or for other reasons nuclear power is unable to make a comeback, what would the impact of losing this energy option be? Economic conditions, demand for electricity and energy prices have changed so dramatically in recent years that it's virtually impossible to predict with any certainty just what the effects would be. Some have predicted that loss of the nuclear option will mean higher electricity costs, more pollution from coal-fired plants and less economic growth and social mobility. Others believe that demand for electricity will rise so slowly in coming years that reliance on improvements in energy efficiency and renewables will easily fill nuclear's niche in the nation's energy mix without disturbing social and economic growth.

Nuclear power was developed under a veil of secrecy; only a few scientists understood either the potential or the danger inherent in this technology. Thirty years later, the merits and demerits of nuclear power are being debated by all segments of society. However, what is being debated today is not primarily how this technology should be developed—a technical issue—but what type of commitment should be made—an economic and political, and even a moral issue. While scientists played a dominant role in the first decision, the public will shape the second through their decisions in the market place and the voting booth, and through their participation in energy policy making at the local, state and federal levels. □

Notes

Chapter 1

1. League of Women Voters Education Fund, *Energy Options* (Washington, DC, 1977), p. 1.

Chapter 2

1. Rogovin, Stern & Huge, *Three Mile Island: A Report to the Commission and to the Public* (U.S. Department of Commerce, National Technical Information Service, January 1980), pp. 109-110.

Chapter 3

1. Resources for the Future, *Energy in America's Future: The Choices Before Us* (John Hopkins University Press, Baltimore and London), p. 367.

2. Herbert Inhaber, "Risk with Energy from Conventional and Nonconventional Sources," *Science*, Vol. 203 (February 23, 1979), p. 722.

3. John P. Holdren et al., *Environmental Aspects of Renewable Energy Sources* (Annual Review Energy, 1980), p. 265.

4. Ibid., p. 266.

5. National Academy of Sciences, Committee on Nuclear and Alternative Systems, *Energy in Transition 1985-2010* (Washington, DC, 1979), p. 487.

6. John P. Holdren et al., *Energy Information: Description, Diagnosis and Design* (proceedings of a workshop held at Stanford University, December 15-16, 1979), p. 225.

7. National Academy of Sciences, Committee on Nuclear and Alternative Energy Systems, *Energy in Transition 1985-2010* (Washington, DC, 1979), p. 338.

8. William W. Lowrance, *Of Acceptable Risk: Science and the Determination of Safety* (William Kaufman, Inc., Los Altos, CA, 1976), pp. 86-94.

9. Ibid., pp. 93-94.

10. Robert L. Dupont, M.D., *Nuclear Phobia—Phobic Thinking About Nuclear Power* (The Media Institute, March 1980), pp. 3-4.

Chapter 4

1. National Academy of Sciences, Committee on the Biological Effects of Ionizing Radiations, *The Effects on Populations of the Exposure to Low Levels of Ionizing Radiation* (Washington, DC, 1980), p. 4.

2. Conversation with Ross Scarrano, Chief Uranium Recovery Licensing Branch, Division of Waste Management, Nuclear Regulatory Commission, March 20, 1981.

3. Conversation with Frank Congel, Director, Power Plant Operations, Nuclear Regulatory Commission, March 20, 1981.

4. U.S. Environmental Protection Agency, Office of Radiation Programs, *Occupational Exposure to Ionizing Radiation in the United States: A Comprehensive Summary for the Year 1975* (Washington, DC, 1980), p. 44.

5. U.S. Nuclear Regulatory Commission, *Reactor Safety Study: An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants* (Washington, DC, 1975).

6. Ad Hoc Risk Assessment Review Group Report to the U.S. Nuclear Regulatory Commission, NUREG/CP-0400, H. W. Lewis, Chairman (Springfield, VA, NTIS, September 1978).

7. Atomic Industrial Forum, *Cost Impacts Related to Nuclear Power Plant Project Duration* (Washington, DC, April 1978), p. 1.

8. "Licensing not the Sole Cause of Licensing Delays: AIF Study," *The Energy Daily*, (June 29, 1981), p. 2, and *Update*, Nuclear Power Program Information and Data (prepared by the office of Nuclear Reactor Programs, U.S. Department of Energy, March/April 1981), pp. 16-20.

Chapter 5

1. Energy Information Administration, *Nuclear Power Regulation*, Energy Policy Study, Vol. 10 (U.S. Department of Energy, Washington, DC, May 1980), p. 90.

2. *Ibid.*, p. 155.

3. *Ibid.*, pp. 157-159.

4. R. Murray Campbell, *The Economics of Nuclear Power* (Atomic Industrial Forum, Inc., Washington, DC, February 1979), pp. 19-20.

5. Office of Coordination and Special Projects, Office of Nuclear Reactor Programs, *UPDATE Nuclear Power Program Information and Data* (U.S. Department of Energy, Washington, DC, May/June 1981), p. 27.

Chapter 6

1. Report of the Nonproliferation Alternative Systems Assessment Program, Vol. IX, *Reactor and Fuel Cycle Description* (U.S. Department of Energy, Washington, DC, 1980), p. 263.

2. International Nuclear Fuel Cycle Evaluation, Vol. 4, *Reprocessing, Plutonium Handling, Recycle* (International Atomic Energy Agency, Vienna, Austria, 1980), p. 100.

3. *Nuclear News* (February 1980), p. 45.

4. Brian G. Chow, *Economic Comparison of Breeders and Light Water Reactors* (Pan Heuristics, P.O. Box 9695, Marina del Rey, CA 90291, 1979), p. 1. Reference is case for transition from improved LWR to LMFBR. In this chapter all 1978 dollar values are increased by 25% to obtain 1980 price levels.

5. Ibid., p. 2. Also see Brian G. Chow, *Timing of Breeder Demonstrations: An Economic Analysis* (Pan Heuristics, Marina del Rey, CA,

1981).

6. *An Assessment Report on Uranium in the United States of America*, Report GJO-111 (80) (U.S. Department of Energy, Grand Junction Office, CO, 1980), p. 21.

7. 1980 Annual Report to Congress, Vol. III: *Forecasts* (Energy Information Administration, Department of Energy, Washington, DC, 1981), p. 158.

8. Judith K. Grange et al., *High Cost Uranium: U.S. Productivity Projection, Worldwide Resources Data Base, and Research and Development Plan* (Science Applications, Inc., 40 Denver Technological Center West, Englewood, CO 80111, 1981), p. 59; and F.R. Best and M.J. Driscoll (editors), *Proceedings of a Topical Meeting on the Recovery of Uranium from Seawater* (Nuclear Engineering Department, Massachusetts Institute of Technology, Cambridge, MA 02139, December 1-2, 1980), p. 1.

9. Zivia Wurtele et al., *Energy Security and Alternative Nuclear Systems* (Pan Heuristics, Marina Del Rey, CA, 1981), p. 86.

10. Albert Wohlstetter et al.,*Toward a New Consensus on Nuclear Technology*, Vol. 1 (Pan Heuristics, Marina Del Rey, CA, 1979), pp. B-13 to B-19.

Chapter 7

1. Report of the Nonproliferation Alternative Systems Assessment Program, Vol. II, *Proliferation Resistance* (Department of Energy, Washington, DC, 1980), pp. 2-43.

2. Dollezhal and Koryzakin, "Nuclear Electric Power Production: Achievements and Problems," *Kommunist* (September, 1979), pp. 19-28.

More LWVEF resources for citizens

For a wealth of resources, the reader is advised to scan the *Primer*'s lengthy *Notes* section. These books, pamphlets and reports, which explore and examine specific nuclear issues in greater detail, can give the interested citizen a more wide-ranging understanding of the subject.

The following list of League of Women Voters Education Fund (LWVEF) publications supplements the *Notes* section. All materials were written, like the *Primer*, in the unbiased, concise and easy-to-understand manner that is the trademark of the LWVEF. Two specifically deal with nuclear issues. Another, *Energy Brief 1*, supplies a list of nuclear-related publications. The rest focus in on the citizen's role in local and state government planning and operation—background information that's essential to grasping a total picture of your place in the nuclear power debate.

- *A Nuclear Waste Primer*, Pub. No. 391, 63 pp., 1980, $1.95.
- *Taking Nuclear Issues to the Village Square: A Guide for Community Leaders*, Pub. No. 155, 8 pp., 1981, 75¢.
- *Energy Brief 1: Nuclear Power: An Annotated Bibliography*, Pub. No. 466, 2 pp., 1981, 20¢.
- *The Citizen and the Budget Process*, Pub. No. 482, 20 pp., 1974, 75¢.
- *The Politics of Change*, Pub. No. 107, 16 pp., 1972, 75¢ (how to analyze the informal power structure in your community).
- *Anatomy of a Hearing*, Pub. No. 108, 12 pp., 1972, 60¢ (tips on how to testify).
- *Going to Court in the Public Interest*, Pub. No. 244, 16 pp., 1973, 25¢.
- *Simplified Parliamentary Procedure*, Pub. No. 138, 12 pp., 1979 revised edition, 30¢.

"*The League of Women Voters has established a reputation for both objectivity and accuracy in its energy publications.* A Nuclear Power Primer: Issues for Citizens *adds to that reputation.*"

John Fowler
National Science Teachers Association

"*In scope, balance of viewpoints, technical clarity, and —most importantly —language, style and format, the* Nuclear Power Primer *deserves a wide readership; and it should get it, since neither calculus nor a degree in physics are prerequisites for following the argument.*"

Hans Landsberg
Resources for the Future

"*The League of Women Voters has prepared a study that not only helps us to understand the technical complexities (of nuclear power), but also to see past them to the underlying social issues about which we, collectively, must ultimately decide.*"

Thomas L. Neff
Center for Energy Policy Research
Massachusetts Institute of Technology

A NUCLEAR POWER PRIMER:

Issues for Citizens

League of Women Voters Education Fund

Contents

"*The League of Women Voters has established a reputation for both objectivity and accuracy in its energy publications.* A Nuclear Power Primer: Issues for Citizens *adds to that reputation.*"

John Fowler
National Science Teachers Association

"*In scope, balance of viewpoints, technical clarity, and –most importantly –language, style and format, the* Nuclear Power Primer *deserves a wide readership; and it should get it, since neither calculus nor a degree in physics are prerequisites for following the argument.*"

Hans Landsberg
Resources for the Future

This newest publication in the League of Women Voters Education Fund's (LWVEF) nuclear power series. . .

A Nuclear Power Primer: Issues for Citizens (#575, 1982, 80 pp., $2.50)

. . . identifies past and present U. S. policies on nuclear power issues and outlines future policy options.

. . . supplies detailed and unbiased analyses of all major nuclear power controversies.

How safe is nuclear power? Are there less risky energy alternatives? Is nuclear power a better buy than other energy sources?

Let *A Nuclear Power Primer: Issues for Citizens* provide a factual framework for thinking through these and other probing questions.

* * *

Two other LWVEF publications can help round out the nuclear energy picture:

A Nuclear Waste Primer (#391, 1980, 63 pp., $1.95), a bestseller that zeroes in on another of nuclear power's unanswered questions, "What should we do about nuclear waste?"

Taking Nuclear Issues to the Village Square: A Guide for Community Leaders (#155, 1981, 8 pp., 75¢), a guide to designing a successful education campaign on nuclear power in your community—complete with sample agendas.

For objective and reliable information on related issues, try this LWVEF sampling:

- ☐ *A Toxics Primer* (#545, 40¢), background on effects of toxics exposure and government control programs;
- ☐ *A Hazardous Waste Primer* (#402, 75¢), discusses sources and characteristics of hazardous waste treatment and disposal options;
- ☐ *Energy Dilemmas* (#688, $1), sketches U. S. energy history;
- ☐ *Energy Options* (#628, $1), includes an audit of energy sources, their risks and benefits;
- ☐ *Nuclear Power: An Annotated Bibliography* (#466, 20¢);
- ☐ *Suggested Energy Reading 1981* (#528, 20¢).

Order from: League of Women Voters of the United States
1730 M Street, NW
Washington, DC 20036
(202) 296-1770

Member discounts
20% for 11-50 copies
30% for 51-500 copies
40% for 501-1,000 copies

Nonmember discounts
10% for 11-50 copies
15% for 51-500 copies
20% for 501-1,000 copies

Pub. #	Quantity	Title	Price (inc. discount)

Total cost of order _____
Handling charge + $ .50
Total enclosed (check or money order) _____

Name _____

Organization _____

Address _____

City _____ State _____ Zip _____

THE WOMEN'S VOTE:

Beyond the Nineteenth Amendment

League of Women Voters Education Fund

This publication was written by Mary Stone, Marlene Cohn and Matthew Freeman of the LWVEF Government/Voters Service Department.

Production and distribution of this publication have been made possible by a grant to the League of Women Voters Education Fund from the Rockefeller Family Fund.

PREFACE

Following the 1982 election, considerable press and public attention focused on the "gender gap" or the "women's vote"—an emerging pattern in elections that reveals how women and men have come to differ as voters in their political preferences and voting choices. According to election experts who have long studied and researched voting behavior, a differentiated "women's vote" is a relatively recent phenomenon, although trends were apparent before 1980—the watershed year for the women's vote. Only in 1982, however, did the phenomenon begin to receive the widespread public media notice that such a marked trend deserves.

Experts agree that these gender-based differences between men and women voters are long-term. It is therefore important that the women's vote and the implications of the gender gap be closely examined. Political and economic leaders need to understand what the issue differences and voting pattern differences are between men and women voters and what these differences mean for politics in the United States.

The League of Women Voters Education Fund (LWVEF), believing that the women's vote is a critically important feature of the sociopolitical landscape, convened a Conference on the Women's Vote in June 1983, funded in part by contributions from the Windom Fund and the George Gund Foundation. Participants included leaders of more than 40 organizations who were drawn by a common desire to learn more about the women's vote and motivated to plan and strategize together about ways to increase voter registration and electoral participation among women. Participants heard noted scholars and polling experts discuss the women's vote and what it means.

This publication summarizes the key research findings presented at the conference, presents other information as well and concludes with a discussion of what the women's vote may mean for the future.

INTRODUCTION

In the early 1980s, several voting patterns among women showed marked change. The presidential election year of 1980 was the first in which the proportion of women voting was equal to that of men, a pattern that was repeated in 1982. The early 1980s also saw identifiable differences in how women voted compared to men and in why they made the voting choices they did. In 1982, political commentators began using the phrase "gender gap," as gender differences on issue preferences and partisan leanings continued in significant degree. And as the 1984 presidential campaign warmed up, the gender gap continued to be a widely noticed and discussed new facet of American electoral behavior.

The reasons for the gender gap are many and complex, but some obvious connections come to mind. Inspired by the protest marches and the Equal Rights Amendment (ERA) ratification battles of the 1970s, many women, perhaps for the first time, have seen the political process up close and have recognized the importance of voting. Moreover, the increase in the number of women in the work force and in the number of single-parent families has meant that many women began to clearly perceive their stake in the political process. Another factor contributing to increased voting proportions by women was the decreased numbers in the voting-age population of women born and reared before the vote was granted to women or reared in families that frowned on women's participation in politics. The sheer numbers of women (53 percent) in the voting-age population and the increased turnout of women at the polls have resulted in a political fact of great significance. In 1980, there were six million more women voters than men voters, even though similar percentages of each gender voted. The proportion of each gender voting in 1982 continued to be approximately equal, meaning again that, in real numbers, more women than men were in the voting public. As the import of the statistics became understood, candidates, campaigners, scholars and the media became intrigued—or concerned—as the case may be, about the women's vote. It began to be factored into political equations and considered in political strategy decisions. Following is a look at the forces that led to this gender gap and a discussion of its roots and its manifestations.

ANTECEDENTS OF THE GENDER GAP

An understanding of women's voting behavior must begin with the ratification of the Nineteenth Amendment; for only against the backdrop of the enfranchisement of women in the United States can the full scope of the change in women's voting patterns be appreciated.

In 1920, the Nineteenth Amendment to the United States Constitution was ratified by the requisite 36 states, after passing Congress in 1919. The amendment says:

> *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.*

Capping three-quarters of a century of struggle for the women's franchise, the Nineteenth Amendment was an epoch-marking event in the history of American women. The excitement and challenge of that moment are evident in a passage from a letter that suffragist leader Carrie Chapman Catt wrote to new women voters in 1920:

> The vote is the emblem of your equality, women of America, the guaranty of your liberty. That vote of yours has cost millions of dollars and the lives of thousands of women. Money to carry on this work has been given usually as a sacrifice, and thousands of women have gone without things they wanted and could have had in order that they might help get the vote for you. Women have suffered agony of soul which you never can comprehend, that you and your daughters might inherit political freedom. That vote has been costly. Prize it!
>
> The vote is a power, a weapon of offense and defense, a prayer. Understand what it means and what it can do for your country. Use it intelligently, conscientiously, prayerfully. No soldier in the great suffrage army has labored and suffered to get a "place" for you. Their motive has been the hope that women would aim higher than their own selfish ambitions, that they would serve the common good.
>
> The vote is won. Seventy-two years the battle for this privilege has been waged, but human affairs with their eternal change move on without pause. Progress is calling to you to make no pause.[1]

---

[1]Carrie Chapman Catt, a noted suffragist leader, was president of the National American Woman Suffrage Association until 1920. The League of Women Voters was born at the Association's final convention. The LWV was created to teach women about public affairs and to encourage them to use the franchise. Catt's letter is quoted in Mary Gray Peck, *Carrie Chapman Catt* (New York: H.W. Wilson Co., 1924).

Participants at the League of Women Voters Education Fund's Conference on the Women's Vote listen as Dr. Barbara Farah of the University of Michigan reviews the data showing an electoral gender gap in the 1982 election.

The bright promise of these stirring words was not translated into widespread voting and political participation by women in the years following 1920, however. Rather, a much different trend emerged: after the Nineteenth Amendment was ratified, only a small number of newly enfranchised women registered and voted. Charles Merriam and Harold Gosnell, political scientists who studied nonvoting trends in the 1920s in Chicago, found women's early voting rates lagging far behind those of men. They estimated that only about a third of the eligible female voting-age population turned out to vote in the 1923 mayoral election in Chicago, while the voter turnout rate for men was almost twice as high. Even though women voters had influenced the outcomes of some state elections before 1920 in those few states in which they could vote, the overall performance of women voters in the 1920s fell considerably below expectations.

There are a number of possible reasons for this low initial turnout among women. Some attribute the low participation rate to the inability of some local election officials to absorb and manage the increased number of voters. The amendment was, after all, ratified only two and a half months before the 1920 election. The low national turnout for women can also be partly attributed to election practices in southern states that often depressed minority turnout, both male and female. These administrative obstacles to voting included poll taxes, literacy tests, lengthy residence requirements, frequent reregistration requirements and the like. Cultural patterns also dampened participation rates for many women, especially in the South. Western women, on the other hand, were apparently more likely to vote than other women, for they had been voting in many western states for some time. Some experts say that frontier life may have had an equalizing impact that encouraged women's voting participation in the West.

However, inept or discriminatory election procedures and regional customs cannot totally explain the low voter participation rates for

women in the 1920s. Voting was a new experience and a new re- ity for women and, according to many experts, not all women felt table about exercising this right. Women associated with the suf movement voted, but others not accustomed to thinking of themselves political persons tended to hold back. Many women, as well as many men, also thought politics was not an appropriate arena for women—an attitude that lingered for many years. (It should be noted that the voting rates for any group entering the electorate are initially low, whether it be women, minorities or young people.)

During the 1920s, class-based factors may have affected voter turnout for some women. The Merriam-Gosnell study of nonvoting found that in Chicago in 1923 (which at that time kept voting records by sex), native American women, particularly those well-off economically, voted at rates very close to those of their male counterparts. The voting rates for immigrant women in ethnic neighborhoods, however, were drastically lower than those for men. Cultural patterns, disinterest or fear of embarrassment apparently kept naturalized women from going to the polls. All in all, the 1920s were a disappointment to the champions of women's voting rights who had invested their hopes in a new empowerment of women through the ballot box.

The New Deal brought some improvement in female voter turnout as women were apparently attracted by the issues of high priority to the Roosevelt administration. In spite of this interest, however, male-female differences in voter participation remained significant until well after World War II. In 1948, for example, the turnout rate for women lagged 13 percentage points behind the rate for men. By the 1952 and 1956 elections, there was only a 10-point lag between men and women. This gap in turnout continued to narrow into the 1960s and 1970s, and by the 1980 presidential election, there was virtually no gender-based difference in voter turnout, as Figure 1 shows.

During a panel discussion of coalition efforts and individual organization activities on the women's vote, Debra Livingston reported on a voter registration project conducted in 1982 by the National Association of Social Workers. Other members of the panel included, from left to right, Judy Goldsmith, president of the National Organization for Women; Bella Abzug, secretary of the Women USA Fund; and Kathy Wilson, president of the National Women's Political Caucus.

sponsibil-
comfor-
frage
as

RS THAT INFLUENCE TURNOUT

rjorie Lansing, a speaker at the LWVEF Conference
te, and coauthor Sandra Baxter have written the highly respected and comprehensive *Women and Politics: The Visible Majority*.[2] Their study describes the changing voting pattern for women and men in the eight presidential elections since 1952 and points up interesting trends in subcategories of the female population.

Education—Social scientists find education generally is the single most powerful predictor of voter turnout for both men and women (i.e., it is the socioeconomic characteristic most highly correlated with voting). Higher levels of education are more closely associated with voter participation particularly among women. The Lansing-Baxter study shows that over a 25-year period, college-educated women have voted at the highest rates and that the rate for this group does not fluctuate as much as those of other women. Grade-school or high-school educated women are possibly more subject to the effect of different candidates and various campaign issues in different election years, and their turnout rates show more fluctuation.

Employment—Lansing and Baxter also found that women employed outside the home have made a great improvement in their voter turnout rate over time. Women in the 1980s represent approximately 40.8 percent of the total work force, and apparently employment has become a powerful motivator for their political participation. But among working women (and 49.3 percent of women work outside the home), there are significant differences. The highest voter participation rate is evident among professionally employed women. Up until 1980 the next highest participation rate was among clerical and sales women employees, but in 1980 this group was surpassed by homemakers. Women in blue collar jobs have remained at the lowest turnout levels.

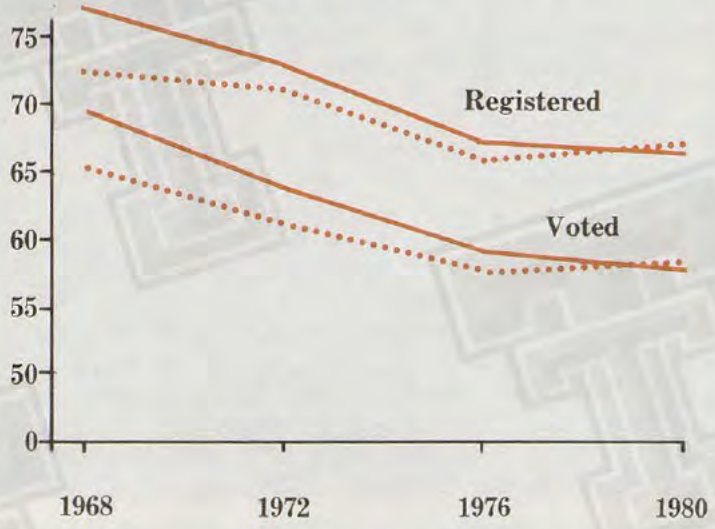
Region—Geographic region also plays a role in voter turnout. Census Bureau reports show that southern women are less likely to vote than women who live in the northeastern, western, or north central regions of the country, although the voter turnout rate for southern women improved from 1976 to 1980. Women in the north central states consistently have the highest turnout rate. In 1976, northeastern women had the second highest rate, followed by western women, but in 1980, these two categories changed places.

Race—Lansing told the LWVEF Conference that race can influence voter turnout—but, for black women at least, not always as one would expect. Since the 1960s, black women have voted at rates similar to or even higher than those of black men. As Lansing and Baxter have stated, "White women have taken longer than black women to reach voting rates

[2] Ann Arbor: University of Michigan Press, Revised edition, 1983.

FIGURE 1

Percent of Men and Women Who Reported Registering and Voting in Presidential Elections*



Source: U.S. Bureau of the Census.
Compiled by the League of Women Voters Education Fund.

*Both Census Bureau studies and other surveys of voting behavior based on interviews have found that citizens in interviews tend to "overreport" their voting or registration rates, by as much as 5–15 percent. Speculation is that norms of democracy and patriotism make some citizens uncomfortable about saying they did not vote, so they report they did. Others may not remember. For example, in 1980, the actual average turnout rate for all voters was 53.2 percent of the voting-age population.

comparable to those of their respective men." Also, they point out that in 1976 black women with an elementary school education voted at rates 5–11 percentage points higher than their white female counterparts. Since they vote at rates greater than their socioeconomic background would predict, Lansing suggests that the motivation for these black women to vote is undoubtedly strong, even though many may be economically disadvantaged. (Citizens at the lower end of the socioeconomic spectrum generally tend to vote at lower rates, a characteristic intensified

A LOOK AT THE NUMBERS

All discussion of voter turnout differences between men and women should rest on an understanding of an important demographic fact: since 1964, women have outnumbered men in the *numbers* of eligible persons who actually vote. Women have been a majority of the U.S. population since the end of World War II, and by 1982 constituted 51.3 percent of the total U.S. population and 52.8 percent of the voting-age population (VAP), according to the Census Bureau figures.

The census data show that, in all age categories of the VAP, women outnumber men; the differences are slight in the younger age groups and grow larger in the older age categories. For example:

18–20-year-old voters are 50.5% female
35–44-year-old voters are 51.4% female
45–54-year-old voters are 51.8% female
65–74-year-old voters are 56.6% female
over 74-year-old voters are 63.4% female

Discussions about voter turnout *rates* refer to the proportion of each gender that votes. With more women than men in the voting-age population and with voting rates for women at least as high as voting *rates* for men, the majority of the voters will be women.

when combined with minority status.) Further research is needed to determine the reasons for atypical participation rate for black women.

Age—Age also affects voter turnout for women, with the highest levels of participation occurring between the ages of 31 and 60. The next highest voting rate is found in the 61 and over age group (although in 1980, the differences between the two groups were not great), with the 18–30-year-old category participating at the lowest rate.

While all of the factors described above can influence voter participation for both women and men, these factors can combine in various ways to affect different individuals. Until 1980, education had been by far the most important correlate of turnout for women, with age running a close second. Region and employment status were not highly predictive. In 1980, age and employment surpassed education as the best predictors, with education and region coming next, according to the Baxter-Lansing study.

Voter turnout is thus related to various demographic characteristics of voters. But an understanding of the act of voting also requires some attention to voters' attitudes and opinions as well.

THE WOMEN'S VOTE COMES OF AGE

What made news in 1980 and 1982 was that, for many women, voting choices and political preferences were distinctly different from the choices made by men. Consequently, as the 1984 presidential campaign period heated up, speculation about the gender gap or the women's vote became a common topic in the media. Democratic candidates appearing before the fall 1983 convention of the National Organization for Women were asked to respond to the idea of a woman as a vice-presidential candidate. Republicans speaking at the 1983 National Federation of Republican Women conference discussed the importance of recruiting more Republican women to run for congressional and senatorial seats. Political cartoonists began depicting the growing political power of women voters. In short, the gender gap had "arrived." But what did it really mean? A look at some trends in women's voting decisions can give us a basis for understanding the long-term forces at work in the gender gap of the 1980s.

PARTISAN DIFFERENCES

Early voting research focused on political party preference as more important than issues or candidate preference in influencing how people voted when they went to the polls. Even though party affiliation seems to have lost some of its influence in recent years, for many it is still a vital factor in the process of deciding for whom to vote. Even those who may insist that they vote for "the candidate, not the party" often use party identification as a shortcut for making their decision, absent other influences.

Scholars have found that historically, men's and women's partisan preferences did not differ greatly, although in the 1950s (and earlier) women were slightly more likely than men to be Republican. By the 1970s and certainly in the 1980s, however, this pattern had shifted. In 1976, a greater proportion of women identified themselves as Democrats than men (by 5 percentage points, 53 percent to 48 percent), and these differences continued in the 1980 and 1982 elections.

The 1980 election results again showed a clear difference in party preference between men and women. As Marjorie Lansing pointed out at the LWVEF Conference on the Women's Vote, women expressed a preference 6 percentage points higher than men for the Democratic party and a preference 4 percentage points lower than men for the Republican party. These preferences carried through the 1982 elections as well.

In 1982 pollsters, politicians and the media carefully eyed the newly named "gender gap." Preelection polls tracked a consistent significant gap between male and female "likely voters," both in their approval/disapproval of the way President Reagan was handling his job and on their likely vote in the '82 congressional elections. The consistent preelection

differences between men and women led many to expect that the women's vote would be one of the critical factors in the 1982 elections.

Actual results were mixed at the national level but more significant at the state level. And, the male/female partisan differences were noteworthy. According to the CBS News/*New York Times* national exit poll on election day, in the 1982 elections for the U.S. Congress, 57 percent of women voters preferred Democratic candidates, compared to 53 percent of men voters. The gap was even greater in other national polls: the ABC exit polls, for example, showed women preferring Democratic candidates by 5 points more than men; NBC polls showed a six-point difference. Kathleen Frankovic, surveys director for CBS News, told the LWVEF Conference on the Women's Vote that analysis of exit poll data in 1982 suggested that gender might be a better predictor of voting behavior than some other characteristics for that election.

In the spring of 1983, University of Michigan social scientists reported on a study of gender gap implications in the 1982 election to a meeting of the American Association for Public Opinion Research. Among other findings, Arthur Miller and Oksana Malunchak reported that 1982 gender-based partisan differences were most striking in open districts. With no incumbency influence, these districts provided a unique laboratory for comparisons.

The 1980 and 1982 polls also indicated the existence of a "marriage gap"—unmarried voters of either gender were more inclined to favor Democratic candidates over Republican candidates. The *New York Times* reported that single voters of both sexes favored Democrats over Republicans in contests for the House of Representatives by 11 points more than married voters.

ATTITUDES ABOUT CANDIDATES, ISSUES AND EVENTS

Women voters (as well as men) respond to a variety of political influences besides partisan preferences. A look at the interplay of some of these attitudes provides a more comprehensive picture of the voting behavior of women.

Women, like men, respond to candidates according to their feelings about the candidates' personalities and characters as well as their stands on issues. For example, researchers of the 1952 election found that women favored the Republican candidate, Dwight Eisenhower, more than men largely because of their concern about the Korean war and its effect on inflation and employment. Women apparently saw Eisenhower as a person more able to extricate the United States from the Korean war.[3]

[3]This obvious difference in women's candidate preferences prompted pollster Louis Harris to write a prescient comment about the 1952 election: "The implication of this newfound independence among women can have a profound effect on the future of American politics. It raises the real possibility that in the future there will in fact be a 'women's vote' quite separate from the men's [vote]."

Voters' assessments of candidates are complex, drawing on a variety of predispositions. Harvard scholar Ethel Klein, a speaker at the LWVEF Conference on the Women's Vote, described poll data showing that women who preferred George McGovern in 1972 on the basis of his stand on women's issues were more likely to vote for him than were men who favored these issues. This advantage was offset, however, by the less favorable perceptions women had about McGovern as a candidate and leader. Lansing also suggested that women's opinions on important public policy views can explain their candidate preferences, at least in part. For example, early in the 1960 campaign, women preferred Nixon to Kennedy, presumably because they felt more comfortable with him due to his greater international experience at the time. After the campaign was over, however, women voted for Kennedy in the same proportion as men.

Since 1952, scholars using survey research at the University of Michigan have studied voter participation and voter preferences on issues in presidential elections. Numerous opinion polls such as those conducted by Gallup, Roper and Harris, as well as by the media, also help to illustrate how voters feel about issues and how they make political choices. For many years, the conventional wisdom was that women's opinions on issues did not differ appreciably from men's. However, on closer examination this assumption does not hold up. Research data on how women felt about issues in the early years of their enfranchisement are scarce. Generally speaking, women supported peace and social and economic welfare issues, but the systematic collection of information about women's preferences really did not begin until the post-World War II period. But then, some interesting findings emerged.

Baxter and Lansing pointed out that even in the 1950s, women held different positions from men on some issues and, most consistently, on the issue of war and peace. In fact, women historically have been more likely than men to oppose heavy military commitments and aggressive policies. They have been more likely to be critical of U.S. involvement in wars, more likely to support U.S. withdrawals from wars and generally more apprehensive about U.S. involvement in war from World War II to Korea, Viet Nam, Cambodia and other more recent threats to world peace. Women's preferences for peace are more prominent among younger, more highly educated women. (Of course, none of this is to imply that men are pro-violence or pro-war; it means only that women as a group tend to be more negative about violence and aggression than men.)

By the 1970s, many women had developed distinct feminist issue preferences, but the nature of the political campaigns and the candidates prevented large numbers of women from making an electoral choice based on these issue preferences because candidates did not address these points in the campaigns. Instead of issue preferences, Ethel Klein found that campaign symbolism and candidate impressions were the important voting influences for women in both 1972 and 1976.

The 1980 election showed a continued trend for women to be more "pro-peace" than men, in general, and to assess candidates at least partly on the basis of this issue preference. Baxter and Lansing cite a wide range of 1980 opinion polls to support their contention that the "peace/war issue

had more influence on women than on men in 1980." But this was not the only issue on which men and women differed in the campaign.

Economic issues also divided men and women in 1980. At the LWVEF Conference, Lansing pointed to the fact that women were more inclined to favor social welfare spending than men, and to feel, by 8 percentage points more than men, that their financial condition had worsened over the period of a year. In a paper presented at a political science conference, political scientist Celinda Lake wrote that "while men were more concerned about, had more information on, and based judgments more on big government and economic issues—both of which clearly favored Reagan—women turned more to social issues which at least relatively favored Carter." Lake suggested that defense spending, the economy and social welfare issues were important campaign issues to women.

In addition, the presidential candidates in 1980 clearly differed on "women's issues." Carter supported the ERA and Reagan opposed it. Carter opposed an anti-abortion constitutional amendment while Reagan favored it. Carter seemed more comfortable with the changing role of women, while Reagan campaigned on traditional family values. Yet polls seemed to indicate that it was not "women's issues" *per se* that caused the marked division between women and men voters in 1980. For example, men and women both responded to questions concerning the Equal Rights Amendment (ERA) similarly: about 60 percent of both genders supported the proposed amendment. But according to Ethel Klein, 60 percent of women who supported the ERA were likely to vote for Carter compared to 51 percent of men who supported the amendment. Moreover, the sex difference in the relation between support for women's issues and the actual voting decision was even greater among ERA supporters who felt Carter was better on women's issues. A similar pattern was noted on the issue of abortion. Among men and women voters who disapproved of ERA, there was not an appreciable gender difference.

Unlike women's issues, however, environmental issues clearly divided men's and women's voting preferences in 1980. Polls confirmed the high level of importance women placed on protecting the environment. Women consistently were more likely to oppose off-shore drilling and construction of nuclear power plants and generally were more supportive of a range of environmental issues. These differences in issue stances seemed to be replicated in voting patterns.

It is unclear whether or not the personal qualities of candidates Reagan and Carter were factors in the 1980 gender gap, since men and women seemed cool to *both* candidates during the campaign period. In preelection surveys designed to pinpoint the public's perception of the candidates' personal qualities, President Jimmy Carter was described as a "basically good man, but one whose leadership skills were in doubt." Candidate Ronald Reagan seemed to fare a little better. Even after the long primary season, many voters surveyed seemed uncertain about Reagan's personal qualities; others gave him low marks on competence (cited in Baxter and Lansing, p. 189).

On the question of Carter's handling of the presidency, an issue that candidate Reagan stressed in the campaign, both women and men rated

Dr. Marjorie Lansing of Eastern Michigan University helped LWVEF conference participants put the women's vote in perspective by drawing on her research into the changing voting patterns for women and men since 1952. Lansing coauthored Women and Politics: The Visible Majority, *with Sandra Baxter.*

President Carter poorly, although fewer women (53%) disapproved than men (59%), according to University of Michigan surveys.

The results of 1980 exit polls conducted by the media and surveys conducted by scholars revealed a clear difference between men and women in their votes for president. According to conference speaker Kathleen Frankovic of CBS, the CBS News/*New York Times* 1980 poll showed both women and men preferred Ronald Reagan to Jimmy Carter, women by a narrow margin of 47 percent to 45 percent and men by a much sharper difference of 55 percent to 36 percent. The University of Michigan data used by Baxter and Lansing show similar results. Reagan received 47 percent of women's votes compared to 55 percent of the men, while 42 percent of women supported Carter compared to 36 percent of the men. Though the gender differences did not affect the outcome of the election, they set the stage for the 1982 election and the media's attention to the gender gap.

During the 1982 campaign period, the CBS/*New York Times* polls indicated that women were much less supportive of President Reagan's policies and performance than men (see Table 1) and that women were more inclined than men to elect Democrats to Congress (see Table 2). As the congressional campaign progressed, polling experts studied the gender gap and what it might portend for the 1982 election. There was speculation as to whether it was "real," whether it would affect any races and what it would be in the future.

Kathleen Frankovic concluded from examining the 1982 CBS News/*New York Times* election day exit poll that the gender gap was "statistically real." The poll showed that 57 percent of women voters cast their ballots for Democratic candidates for the House of Representatives compared with 53 percent of the men voters. The gender gap in this survey showed up most clearly in the Midwest.

Women voters in general had a more pessimistic view of the economy than men voters and were less likely to think they had been helped by the

TABLE 1

Gender Differences in Assessing Presidential Policies and Performance
(by percent)

	Sept. 1983		June 1983		Jan. 1983		May 1982		Jan. 1982	
	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
Do you approve or disapprove of the way Ronald Reagan is handling his job as President?										
APPROVE	53	39	57	39	47	35	49	39	54	44
DISAPPROVE	38	43	33	44	44	50	38	48	34	41
Do you approve or disapprove of the way Ronald Reagan is handling foreign policy?										
APPROVE	45	32	53	35	47	32	51	36	56	49
DISAPPROVE	45	49	32	40	33	43	34	42	31	31
How about the economy? Do you approve or disapprove of the way Ronald Reagan is handling the economy?										
APPROVE	50	39	60	39	42	28	42	33	46	39
DISAPPROVE	44	48	34	50	50	61	49	58	46	50
Whatever its effect on you, do you think the economic program has helped or hurt the country's economy?										
HELPED			56	42	33	22	25	18	33	31
HURT			35	42	57	63	54	62	52	50
TOO EARLY TO TELL (VOL.)			3	5	3	4	8	8	7	6

Source: CBS News/*New York Times* Poll. Used by permission.

TABLE 2

Women, Men and Partisan Inclination in the 1982 Elections
(by percent)

PRE-ELECTION OPINION

Do you think the country should elect more Republicans to Congress, or more Democrats to Congress?

	Jan. 1982		May 1982	
	MEN	WOMEN	MEN	WOMEN
MORE REPUBLICANS	27	19	24	20
MORE DEMOCRATS	32	34	31	38

If the 1982 elections for U.S. House of Representatives were being held today, would you vote for the Republican candidate or the Democratic candidate in your district? (IF UNDECIDED) Which way do you lean as of today—towards the Republican candidate or towards the Democratic candidate?

	Oct. 1982	
	MEN	WOMEN
REPUBLICAN	41	35
DEMOCRATIC	51	53

EXIT POLLS

Vote in 1982 elections for U.S. House of Representatives

	Overall		*Democratic Incumbent Districts*		*Republican Incumbent Districts*		*Open Seats*	
	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
REPUBLICAN	44	40	33	32	54	47	47	42
DEMOCRATIC	53	57	63	64	43	50	51	54

Source: CBS News/*New York Times* Polls. Used by permission. Election Day and October 1982 percentages based on opposed House districts only.

Dr. Kathleen Frankovic of CBS News reported that her analysis of 1982 exit poll data clearly indicated a "statistically real" gender gap.

Administration's economic program. In addition, they had a less favorable view of Reagan's conduct of the presidency.

The final results showed that the gender gap had an effect in some races but not in others. In Texas, Democrat Mark White's upset victory in the governor's race was credited largely to the support of women voters. Their preponderance in the electorate and their overwhelming support of Democrat White overcame a five-point preference among men for the Republican candidate.

In the New York governor's race, Democrat Mario Cuomo's edge among women voters was large enough to overcome his opponent's lead among men. Similar statistics were reported in the New Jersey Senate race, where, in a different twist, Democrat Frank Lautenberg campaigned with the endorsement of the National Organization of Women and outpolled Millicent Fenwick, a popular Republican member of the House of Representatives.

Simply comparing the final tallies of men's and women's votes may gloss over the effects of candidates' campaign tactics. For example, in Arkansas, Democrat Bill Clinton's preelection polls indicated that while he was benefitting from the female half of a significant gender gap, he was trailing among *male* voters. His campaign responded by targeting men voters with a series of male-oriented television commercials aired during sports broadcasts and other male-oriented programs. On election day, both women and men supported Clinton by a margin of 9–12 percentage points. While a cursory analysis of the results would not reveal a gender gap, it was in fact an important factor in the way the campaign was conducted.

THE WOMEN'S VOTE: LOOKING AHEAD

Two major questions for observers of American electoral politics is whether the gender gap is part of a long-term trend and whether it will continue to be important. Key scholars have answered these questions in the affirmative. Kathleen Frankovic reported to the LWVEF Conference: "The differences in the 1982 elections suggest the emergence of long-term divisions between men and women in political behavior." Harvard scholar Ethel Klein stated: "The gender gap is rooted in long-term demographic trends. . . ." Marjorie Lansing pointed out: "The differences in [male/female] attitudes are anchored in long-run demographic variables." What then, do these conclusions mean for the future?

THE WOMEN'S POLICY AGENDA

Ethel Klein addressed some of these questions at the LWVEF Conference on the Women's Vote. Since there is general agreement that historical evidence shows that a gender gap does exist, the next question must be: What lies ahead? The gender gap is more than just a difference in voter turnout levels or differences in the level of support for certain candidates, parties or policy positions by men and women. What has become apparent, says Klein, is that women tend to calculate their voting decisions according to a multi-issue policy agenda which differs from that used by men and which cuts across group lines. The degree of importance of certain issues varies among voters. That, to Klein, is what makes the gender gap important and durable. Different campaigns and different elections will trigger responses based on different issues. What the gender gap means is that women have identifiable interests that they are willing to translate into votes.

This policy agenda shared by women cuts across all divisions of women by race, education and age, although different groups may place more weight on some issues than others. Professor Marianne Githens of Goucher College has surveyed recent studies in this field and concluded that the women's agenda "appears as though it is a configuration of peace, the environment, Reaganomics, social issues and a general sense of fair play that distinguishes women's preferences and opinions from those of men."

Specific "women's issues" have been shown to be important factors in combination with the other issues. These issues, in Klein's view, seem to fall into two dimensions: first, the national welfare, i.e., what is best for the society as a whole; second, self-interest, i.e., what is best for women. Peace and the environment clearly fall into the first dimension, while economic issues can be included in both. Women's support for social welfare programs has traditionally been a considered a "compassionate" interest in the needs of the poor and the disadvantaged; however, as

women have become more aware that many of them *are* poor and disadvantaged, economic issues have become a matter of self-interest as well. Such "women's issues" as economic discrimination against women, abortion rights and support for the ERA also fall into the self-interest category.

A NEW POLITICAL CONSCIOUSNESS

The increased dimension of self-interest, combined with demographic trends and new role perceptions affecting the lives of women, helps to define and explain the gender gap. A majority of women have joined the work force; a majority of the nation's poor are women. Changes in lifestyle and family structure have affected how women see themselves. Such large-scale forces have brought women into a new relationship with the world of politics. As Virginia Sapiro points out in *The Political Integration of Women*, women no longer stand at the margin but are gradually becoming integrated into the mainstream of political life.

Klein believes that long-term demographic trends have redefined what it means to be a woman in the United States in the 1980s. Over time, traditional roles that constrained the participation of women in politics disappeared as women developed a political consciousness. In discussing this process, both Klein and Lansing stressed the significance of the fight for the ERA, through which women have become more aware of their own interests and have begun to look to the political arena to address them. And as women have become informed about discrimination and injustices directed against them, they have developed a new unity in the realization that other women faced similar problems.

Women also have gained political skills and experience in the fight for ERA, whether as observers or participants. Many women have become familiar with the voting records of their state legislators. They have learned lobbying and electioneering techniques and have gained new confidence in their ability to communicate their concerns to public officials.

The Reagan campaign and administration have been other important factors in the recent political education of women. Reagan has stirred feminist interests by opposing ERA, abortion and government spending for social programs while supporting traditional goals and values for women.

These political and historical trends have meant that, in recent years, more women have been voting, running for office or serving in other community leadership roles. As Virginia Sapiro put it in her book, "Women as a group and women as individuals are being transformed—and indeed are transforming themselves—into citizen members of the political community."

CONTINUING TRENDS

Writing in September 1983, after attending a conference of political

Dr. Ethel Klein of Harvard University told conference participants that the knowledge that women have identifiable interests which they are willing to translate into votes can help in the development of a "language of political empowerment" for women.

scientists, columnist David Broder summarized a host of research papers on the gender gap with the statement that it "looks more and more like a deeply rooted trend."

The evidence has in fact led most observers to the conclusion that the gender gap is here to stay even though it may not always be evident in specific election results. Frankovic bases her belief that the gender gap will continue beyond the 1984 election on the continuing difference between the way men and women make election choices, a trend that became apparent in the 1980 election, was again reflected in 1982 and is still showing up in recent polls on approval rates for the Reagan presidency. For example, in a September 1983 *Washington Post*/ABC News Poll, women were distinctly less approving than men of the policies of the current Administration. Women were 15 percentage points more disapproving than men of the way economic matters were being handled and 10 percentage points more critical about the handling of cuts in social programs. In this poll, women gave the President an approval rating that was 12 percentage points lower than that of men. The CBS/*New York Times* poll showed similar gender differences to the *Washington Post*/ABC poll for 1983 (see Table 1).

Miller and Malanchuk note that "emerging gender differences certainly appear to be associated with shifting patterns of party identification, thereby implying that they will be lasting." They believe that the reasons that women have become more Democratic (see previous section) also explain the gender gap and they find these reasons "deeply rooted in long-term socialization practices that define the moral imperatives differently for men and women."

At the LWVEF Conference, Lansing predicted that the gender gap in the voting patterns of men and women will continue in future elections unless the following happen: candidates come to agree on policy issues important to women, there is real progress on peace and related issues, *and* there are changes in women's perceptions about their economic well-being.

THE RESEARCH AGENDA

As scholars of women's voting behavior look to the future, they see the need for research that both supplements the information in hand and answers important new questions. Research on women and politics is still at the exploratory stage so that more information is needed in order to reach the next stage of building explanatory theory. For example, Lansing advocates major investigation into the "intensity of political involvement among black women." Participants at the Conference on the Women's Vote echoed this request for more study about minority women and stressed the need to broaden the scope of research to include all groups of women. Lansing also called for more information about the relationship between the strength of the political parties and the numbers and success of women candidates.

University of Michigan scholar Barbara Farah, noting that those who vote in primary elections tend to be more active and better informed than the electorate in general elections, stressed the need for more research on how women determine their choices in those elections and on how more women can be motivated to participate in primaries. Drawing on her research experience from the 1982 Women USA Fund registration and get-out-the-vote campaigns in six states, Farah concluded that women *are* able to identify which candidates are more able to deal with issues of importance to women.

Klein advocated more sophisticated research on why women think about politics in a way different from men, and Farah emphasized the lack of research on how women make up their minds on how to vote. This kind of knowledge, Klein observed, would lead to the development of a "new language of political empowerment" to help women make connections between what they want and need and how they can use the political system to meet those needs.

Researchers and observers alike recognize the need for comparability of data in the study of the women's vote. Since different scholars have asked different questions, and different sets of issues have been surveyed, it has been difficult to draw broad conclusions. Some basic guidelines should be agreed upon and data should be pooled as researchers look to the future. Important questions that probe public opinion on issues of special interest to women should be added to standard polls and national surveys.

Marianne Githens, political science professor at Goucher College, has looked at the way political science has approached the study of women and politics and called for some basic changes. In her opinion, the discipline has long tended to trivialize gender-related research by treating it as a "side-road," a study of deviance from the male standard. Women's political behavior has been studied using the behavior of men (specifically, in the United States, white men) as the norm and defining political activity in relation to what men do in the political arena. "What is now needed," Githens concludes, "is a new research agenda focusing on what women define as political and what they see as appropriate political behavior within this context."

AGENDA FOR THE FUTURE

The gender gap exists; it is based on an issue agenda distinct for women; it is unlikely to be a short-lived phenomenon. The women's movement, according to Marjorie Lansing, is looking forward to a third stage after the struggle for suffrage and the era of activism that ended inconclusively with the defeat of the ERA in 1982. "What began as a special interest protest has emerged into a cohesive group, loosely organized, highly individualistic and composed of women bearing right and left ideologies. The third wave of the women's movement will attempt to secure equal human rights, including full participation in the political system."

Klein recognizes that women activists are now in a transition period, moving from a time of confrontation into a period of participation in electoral politics. She estimates that active, attentive feminists—men, women, Republicans and Democrats favorable to women's issues—now make up about 20 percent of the electorate. Republican women have recently been more vocal in summoning their party to pay attention to the concerns of women; the party is responding by stressing women's issues in training sessions for candidates and by focusing on such issues as education.

Members of Congress Claudine Schneider (R RI) and Barbara Kennelly (D CT), who addressed the participants at the Conference on the Women's Vote, urged women to take advantage of the new awareness of the women's vote to achieve action on the issues women care about. Schneider stressed the importance of campaigns and organizations reaching the "nonjoiners," to inform them about the issues and to get them out to vote so that women can use the enormous potential of the women's vote to elect responsive officials.

Barbara Farah stressed the importance of participation by women in primary elections and other candidate selection processes; for at that

Dorothy S. Ridings (right), chair of the League of Women Voters Education Fund, introduces Rep. Barbara Kennelly (D CT), who gave conferees an inside view on the impact of the women's vote on the election process and on issues before Congress.

stage of the process, small numbers of votes can make crucial differences. Research also indicates that voters in primary elections are much more likely to vote in general elections.

The Baxter-Lansing 1983 edition of *Women and Politics: The Visible Majority* takes up the call for action: "With their strength in numbers, leadership experience, and organizational skills, women now have the best opportunity in the sixty years since suffrage to exercise political clout. Their clout is especially powerful in the closely balanced electoral system of the United States. When winning margins are smaller, a well-organized voting bloc can often determine election outcomes, as women demonstrated in 1982."

The next step, then, is to bring as many women as possible into the political process, through education, registration and get-out-the-vote drives and grass-roots organization. Both political parties seemed well aware of gender gap implications going into the 1984 presidential campaign. The media began devoting extensive coverage of both gender-related issues and women's voter registration plans as early as the fall of 1983.

Women's organizations continue to work toward encouraging more women to register and vote. The Women's Roundtable, a cooperative effort of more than 40 organizations committed to women's issues, showed significant staying power in the cause of women voting. This group of organization leaders began meeting in the summer of 1982 to plan strategies to increase the electoral participation of women (leaders of the Women's Roundtable largely made up the participants at the 1983 LWVEF Conference on the Women's Vote.) In the spring of 1983 this group made a commitment that each organization in the Roundtable would do its utmost to register its own members and get them out to vote and to reach other women as well, to bring them fully into the electoral process. Using a variety of techniques, groups planned to emphasize voter education, registration drives, and get-out-the-vote campaigns. Leaders of these organizations pledged that women will be equal participants with men in voting and determining policies that affect their lives.

Beyond that, women will continue to use their new political skills and clout to elect women to office. Ruth Mandel, director of the Center for the American Woman and Politics at Rutgers University, pointed out to the Women's Vote Conference that, although women now make up only about 10 percent of elected officials in this country, those women officeholders are making an important difference.

In Marjorie Lansing's words at the conclusion of the Conference on the Women's Vote: "We will not go back to the *status quo ante*, and women will continue to strive... to become cosigners of the social contract."

SCHOLARS AND POLLING EXPERTS WHO SPOKE AT THE LWVEF CONFERENCE ON THE WOMEN'S VOTE

Marjorie Lansing, Ph.D., Eastern Michigan University
Kathleen Frankovic, Ph.D., CBS News
Barbara Farah, Ph.D., University of Michigan
Dotty Lynch, Lynch Research Inc.
Wilma Goldstein, Campaign Fund for Republican Women
Ethel Klein, Ph.D., Harvard University

FOR FURTHER READING

Baxter, Sandra and Marjorie Lansing, *Women and Politics: The Visible Majority*, Ann Arbor, Univ. of Michigan Press, Revised edition, 1983.

Elshtain, Jean Bethke, *Public Man, Private Woman: Women in Social and Political Thought*, Princeton, Princeton Univ. Press, 1981.

Frankovic, Kathleen A., "Sex and Politics—New Alignments, Old Issues," *P.S.* 15, (Summer 1982).

Fulenwider, Claire Knoche, "Feminist Ideology and the Political Attitudes and Participation of White and Minority Women," *Western Political Quarterly*, 34, March 1981.

Githens, Marianne, "The Elusive Paradigm: Gender, Politics and Political Behavior" in Ada F. Finifter, ed., *Political Science: The State of the Discipline*, Washington, D.C., American Political Science Association, 1983.

Githens, Marianne and Jewel L. Prestage, eds., *A Portrait of Marginality: The Political Behavior of the American Woman*, New York, David McKay Co., Inc., 1977. See especially John W. Soule and Wilma McGrath, "A Comparative Study of Male-Female Political Attitudes at Citizen and Elite Levels," and John J. Stucken, "Women as Voters."

Klein, Ethel, *Consciousness and Group Politics: The Rise of the Contemporary Feminist Movement*, Cambridge, Harvard Univ. Press, 1984.

Lake, Celinda, "Guns, Butter and Equality: The Women's Vote in 1980," Paper presented at the annual meeting of the Midwest Political Science Association, 1982.

Mandel, Ruth B., *In the Running: The New Woman Candidate*, New Haven, Ticknor & Fields, 1981.

Charles E. Merriam and Harold F. Gosnell, *Non Voting*, Chicago, Univ. of Chicago Press, 1924.

Miller, Arthur H. and Oksana Malanchuk, "The Gender Gap in the 1982 Elections," Paper presented at annual conference of American Association for Public Opinion Research, 1983.

Poole, Keith T. and L. Harmon Zeigler, "Gender and Voting in the 1980 Presidential Election," Paper presented at the 1982 Annual Meeting of the American Political Science Association.

Sapiro, Virginia, *The Political Integration of Women: Roles, Socialization and Politics*, Urbana, Univ. of Illinois Press, 1983.

ORDER FROM
League of Women Voters of the United States
1730 M Street, NW, Washington, DC 20036
Publication No. 425
$1.75 ($1.25 Members)
ISBN 0-89959-344-5

LWV-CC

Using the Voting Rights Act

United States Commission on Civil Rights
Clearinghouse Publication 53

April 1976

U.S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman
John A. Buggs, *Staff Director*

Using the Voting Rights Act

United States Commission on Civil Rights
Clearinghouse Publication 53

April 1976

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

TABLE OF CONTENTS

INTRODUCTION

The Voting Rights Act of 1965, amended by Congress in 1970 and again in 1975, protects and strengthens minority citizens' right to vote throughout the United States. In many parts of the South, it has been used to remove unfair qualifications for voting and to correct unfair administration of the election system. It has led to greatly increased registration, voting, and election of blacks to public office in most Southern States.

Application of the law's special provisions in other scattered sections of the country has also provided opportunities for increased political participation by American Indians, Mexican Americans, and Puerto Ricans. In extending the Voting Rights Act on two occasions, Congress expressed its determination that every trace of racial discrimination in voting should be removed.

In 1975 Congress also amended the Voting Rights Act to strengthen the 14th amendment voting rights of citizens with a limited knowledge of English. The new provisions of the Voting Rights Act require States, counties, and towns with significant numbers of Spanish heritage Americans, Asian Americans, American Indians, or Alaskan Natives to conduct elections in the language(s) of the appropriate minority group(s) as well as in English. Although the law itself is technical and complex, its basic intent is simple and clear: racial and language minority citizens should have the same rights and opportunities as other Americans to participate in politics and government at every level.

In order to meet this goal, the law contains permanent and temporary provisions. The permanent or general provisions affect the entire country. The temporary or special provisions affect certain States and counties or towns where minority citizens may have had difficulty exercising their right to vote.

More specifically, the Voting Rights Act:

- prohibits the use of literacy tests and other devices as qualifications for voting in any Federal, State, local, general, or primary election anywhere in the United States;
- assures that residence requirements will not prevent citizens from voting for President and Vice President anywhere in the United States;
- authorizes the Federal courts to apply the special provisions to jurisdictions not already covered by them;
- provides for assigning Federal *examiners* to register voters and Federal *observers* to watch voting in many States and counties covered by the special provisions of the law;
- requires Federal clearance of new registration and voting laws and procedures in many States and counties covered by the special provisions of the law; and,

- requires the use of languages other than English for registration and voting in certain States, counties, and towns covered by the minority language provisions of the law.

DEFINITIONS

In the Voting Rights Act, certain terms have specific legal definitions. Among the most important are:

voting—includes all action necessary, from the time of registration to the actual ballot count, to make a vote for public or party office effective.

test or device—any requirement that a person must do any of the following in order to register or vote:

1) demonstrate the ability to read, write, understand, or interpret any matter;
2) demonstrate any educational achievement or knowledge of any particular subject;
3) prove his (her) qualifications by having another person (such as a registered voter) vouch for him (her);
4) possess good moral character;
5) register or vote only in English in jurisdictions where the Census Bureau has determined that more than 5 percent of the citizens of voting age are members of a single language minority.

language minority—a person who is American Indian, Asian American, Alaskan Native, or of Spanish heritage. According to the Census Bureau, the category "Asian American" includes Chinese, Filipino, Japanese, and Korean American citizens. The category "persons of Spanish heritage" includes:

1) persons of Spanish language in 42 States and the District of Columbia;
2) persons of Spanish language and persons of Spanish surname in Arizona, California, Colorado, New Mexico, and Texas, and
3) persons of Puerto Rican birth or parentage in New Jersey, New York, and Pennsylvania.

Political subdivision—a county, parish, town, or other subdivision of a State that conducts voter registration.

illiteracy—failure to complete the fifth primary grade.

In this pamphlet, the following terms are also used:

jurisdiction—a general term referring collectively to different governmental entities including States, counties, cities, towns, special purpose districts (such as school districts), etc.

covered juridictions—a general term referring collectively to different governmental entities that are covered by the special provisions of the Voting Rights Act.

GENERAL PROVISIONS

The general provisions of the Voting Rights Act of 1965, as amended in 1970 and 1975, are permanent and apply everywhere in the United States. These provisions:

- limit the use of certain voter qualifications;
- authorize suits in Federal court that seek to enforce voting rights by having the special provisions of the Voting Rights Act apply to States or local jurisdictions not already covered;
- establish criminal penalties for certain acts related to voting.

VOTER QUALIFICATIONS

Traditionally, States have the power to set voter qualifications. Federal law, however, including the Voting Rights Act and other laws, the U.S. Constitution, and Federal court decisions, limits that power and prohibits the use of certain qualifications. In general, any citizen 18 years old or older who meets minimal State and local residence requirements and who has not been found legally insane or convicted of a disqualifying crime may register and vote in local, State, and Federal primary and general elections.

The 15th and 19th amendments to the Constitution provide that States may not deny the right to vote on account of race, color, or sex. Under Federal voting law, States may not require persons to pass literacy tests or pay poll taxes in order to register or vote. The Voting Rights Act requires all States to permit absentee registration and voting for Presidential elections and sets maximum residence requirements (30 days before the election) for voting in any State in Presidential elections. A qualified voter who has moved to a new State or local jurisdiction within 30 days of a Presidential election must be allowed to vote in person or absentee at his or her former place of residence.

CIVIL SUITS AND ATTORNEY'S FEES

The general provisions of the Voting Rights Act authorize Federal courts to impose some or all of the special provisions in jurisdictions not automatically covered upon finding major violations of federally-protected voting rights. The law permits the U.S. Attorney General and private citizens whose voting rights have been violated to ask the courts for this relief. In addition, the Voting Rights Act permits the winning side in a voting rights lawsuit to recover attorney's fees. This provision means that when a court finds that a jurisdiction or public official has failed to protect someone's voting rights, the government involved may be charged for the fees for the voter's lawyer.

CRIMINAL PROVISIONS

The Voting Rights Act makes it a crime for anyone—public officials

or private individuals—to deny persons the right to vote. It is also a crime to:

- attempt to or to threaten, intimidate, or coerce a person to prevent him (her) from voting;
- attempt to or to threaten, intimidate, or coerce a person who urges or helps another person to vote;
- give false information (or conspire with another person to give false information) about eligibility to register to vote in Federal elections;
- give false information to Federal examiners and hearing officers designated to enforce the Voting Rights Act;
- vote more than once in the same Federal election.

These provisions are designed to protect individuals from physical, economic, or other pressures intended to prevent them from voting, and to protect against fraud. For all of these crimes, the Voting Rights Act sets penalties including fines and imprisonment. In addition, the act authorizes the Attorney General to seek injunctions in order to prevent persons from violating the criminal provisions or the other sections of the Voting Rights Act.

SPECIAL PROVISIONS

In addition to the general protections that apply throughout the United States, the Voting Rights Act contains special provisions that apply only in States and localities that meet certain conditions and statistical tests spelled out in the law. Under the Voting Rights Act of 1965, as amended in 1970, special coverage resulted in all covered jurisdictions having to comply with a single set of special provisions. The 1975 amendments added minority language provisions that require some jurisdictions to use one or more languages in addition to English in the electoral process.

Coverage

There are four different coverage formulas (or "triggers") by which the special provisions of the act may be applied to jurisdictions throughout the country. A single jurisdiction may be covered under more than one trigger. Special coverage under each of the four triggers is automatic; after the Attorney General or the Director of the Census has found that a jurisdiction has met the stated conditions for coverage, it must immediately comply with the requirements of special coverage. A covered jurisdiction may seek to be exempted (or "bail out") from special coverage by proving to a Federal court that it should not be covered, but it must comply with the law until it has received such a determination. The act provides standards to be used by Federal courts in determining whether or not a jurisdiction should be exempted.

These triggers and bailout provisions are complex and of more interest to officials in covered jurisdictions than to the average citizen. Even though there are four different triggers, basically only two kinds of special remedies may affect a single jurisdiction and thus directly affect the protections available to the minority voter. Jurisdictions may be affected by the special provisions of the 1965 Voting Rights Act or by the 1975 amendments, or both, by operation of one or more triggers. The basic remedies are not affected by which trigger brings them into force. The major difference in coverage by different triggers is in the requirements for bailout, not in the protections provided to voters.

Jurisdictions come under some or all of the special provisions of the Voting Rights Act if they meet one or more of the following tests:

1) The jurisdiction maintained on November 1, 1964, a test or device as a condition for registering or voting, *and* less than 50 percent of its total voting-age population voted in the 1964 Presidential election;
2) The jurisdiction maintained on November 1, 1968, a test or device as a condition for registering or voting, *and* less than 50 percent of the total voting-age population voted in the 1968 Presidential election;
3) More than 5 percent of the citizens of voting age in the jurisdiction were members of a single language minority group on November 1, 1972, *and* the jurisdiction provided registration and election materials only in English on November 1, 1972 (that is, maintained a test or device as defined in the 1975 amendments), *and* less than 50 percent of the citizens of voting age voted in the 1972 Presidential election;
4) More than 5 percent of the citizens of voting age in the jurisdiction are members of a single language minority group, *and* the illiteracy rate of such persons as a group is higher than the national illiteracy rate.

Jurisdictions covered only by the first or second trigger are subject only to the special provisions of the original Voting Rights Act (see table 1). Jurisdictions covered only by the fourth trigger are subject only to the minority language provisions (see table 2). Jurisdictions covered by the third trigger must comply with the special provisions of the 1965 act *and* the minority language provisions (see table 3).

The four triggers apply to States and to counties, parishes, or towns within States that are not covered as a whole. In some instances, whole States are covered by one or more of the first three triggers. For example, the whole State of Alabama was covered under the first trigger and, by the extensions of the Voting Rights Act in 1970 and 1975, the State remains covered by that trigger. A number of counties in North Carolina were covered by the 1965 act, but the entire State was not. Similarly, the entire State of Texas

is covered under the third trigger, but only a few California counties are covered, and the entire State is not.

In jurisdictions covered by the first three triggers, statewide coverage means that all the State's political subdivisions are also covered. The fourth trigger, however, has a special exemption provision so that even if a State meets the two tests, counties in which less than 5 percent of the citizens of voting age are members of the language minority group are exempted from the minority language requirements. Thus, for example, although California as a State is covered by the fourth trigger, some of its counties contain less than 5 percent Spanish heritage citizens of voting age, and these counties are therefore exempted.

The special provisions of the Voting Rights Act are temporary. All four triggers have bailout provisions. In order to end special coverage under the first three triggers, a jurisdiction must file suit in the U.S. District Court for the District of Columbia and prove that its test or device was not used with a discriminatory purpose or effect for a previous period of years (17 years under the first two triggers and 10 years under the third).

Jurisdictions, for example, that were covered under the first trigger in 1965 may find it difficult to make that proof and therefore may not be able successfully to bring a bailout suit before August 6, 1982. Similarly, jurisdictions covered under the third trigger that had English-only elections in 1972 may find it difficult to prove to the court before August 6, 1985, that they have had a discrimination-free system for 10 years. Some jurisdictions may be able to bail out before 1982 or 1985, and all jurisdictions, if they have not continued to use a discriminatory test or device, should be able to bail out after the appropriate number of years has passed.

Bailout under the fourth trigger is somewhat different. Jurisdictions covered under that trigger can bring bailout suits in local Federal courts, and they need only prove that the illiteracy rate for the applicable language minority group(s) is equal to or less than the national rate. That is, no specific time period would be involved in their bailout suits, but only another statistical test. In any event, the provisions containing the fourth trigger automatically expire on August 6, 1985.

Enforcement of the special provisions of the Voting Rights Act is carried out by the Voting Section of the Civil Rights Division of the Department of Justice, under the supervision of the Attorney General. Individuals who wish to complain about discrimination in the electoral process or to provide information to the Justice Department should contact the Voting Section or the Assistant Attorney General for Civil Rights. Other Federal agencies, particularly the Census Bureau and the Civil Service Commission, in addition to the Federal courts, also have more limited responsibilities for enforcement of the special provisions.

SPECIAL PROVISIONS OF THE 1965 ACT

The original Voting Rights Act provides for three kinds of direct Federal involvement in the electoral processes of jurisdictions covered by the first three triggers mentioned above. These are the authority for the use of Federal examiners and Federal observers and the requirement for Federal clearance of changes in a covered jurisdiction's election laws and practices (often called "section 5 review"). Tables 1 and 3 list all the jurisdictions that were subject to these special provisions as of March 1, 1976.

Federal Examiners

Section 6 of the Voting Rights Act authorizes the Attorney General to have the Civil Service Commission appoint Federal examiners to list citizens eligible for registration in their local jurisdictions. In order to do this, the Attorney General must:

1) have received 20 meritorious written complaints from residents of the locality charging discriminatory denial of the right to vote, *or*
2) believe that the appointment of examiners is necessary to enforce voting rights protected by the 14th and 15th amendments.

After the Attorney General has made such a finding, the Civil Service Commission sets the times, places, and procedures for the examiners to interview and list for registration persons who satisfy the State qualifications that do not violate Federal law. Usually the examiners open an office in a local Federal building. There should be local publicity about their presence and their office hours.

Federal examiners do not completely replace local registration officials, but they do provide an alternate means of registration. The examiners give qualified voters a certificate stating that they are eligible to vote in any election and give the local election officials a list of the voters to be included in the official registration list.

Voters certified by examiners must be permitted to vote by local officials. The Voting Rights Act permits challenging the qualifications of a person listed by the examiners, but such a voter must be considered eligible and allowed to vote until a Civil Service Commission hearing officer and the U.S. Court of Appeals uphold a challenge. Only if the challenge is upheld may the name of a voter certified by the examiners be removed from the list and the person be denied a ballot.

Federal examiners are also available during elections to protect the voting rights of persons who are properly registered or listed. If such persons are not permitted to vote, they may complain to the examiner within 48 hours of the closing of the polls. If the examiner believes that a complaint has merit, he or she must

immediately inform the U.S. Attorney General who may then seek a Federal court order allowing the person to vote and suspending the election results until that vote has been counted.

Other sections of the law provide general procedures for the use of Federal examiners. These include requirements for timely notification to the local officials of the names of listed voters and provisions for ending the assignment of examiners in a local jurisdiction.

The use of Federal examiners is not automatic. The law assumes that registration in covered jurisdictions will be nondiscriminatory, and most examiners were used in the very early years of the Voting Rights Act. Examiners have been used, however, as recently as 1975, and they can be used at any time in jurisdictions subject to this authority.

A person who believes that local officials are registering voters in a discriminatory fashion should immediately notify the Justice Department. In order to be effective, examiners must be appointed several months before an election takes place. For jurisdictions listed in tables 1 and 3, the Attorney General can direct the appointment of examiners, but a lawsuit filed by affected citizens or the Attorney General is necessary to get examiners appointed for any other jurisdiction.

Federal Observers

The Attorney General may also request the Civil Service Commission to appoint observers for counties or other local jurisdictions that have been designated for examiners. Observers can be appointed even if examiners have not actually served in the locality.

Federal observers act as poll watchers at local polling places. Their job is to see if all eligible voters are allowed to vote and if all ballots are accurately counted. They also may observe the way local election officials (or others) assist voters who request help in marking their ballots, if the voter consents. The persons who act as Federal observers are usually employees of the Civil Service Commission or another Federal agency and from a different State than the one where the election is held.

The Federal observers do not run the election; even where observers are serving, local officials still manage the polls. The observers just watch what happens at their assigned polling places and report what they have seen to the Justice Department. Usually a Justice Department attorney is present in a locality where observers are serving. The observers' reports may be used in court if the Justice Department decides to challenge the conduct of the election.

In deciding whether to request observers, the Attorney General considers such factors as local past practices, whether minority candidates suffered discrimination or encountered racial problems

in campaigning for office, and the views of local residents o whether fair elections can be expected without observers. [illegible]son who thinks observers are necessary to ensure that an election is fairly run without racial considerations should contact the Justice Department. The Attorney General can move quickly to have observers sent to jurisdictions listed in tables 1 and 3, but again, a lawsuit would be necessary to have observers appointed for any other jurisdiction.

Federal Review of Voting Changes (Section 5 Review)

The third form of direct Federal involvement in the State and local electoral process that occurs under the special provisions of the 1965 act is known as section 5 review. The jurisdictions subject to section 5 are listed in tables 1 and 3.

Section 5 of the Voting Rights Act requires covered jurisdictions to submit all changes in laws, practices, and procedures affecting voting to either the U.S. Attorney General or the U.S. District Court for the District of Columbia for a ruling that the changes do not discriminate against racial or language minorities. Entirely new electoral provisions in covered jurisdictions are also considered changes and must be cleared under section 5. Jurisdictions almost always submit their changes to the Attorney General, rather than to the court. Section 5 coverage is automatic: it does not require a separate decision by the Attorney General as use of examiners or observers does. Any jurisdiction covered by the original special provisions is immediately subject to the section 5 review requirement.

Jurisdictions covered by the 1965 act (the first trigger listed above) must submit all changes made after November 1, 1964. Jurisdictions covered by the 1970 amendments (the second trigger) must submit all changes made after November 1, 1968, and jurisdictions covered by the 1975 amendments (the third trigger) must submit all changes made after November 1, 1972.

Under section 5, it is the responsibility of the covered jurisdiction to submit its changes and prove that they are not discriminatory. It is a violation of the Voting Rights Act for a jurisdiction to enforce or administer a change in electoral laws and practices that has not received section 5 clearance from the Attorney General or the court. The section 5 requirement applies to States covered as a whole, to the political subdivisions within States covered as a whole, and to political subdivisions that are covered separately. All political units within such covered jurisdictions (such as cities, towns, school districts, etc.) are also subject to section 5.

The purpose of section 5 review is to ensure that State and local officials do not use their power over election laws and practices for the purpose or with the effect of discriminating against protected minorities. The Attorney General has 60 days in which to make a determination concerning a submission. If the Attorney General

does not object, a change may be enforced. If the Attorney General does object, the change may not be enforced, and the jurisdiction must abandon the change, modify it until it is cleared, or try to persuade the court that the change is not discriminatory. It is a violation of the Voting Rights Act for a jurisdiction to enforce a change to which the Attorney General has objected.

The U.S. Supreme Court and Congress have interpreted the reach of section 5 very broadly. *All* changes in election laws and practices must be submitted, even if they seem to be very minor. For example, all of the following types of changes (as well as many others) must be submitted and cleared before they can go into effect:

- amendments (affecting voting) to a State constitution or a city charter
- annexations
- changes in the qualifications for, or the times and places of, registration and voting (including changes in a voter's polling place)
- changes in precinct boundaries
- changes in the qualifications for, or terms of, offices
- changes in the nature of offices (such as changing from elective to appointive, or the reverse, and changing the duties of an office)
- changes in the boundary lines for representative districts for such offices as city councils, school boards, county commissions, State legislatures, and the U.S. Congress (including changing from several districts to one district for all representatives)
- provisions for bilingual or multilingual elections

When a jurisdiction submits a change, it must provide an explanation of the reason for the change, its likely impact, and supporting materials. The Justice Department has published guidelines for compliance with section 5. While the Justice Department staff is considering a submission, private citizens and groups may offer their own comments on the change by writing to the Voting Section. Since the Attorney General usually must act on a submission within 60 days, it is important to send comments as early as possible after the submission. Often the only way the Justice Department can discover that a seemingly fair change actually will discriminate against racial or language minorities is through the comments of the local residents. For section 5 review to be fully effective, it is essential that citizens monitor and comment on changes in election laws and practices.

Each week the Justice Department publishes a list of the submissions made under section 5. The list shows, by date of submission, all the changes that have been submitted by States and local jurisdictions. Any person who is interested in knowing what changes have been submitted may obtain the list, free of charge,

by writing to the Voting Section and asking to be placed on the mailing list for the "section 5 weekly submission list."

By reading the list each week, individuals can discover what changes their States or local jurisdictions have submitted and can then send their comments to the Attorney General. By regularly reading the list, a person might also discover that a change he or she knows about has not been submitted. This information is also important to the Justice Department and usually cannot be discovered except through residents of the jurisdiction.

Individuals who know that a covered jurisdiction is enforcing a change that has not been submitted, or is enforcing a change that the Attorney General has objected to, may file suit in the local Federal court to prevent enforcement of the change or contact the Attorney General, who also can file such a suit.

Section 5 review and the authority to use Federal examiners and observers provide the Federal Government with powerful tools to ensure that covered jurisdictions do not discriminate against minority voting rights. They are most effective when individuals also monitor their local officials and election systems and inform the Justice Department of local problems.

MINORITY LANGUAGE PROVISIONS (1975 AMENDMENTS)

The 1975 amendments to the Voting Rights Act added the minority language provisions to the special provisions of the act. These provisions require covered jurisdictions to conduct elections in one or more languages in addition to English. Although a jurisdiction may come under this requirement in two ways (the third and fourth triggers described above), the requirement is the same for all covered jurisdictions.

Most jurisdictions must add one language (most often Spanish) but a few must use two or more minority languages in the electoral process. Only the languages of the groups specified in the act must be used. The jurisdictions covered by the minority language provisions and the specified language minority groups are listed in tables 2 and 3.

The minority language requirements of the Voting Rights Act are intended to ensure that American citizens are not deprived of the right to vote because they cannot read, write, or speak English. The basic principle is that a covered jurisdiction conducting registration and voting must take the necessary steps to enable the language minority citizen to exercise his or her voting rights as effectively as English-speaking voters exercise theirs.

Since State and local governments have the primary responsibility for conducting elections, they also have the primary responsibility for implementing the minority language provisions of the Voting Rights Act. The Federal Government, through the Justice Department, is responsible for monitoring the steps taken by

covered jurisdictions to comply with the requirements and for enforcing them through the courts if necessary. The Justice Department has issued guidelines for compliance with the minority language provisions.

The language of the Voting Rights Act and of the guidelines is rather general. Because the new requirements affect localities as small as Loving County, Texas, with its population of less than 200 persons, and as large as Los Angeles County, California, with its population of more than 7 million persons, and because different areas have different election procedures, the actual steps a jurisdiction must take to implement the law vary somewhat with local circumstances.

For example, where the required minority language is currently or traditionally unwritten, such as most American Indian languages, the jurisdiction need provide in that language only oral publicity and oral assistance at registration and polling places. Similarly, a small jurisdiction using paper ballots may be more able to convert to a totally bilingual election than a large jurisdiction using voting machines that limit the size of the ballot.

Also, some jurisdictions provide much more information to the public about elections or are more active in seeking to register voters than others. Because the details of election systems and procedures in different covered jurisdictions vary widely, it is impossible to outline all the ways in which the minority language requirements affect local practices.

In passing these requirements, Congress was particularly concerned that information directly related to registration and voting be as available to language minority citizens as to others. *As a minimum, citizens in covered jurisdictions have a right to expect that their local election officials will provide oral, and where appropriate written, assistance and information in the appropriate minority language(s). Publicity concerning elections and registration qualifications and times should also be provided in the appropriate minority language(s).*

For example:

- if applicants for registration must fill out forms, the forms must be provided in the minority language(s) as well as in English;
- the voter registration officials must include persons able to speak the minority language(s) in addition to English;
- signs and instructions at registration and voting places must be in the minority language(s) as well as in English;
- the election workers who manage the polling places must include persons who can speak the minority language(s) in addition to English;
- election notices and the like must be published and broadcast in minority language media as well as in the English media.

In general, official information concerning the electoral process must be available to the language minority citizen in his or her

own language. The Voting Rights Act does not require covered States and local jurisdictions to provide any specific type of information to their citizens and voters, but it does require them to provide the information they do offer in the appropriate minority language(s) as well as in English. Jurisdictions in California, for example, that usually provide extensive voter information handbooks concerning candidates and issues on the ballot must publish the handbooks in Spanish (and also in Chinese in San Francisco) as well as in English.

Some jurisdictions that are now subject to the Federal minority language requirements have already been using languages other than English in their elections. For example, some cities in New York State have been holding elections in Spanish and English because of Federal court orders. In other areas—for example, some places in California—a State law has required the use of Spanish or other minority language election materials in recent years.

These jurisdictions must now satisfy *both* the Federal and the State requirements. If the Federal requirements are more strict, they prevail. In many other jurisdictions, however, elections have always been conducted only in English, so the new provisions will require important changes in the usual manner of conducting registration and voting. The Voting Rights Act sets minimum requirements. States and local jurisdictions may have additional or more stringent minority language requirements if they wish.

As noted above, the covered jurisdictions themselves have the primary responsibility for complying with the minority language provisions of the Voting Rights Act. Individuals who want to know what steps their own State or local government is taking to implement these provisions should consult local election officials. If a jurisdiction is covered by the 1975 Voting Rights Act amendments and has not bailed out, then it *must* take some steps, and people have a right to know what they are.

Persons who believe that their State or local government is not taking any steps, or is not taking enough steps, to make the electoral process more accessible to language minority citizens should notify the Civil Rights Division of the Justice Department and ask that an investigation be made. If a jurisdiction does not comply with the new requirements, the Justice Department—or individuals whose rights are denied—may sue the local or State government under the Voting Rights Act.

Some jurisdictions newly covered by these provisions have established a local advisory committee of language minority citizens to advise the government about the needs of language minority citizens and the most effective way to protect their voting rights. A person can find out whether there is such a group in his or her locality by contracting local election officials. If your community is covered by the Voting Rights Act, but does not have such an

advisory committee, you can ask that the local government set one up and include representatives of the minority community. While they are not required by the act, such groups may be very helpful in implementing the law.

CONCLUSION

The Voting Rights Act contains an array of different provisions, some of which apply throughout the country and some of which apply only in those States and local jurisdictions that meet the conditions and tests spelled out in the act's four triggers. The special provisions described in this pamphlet ensure added protection of the voting rights of minority citizens in covered jurisdictions. In addition, individuals, as well as the Justice Department, can sue in Federal court and ask the court to impose the special provisions in jurisdictions that are not already covered in order to overcome discrimination in the electoral process.

The purpose of the Voting Rights Act is to ensure that no citizen's right to vote is denied or impaired because of racial or language discrimination. While the act is a strong and effective law, the greatest protection for voting rights rests in citizens knowing what their rights are and how to protect them if their State or local government does not.

Table 1. COVERAGE LIMITED TO ORIGINAL SPECIAL PROVISIONS OF THE VOTING RIGHTS ACT, as of March 1, 1976

Jurisdictions in this category are subject only to the original special provisions of the Voting Rights Act. They *may* be designated for Federal examiners and observers and *must* submit changes in their election laws and practices for Federal clearance, but they are not required to conduct their elections in languages other than English.

State/County

ALABAMA

CONNECTICUT
(Towns)
Groton
Mansfield
Southbury

GEORGIA

IDAHO
Elmore

LOUISIANA*

MAINE (Towns)
Beddington
Carroll Pltn.
Charleston
Chelsea
Connor Unorg. Terr.
Cutter
Limestone
Ludlow
Nashville Pltn.
New Gloucester
Reed Pltn.
Somerville Pltn.
Waldo
Webster
Winter Harbor
Woodland

MASSACHUSETTS
(Towns)
Amherst
Ayer

State/County

MASSACHUSETTS
(Towns) (Cont'd)
Belchertown
Bourne
Harvard
Sandwich
Shirley
Sunderland
Wrentham

MISSISSIPPI*

NEW HAMPSHIRE
(Towns)
Antrim
Benton
Boscawen
Millsfield Twp.
Newington
Pinkhams Grant
Rindge
Stewartstown
Stratford
Unity

NORTH CAROLINA
Anson
Beaufort
Bertie
Bladen
Camden
Caswell
Chowan
Cleveland
Craven
Cumberland
Edgecombe

State/County

NORTH CAROLINA
(Cont'd)
Franklin
Gaston
Gates
Granville
Greene
Guilford
Halifax
Harnett
Hertford
Lee
Lenoir
Martin
Nash
Northampton
Onslow
Pasquotank
Perquimans
Person
Pitt
Rockingham
Scotland
Union
Vance
Washington
Wayne
Wilson

SOUTH CAROLINA

VIRGINIA*

WYOMING
Campbell

* St. Bernard Parish, La., Neshoba Co., Miss., and Charles City Co., Va., must also conduct bilingual elections. See table 3.

Table 2. COVERAGE LIMITED TO MINORITY LANGUAGE PROVISIONS OF THE VOTING RIGHTS ACT, as of March 1, 1976

Jurisdictions in this category are subject only to the minority language provisions of the Voting Rights Act. They *must* conduct their elections in the language(s) appropriate for the listed language minority group(s). (For convenience all Spanish heritage groups are listed as "Spanish.")

State/County	*Language Minority Group*
CALIFORNIA	
Alameda	Spanish
Amador	Spanish
Colusa	Spanish
Contra Costa	Spanish
Fresno	Spanish
Imperial	Spanish
Inyo	American Indian
Kern	Spanish
Lassen	Spanish
Los Angeles	Spanish
Madera	Spanish
Napa	Spanish
Orange	Spanish
Placer	Spanish
Riverside	Spanish
Sacramento	Spanish
San Benito	Spanish
San Bernardino	Spanish
San Diego	Spanish
San Francisco	Spanish, Chinese
San Joaquin	Spanish
San Luis Obispo	Spanish
San Mateo	Spanish
Santa Barbara	Spanish
Santa Clara	Spanish
Santa Cruz	Spanish
Sierra	Spanish
Solaño	Spanish
Sonoma	Spanish
Stanislaus	Spanish
Sutter	Spanish
Tulare	Spanish
Tuolumne	Spanish
Ventura	Spanish
Yolo	Spanish

State/County	*Language Minority Group*
COLORADO	
Adams	Spanish
Alamosa	Spanish
Archuleta	Spanish
Bent	Spanish
Boulder	Spanish
Chaffee	Spanish
Clear Creek	Spanish
Conejos	Spanish
Costilla	Spanish
Crowley	Spanish
Delta	Spanish
Denver	Spanish
Eagle	Spanish
Fremont	Spanish
Huerfano	Spanish
Jackson	Spanish
Lake	Spanish
La Plata	Spanish
Las Animas	Spanish
Mesa	Spanish
Moffat	Spanish
Montezuma	Spanish, American Indian
Montrose	Spanish
Morgan	Spanish
Otero	Spanish
Prowers	Spanish
Pueblo	Spanish
Rio Grande	Spanish
Saguache	Spanish
San Juan	Spanish
San Miguel	Spanish
Sedgwick	Spanish
Weld	Spanish

Table 2. COVERAGE LIMITED TO MINORITY LANGUAGE PROVISIONS OF THE VOTING RIGHTS ACT, as of March 1, 1976 (Cont'd)

State/County	*Language Minority Group*
CONNECTICUT (Towns)	
Bridgeport	Spanish
FLORIDA	
Collier	Spanish
Dade	Spanish
Glades	American Indian
Hendry	Spanish
HAWAII	
Hawaii	Filipino, Japanese
Kauai	Filipino, Japanese
Maui	Filipino, Japanese
IDAHO	
Bingham	American Indian
Cassia	Spanish
KANSAS	
Finney	Spanish
Grant	Spanish
Wichita	Spanish
MAINE (Towns)	
Perry	American Indian
MICHIGAN	
Orangeville Twp. (Barry Co.)	Spanish
Sugar Island Twp. (Chippewa Co.)	American Indian
Imlay Twp. (Lapeer Co.)	Spanish
Adrian City (Lenawee Co.)	Spanish
Madison Twp. (Lenawee Co.)	Spanish
Grant Twp. (Newaygo Co.)	Spanish
MICHIGAN (Cont'd)	
Buena Vista Twp. (Saginaw Co.)	Spanish
Saginaw City (Saginaw Co.)	Spanish
MINNESOTA	
Beltrami	American Indian
Cass	American Indian
Mahnomen	American Indian
MONTANA	
Blaine	American Indian
Glacier	American Indian
Hill	American Indian
Lake	American Indian
Roosevelt	American Indian
Rosebud	American Indian
Valley	American Indian
NEBRASKA	
Scotts Bluff	Spanish
Thurston	American Indian
NEVADA	
Elko	Spanish, American Indian
Mineral	American Indian
Nye	Spanish
White Pine	Spanish
NEW MEXICO	
Bernalillo	Spanish
Catron	Spanish
Chaves	Spanish
Colfax	Spanish
De Baca	Spanish
Dona Ana	Spanish
Eddy	Spanish
Grant	Spanish
Guadalupe	Spanish
Harding	Spanish

Table 2. COVERAGE LIMITED TO MINORITY LANGUAGE PROVISIONS OF THE VOTING RIGHTS ACT, as of March 1, 1976 (Cont'd)

State/County	*Language Minority Group*
NEW MEXICO (Cont'd)	
Hidalgo	Spanish
Lea	Spanish
Lincoln	Spanish
Los Alamos	Spanish
Luna	Spanish
Mora	Spanish
Quay	Spanish
Rio Arriba	American Indian, Spanish
Roosevelt	Spanish
Sandoval	American Indian, Spanish
San Juan	American Indian, Spanish
San Miguel	Spanish
Sante Fe	Spanish
Sierra	Spanish
Socorro	Spanish
Taos	American Indian, Spanish
Torrance	Spanish
Union	Spanish
Valencia	American Indian, Spanish
NORTH CAROLINA	
Swain	American Indian
NORTH DAKOTA	
Benson	American Indian
Dunn	American Indian
McKenzie	American Indian
Mountrail	American Indian
Rolette	American Indian
OKLAHOMA	
Adair	American Indian
Blaine	American Indian
Caddo	American Indian
Cherokee	American Indian
Coal	American Indian
OKLAHOMA (Cont'd)	
Craig	American Indian
Delaware	American Indian
Harmon	Spanish
Hughes	American Indian
Johnson	American Indian
Latimer	American Indian
McIntosh	American Indian
Mayes	American Indian
Ofuskee	American Indian
Okmulgee	American Indian
Osage	American Indian
Ottawa	American Indian
Pawnee	American Indian
Pushmataha	American Indian
Rogers	American Indian
Seminole	American Indian
Sequoyah	American Indian
Tillman	Spanish
OREGON	
Jefferson	American Indian
Malheur	Spanish
SOUTH DAKOTA	
Bennett	American Indian
Charles Mix	American Indian
Corson	American Indian
Lyman	American Indian
Mellette	American Indian
Washabaugh	American Indian
UTAH	
Carbon	Spanish
San Juan	American Indian
Tooele	Spanish
Uintah	American Indian
WASHINGTON	
Adams	Spanish
Columbia	Spanish
Ferry	American Indian

Table 2. COVERAGE LIMITED TO MINORITY LANGUAGE PROVISIONS OF THE VOTING RIGHTS ACT, as of March 1, 1976 (Cont'd)

State/County	*Language Minority Group*
WASHINGTON (Cont'd)	
Grant	Spanish
Okanogan	American Indian
Yakima	Spanish
WISCONSIN (Towns)	
Nashville (Forest Co.)	American Indian
Bovina (Outagamie Co.)	Spanish
Oneida (Outagamie Co.)	American Indian
Hayward City (Sawyer Co.)	Spanish
WYOMING	
Carbon	Spanish
Fremont	American Indian
Laramie	Spanish
Sweetwater	Spanish
Washakie	Spanish

Table 3. COMBINED COVERAGE UNDER THE VOTING RIGHTS ACT, as of March 1, 1976

Jurisdictions in this category are subject to all the special provisions of the Voting Rights Act. These jurisdictions *may* be designated for Federal examiners and observers, *must* submit changes in electoral laws and practices for Federal clearance, and *must* conduct their elections in the language(s) appropriate for the listed language minority group(s). (For convenience all Spanish heritage groups are listed as "Spanish.")

State/County	*Language Minority Group*
ALASKA	Native Alaskan (Statewide)
ARIZONA	Spanish (Statewide)
Apache	American Indian
Coconino	American Indian
Gila	American Indian
Graham	American Indian
Mohave	American Indian
Navajo	American Indian
Pinal	American Indian
CALIFORNIA	
Kings	Spanish
Merced	Spanish
Monterey	Spanish
Yuba	Spanish
COLORADO	
El Paso	Spanish
FLORIDA	
Hardee	Spanish
Hillsborough	Spanish
Monroe	Spanish
HAWAII	
Honolulu	Chinese, Filipino
LOUISIANA	
St. Bernard Parish	Spanish
MISSISSIPPI	
Neshoba	American Indian
NEW MEXICO	
Curry	Spanish
McKinley	American Indian, Spanish
Otero	Spanish
NEW YORK	
Bronx	Spanish
Kings	Spanish
New York	Spanish
NORTH CAROLINA	
Hoke	American Indian
Jackson	American Indian
Robeson	American Indian
OKLAHOMA	
Choctaw	American Indian
McCurtain	American Indian
SOUTH DAKOTA	
Shannon	American Indian
Todd	American Indian
TEXAS	Spanish (Statewide)
VIRGINIA	
Charles City	American Indian

THE VOTING RIGHTS ACT OF 1965,
AS AMENDED IN 1970 AND 1975
(42 U.S.C. 1973 et seq.)

VOTING RIGHTS ACT OF 1965

Public Law 91-285

PUBLIC LAW 89-110, 89TH CONGRESS, S. 1564,
AUGUST 6, 1965

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".

TITLE I—VOTING RIGHTS

Public Law 94-73

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2).

Public Law 94-73

SEC. 3. (a) Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that

the appointment of such examiners is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2). (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

Public Law 94–73

(b) If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

Public Law 93–373

(c) If any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days

after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Public Law 94-73
Public Law 91-285

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this

paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2).

Public Law 94-73

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

Public Law 91-285

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968.

On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972. Public Law 94-73

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future. Public Law 94-73

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or

interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

Public Law 94-73
Public Law 91-285

(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under section 4(c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall

provide them in the language of the applicable language minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to ob-

ject, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

Public Law 94-73

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after con-

sulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

SEC. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

SEC. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Com-

mission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

SEC. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision or a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documen-

tary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service or process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

Public Law 94-73

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Public Law 94-73

(e)(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 202 of this Act, to the extent two ballots are not cast for an election to the same candidacy or office.

Public Law 90-284

SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11(a), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

Public Law 90-284

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11(a) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligiblity to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after

the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c)(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to,

registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such a ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage. Public Law 94-73

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 or this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. Public Law 94-73

SEC. 15. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting

against citizens serving in the Armed Forces of the United States.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

TITLE II—SUPPLEMENTAL PROVISIONS

APPLICATION OF PROHIBITION TO OTHER STATES

Public Law 94-73
Public Law 91-285

SEC. 201. (a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

RESIDENCE REQUIREMENTS FOR VOTING

Public Law 91-285

SEC. 202. (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal pro-

sion are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: *Provided*, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

JUDICIAL RELIEF

SEC. 204. Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, or 203, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under

Public Law 94–73
Public Law 91–285

this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

PENALTY

Public Law 91-285

SEC. 205. Whoever shall deprive or attempt to deprive any person of any right secured by section 201, 202, or 203 of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEPARABILITY

Public Law 91-285

SEC. 206. If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

Public Law 94-73

SEC. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

Public Law 94-73

ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

SEC. 301. (a) (1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

Public Law 94-73

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITION

SEC. 302. As used in this title, the term "State" includes the District of Columbia.

Public Law 94-73

○

FOR MORE INFORMATION

For more information about how the Voting Rights Act affects your local community, contact local citizens' groups or election officials. You may also contact:

Voting Section, Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

or

U.S. Commission on Civil Rights
Washington, D.C. 20425

Two useful publications are:

U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), available from the Commission;

and

David H. Hunter, *Federal Review of Voting Changes: How to Use Section 5 of the Voting Rights Act* (second edition, 1976), available from the Joint Center for Political Studies, 1426 H Street N.W., Washington, D.C. 20005.

U. S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425

POSTAGE AND FEES PAID
U.S. COMMISSION ON CIVIL RIGHTS

HANDBOOK FOR WOMEN'S LEGAL RIGHTS

Prepared and distributed as a
public service by the
Texas Young Lawyers Association

Texas Young Lawyers Association

April, 1980

FOREWORD

The Women's Legal Rights Handbook is prepared by the Women's Legal Rights Committee of the Texas Young Lawyers Association in conjunction with and cooperation of the American Association of University Women, Texas Division, and the Texas Federation of Business and Professional Women's Clubs, Inc.

The handbook is a brief review of the Texas Statutes and Constitutional provisions affecting the legal rights of women in Texas. This pamphlet is not a substitute for the advice of an attorney but is only intended as a guide to men and women of Texas concerning certain rights.

The Texas Young Lawyers Association gratefully acknowledges the funding assistance of the State Bar of Texas, the American Association of University Women, and the Texas Federation of Business and Professional Women's Clubs, Inc. The assistance of the members of the Committee, research of the 1974 AAUW Chairman Marge Miller, Carolyn Nichols, Editor, and Jerri Davenport, Proof Editor, is also gratefully acknowledged and appreciated.

We are hopeful the distribution and use of this pamphlet will assist citizens in the State of Texas to obtain information regarding their rights under the State Statutes and Constitution of the State of Texas.

Mike Irish

J. MICHAEL IRISH, President
Texas Young Lawyers Assoc.

Emil Lippe, Jr.

EMIL LIPPE, JR., Chairman
Public Service Handbook Committee

Suzan Cardwell

SUZAN CARDWELL, Chairperson
Women's Legal Rights Committee

HANDBOOK FOR WOMEN'S LEGAL RIGHTS

Prepared By
The Women's Legal Rights Committee

Suzan Cardwell,
Chairperson

Jane H. Macon,
Handbook Coordinator

Committee Members:

Linda Addison, Evelyn Biery,
Jean Hudson Boyd, Rebecca Fisher,
Shirley Gutierrez, Linda E. Haskins,
Judy K. Hatfield, Sheila Jackson Lee,
Alma Martinez, Myrtle McKensie,
Lionel Schooler, Carol Stowe Morrow

Carolyn Nichols, Editor
Jerri Davenport, Proof Editor

This pamphlet is not a substitute for the advice of a lawyer, but is designed to assist citizens in learning about their rights in Texas.

CONTENTS

PART I. *Page*

PART II. *Page*

PART I

I. GOVERNMENTAL RESPONSIBILITIES

Jury Service

Article 2135, V.T.C.S.

> "All competent jurors are liable to jury service, except the following persons:
>
> 1. All persons over sixty-five (65) years of age.
>
> 2. All females who have legal custody of a child or children under the age of ten (10) years.
>
> 3. All students of public or private secondary schools.
>
> 4. Every person who is enrolled and in actual attendance at an institution of higher education.
>
> Amended by Acts 1965, 59th Leg., p. 455, ch. 232, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 2044, ch. 753, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 2801, ch. 905, § 12, eff. July 15, 1971; Acts 1973, 63rd Leg., p. 175, ch. 85, § 2, eff. Aug. 27, 1973."

This statute provides for the automatic exemption from jury service of a woman but not for a man, who has custody of a child under the age of ten (10) years.

Military Service

Article 5765, Section 2, V.T.C.S.

> "All able-bodied citizens, male and female, and able-bodied males and females of foreign birth who have declared their intention to become citizens, who are residents of this State and males between eighteen and sixty years of age and females between twenty-one and fifty-five years of age, and who are not exempt by the laws of the United States or of this State, shall constitute the reserve militia and be subject to military duty."

A different age span for men and women is established for liability for reserve militia service.

Voting

Article 5.05, Sub. 2, Texas Election Code

> "Expected or likely confinement for childbirth on election day shall be sufficient to entitle a voter to vote absentee on the ground of sickness or physical disability, and a physician executing a certificate for a pregnant woman may state in the certificate that be-

cause of pregnancy and possible delivery she will be or may be unable to appear at the polling place on election day."

A woman may be allowed to vote absentee because of pregnancy.

II. FAMILY RELATIONSHIPS

Guardianship

Section 109, Texas Probate Code

> "(a) Natural Guardians. If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shall be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered."

This statute provides for the appointment of a parent as a guardian of a minor child's estate.

Support

Section 4.02, Texas Family Code

> "Each spouse has the duty to support the other spouse, and each parent has the duty to support his or her minor child. A spouse or parent who fails to discharge the duty of support is liable to any person who provides necessaries to those to whom support is owed."

This statute requires each spouse to support minor children.

Capacity to Contract

Section 4.03, Texas Family Code

> "Except as expressly provided by statute or by the constitution, every person who has been married in accordance with the law of this state, regardless of age, has the power and capacity of an adult, including the capacity to contract."

This law provides that a married woman may make a valid contract without her husband's approval.

Civil Suits

Section 4.04, Texas Family Code

"(a) A spouse may sue and be sued without the joinder of the other spouse.

"(b) When claims or liabilities are joint and several, the spouses may be joined under the rules relating to joinder of parties generally."

This statute allows a suit to be filed by or against a married woman without making her husband a party to the suit.

Children

Section 12.01, et seq., Texas Family Code

Section 12.01. Relation of Child to Mother

"A child is the legitimate child of his mother."

Section 12.02. Relation of Child to Father

"(a) A child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother.

"(b) A child is the legitimate child of his father if at any time his mother and father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

"(c) A child is the legitimate child of a man if the man's paternity is established under the provisions of Chapter 13 of this code." (Texas Family Code 13.01, et seq.)

Section 12.03. Artificial Insemination

"(a) If a husband consents to the artificial insemination of his wife, any resulting child is the legitimate child of both of them. The consent must be in writing and must be acknowledged.

"(b) If a woman is artificially inseminated, the resulting child is not the child of the donor unless he is the husband.

Section 12. 04. Rights, Privileges, Duties and Powers of Parent

"Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;

(4) the duty to manage the estate of the child, except when a guardian of the estate has been appointed;

(5) the right to the services and earnings of the child;

(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

(9) the right to inherit from and through the child; and

(10) any other right, privilege, duty, or power existing between a parent and child by virtue of law."

These sections set forth the relationship of the parent to the child. Of particular importance to women are the sections regarding the legitimacy of a child.

III. CREDIT

Credit Discrimination

Article 5069-2.07, V.T.C.S.

"No licensee under Chapter 3 of this Title or other person involved in transactions regulated by Subtitle Two of this Title may deny an individual credit or loans in his or her name, or restrict or limit the credit or loan granted solely on the basis of sex.

Added by Acts 1973, 63rd Leg., p. 1203, ch. 483, § 1, eff. Aug. 27, 1973."

Article 5069-8.06, V.T.C.S.

"(a) Any person who violates the terms of Article 2.07 of this Title is liable to the aggrieved individual for the actual damages caused by the denial, or for $50.00, whichever is greater, and court costs.

"(b) In addition to the liabilities prescribed in Subsection (a) of this section, any licensee under this Subtitle who violates Article 2.07 of this Subtitle is subject to revocation or suspension of his license.

Added by Acts 1973, 63rd Leg., p. 1293, ch. 483, § 2, eff. Aug. 27, 1973."

These statutes prohibit discrimination on the basis of sex and provide penalties for such discrimination.

IV. HEALTH

Rubella Test

Section 1.38, Texas Family Code

"The State Board of Health may require all female applicants for marriage licenses to present laboratory evidence of immunological response to rubella (German measles) to the county clerk prior to the issuance of a marriage license. Such laboratory evidence of immunological response shall indicate immunity to or susceptibility to rubella (German measles). The board may promulgate rules and regulations regarding the form and content of the required laboratory evidence. This section does not apply to a female applicant who is over 50 years of age or who has had a surgical sterilization.

Added by Acts 1973, 63rd Leg., p. 242, ch. 117, § 2, eff. May 18, 1973."

This statute allows the State Board of Health to require a rubella test for all female applicants for marriage licenses.

Rape Victims

Article 4447m, V.T.C.S.

"Section 1. Any law enforcement agency that requests a medical examination of a victim of an alleged rape for use in the investigation or prosecution of the offense shall pay all costs of the examination.

"Section 2. This Act does not require a law enforcement agency to pay any costs of treatment for injuries.

Acts 1973, 63rd Leg., p. 704, ch. 299, eff. June 11, 1973."

This statute relates to the rape laws found in the section *Crimes Involving Women.*

V. EDUCATION

School Assignment

Section 21.076, Texas Education Code

> "A board may require the assignment of pupils to any or all schools within its jurisdiction on the basis of sex, but assignment of pupils of the same sex among schools reserved for that sex shall be made in the light of the factors set out in Section 21.075(a) of this code."

This statute allows a school board to designate a school to serve only one sex and assign pupils on the basis of sex to that school.

VI. EMPLOYMENT

Hours

Article 5172a, V.T.C.S.

> "Factories, mines, mills, etc.
>
> "Section 1. No female employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant, rooming house, theater, moving picture show, barber shop, beauty shop, roadside drink and/or food vending establishment, telegraph, telephone or other office, express or transportation company, State institution, or any other establishment, institution or other business enterprise, shall be required by her employer to work in excess of nine (9) hours in any twenty-four (24) hour day, nor more than fifty-four (54) hours in any one calendar week, without the consent of the affected employee.
>
> "Seats for female employees
>
> "Section 2. Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, beauty shop, telegraph or telephone company, or other office, express or transportation company; the superintendent of any State institution or any other establishment, institution or enterprise where females are employed as provided in the previous Section, shall provide and furnish suitable seats, to be used by such employees when not engaged in the active duties of their employment and shall give notice to all such employees by posting a notice in a conspicuous place on the premises of such employment, in letters not less than one inch in height, that all such employees will be permitted to use such seats when not so engaged.

"Exceptions

"Section 3. The two (2) preceding Sections shall not apply to:

Female employees employed in any bona fide executive, administrative, professional, or outside sales capacity.

"Extraordinary emergencies; overtime pay

"Section 4. In case of extraordinary emergencies, such as great public calamities, or where it becomes necessary for the protection of human life or property, longer hours may be worked; but for such time not less than one and one-half times the regular rate at which such female is employed shall be paid to such female with her consent. Unless otherwise provided herein, any female employee who works more than forty (40) hours per week shall be entitled to receive from the employer pay at a rate not less than one and one-half times the regular rate for which such female is employed for all hours in excess of nine (9) hours per day, provided the employee actually works more than forty (40) hours per week.

"Violations; penalty

"Section 5. Any employer, or overseer, superintendent, foreman, or other agent of any such employer who shall permit any female to work in any place mentioned in Section 1 of this Act more than the number of hours provided therein in any one day of twenty-four (24) hours in any one calendar week, or who shall violate any of the other provisions or requirements of the Act in any respect, or who having furnished and provided suitable seats as provided for in Section 2, shall by intimidation, instruction, threats, or in any manner, prevent such female from sitting thereon, when not attending the duties of her position, shall be fined not less than Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars. Each day of such violation and each calendar week of such violation, and each employee permitted to work in said places more than the hours so specified in this Chapter, and every other violation of the provisions of this Chapter, shall be considered a separate offense.

"Savings clause

"Section 6. That in the event any Section or part of a Section of the provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining Sections, or parts of Sections of this Act; but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative Section, or part of Section or provision, had not been included. In the event any penalty, right or remedy created or given in any Section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given either in the whole Act or in the Section thereof containing such invalid, unconstitutional or

inoperative; and if any exception to, or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand effective and valid as if the same had been enacted without such limitation or exceptions.

Amended by Acts 1971, 62nd Leg., p. 1671, ch. 473, § 1, eff. Aug. 30, 1971."

This statute establishes working hours for women except those employed in executive, administrative, professional, or outside sales capacities.

Working Conditions

Article 5178a, V.T.C.S.

"Any person in control of any factory, mill, workshop, laundry, mercantile establishment or other establishment where five or more persons are employed, all or part of whom are females, who shall permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employees, shall be find[1] not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not exceeding sixty days, or both.

Acts 1918, 4th C.S., p. 134.

[1]So in enrolled bill. Probably should read 'fined'."

Article 5179a, V.T.C.S.

"Any person in control or management of any establishment included in the preceding article who shall fail or refuse to comply with any written order issued to such person by the Commissioner of Labor Statistics, or any of his deputies or inspectors, for the correction of any condition caused or permitted therein which endangers the health of the employees therein or which do not comply with the law governing such establishments, shall be punished as provided in the preceding article.[1]

Acts 1918, 4th C.S., p. 134.

[1]Article 5178a."

These statutes provide penalties for the maintaining of immoral working conditions where women are employed.

Leave of Absence for Teachers

Section 13.905, Texas Education Code

"(a) Each certified, full-time employee of a school district shall be expected to be given a leave of absence for temporary disability at any time the employee's condition interferes with the performance of regular duties. The contract and/or employment of

the employee cannot be terminated by the school district while on a leave of absence for temporary disability. Temporary disability in this Act includes the condition of pregnancy.

"(b) Requests for a leave of absence for temporary disability shall be made to the superintendent of the school district. The request shall be accompanied by a physician's statement confirming inability to work and shall state the date requested by the employee for the leave to begin and the probable date of return as certified by the physician.

"(c) The governing board of a school district may adopt a policy providing for placing an employee on leave of absence for temporary disability if, in their judgment and in consultation with a physician who has performed a thorough medical examination of the employee, the employee's condition interferes with the performance of regular duties. Such a policy shall reserve to the employee the right to present to the governing board of a school district testimony and/or other information relevant to the employee's fitness to continue the performance of regular duties.

"(d) The employee shall notify the superintendent of the desire to return to active duty at least thirty (30) days prior to the expected date of return. The notice shall be accompanied by a physician's statement indicating the employee's physical fitness for the resumption of regular duties.

"(e) An employee returning to active duty after a leave of absence for temporary disability shall be entitled to an assignment at the school where the employee formerly taught, subject to the availability of an appropriate teaching position. In any event, the employee shall be placed on active duty no later than the beginning of the next term.

"(f) The length of a leave of absence for temporary disability shall be granted by the superintendent as required by the individual employee. The governing board of a school district may establish a maximum length for a leave of absence for temporary disability, but in no event shall that maximum be set at less than 180 days.

Added by Acts 1973, 63rd Leg., p. 1276, ch. 470, § 1, eff. June 14, 1973."

This statute provides that a teacher shall be given a leave of absence for temporary disability if the disability interferes with the performance of duties. Within the definition of temporary disability is pregnancy. The teacher who is given a leave of absence for the temporary disability is entitled to an assignment in his or her former school if one is available.

VII. CRIMES INVOLVING WOMEN

Rape

Section 21.02, Texas Penal Code

"(a) A person commits an offense if he has sexual intercourse with a female not his wife without the female's consent.

"(b) The intercourse is without the female's consent under one or more of the following circumstances:

(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;

(2) he compels her to submit or participate by any threat, communicated by actions, words, or deeds, that would prevent resistance by a woman of ordinary resolution, under the same or similar circumstances because of a reasonable fear of harm;

(3) she has not consented and he knows she is unconscious or physically unable to resist;

(4) he knows that as a result of mental disease or defect she is at the time of the intercourse incapable either of appraising the nature of the act or resisting it;

(5) she has not consented and he knows that she is unaware that sexual intercourse is occurring;

(6) he knows that she submits or participates because she erroneously believes that he is her husband; or

(7) he has intentionally impaired her power to appraise or control her conduct by administering any substance without her knowledge.

"(c) An offense under this section is a felony of the second degree."

Section 21.03, Texas Penal Code

"(a) A person commits an offense if he commits rape as defined in Section 21.02 of this code or rape of a child as defined in Section 21.09 of this code and he:

(1) causes serious bodily injury or attempts to cause death to the victim or another in the course of the same criminal episode; or

(2) compels the submission to the rape by threat of

death, serious bodily injury, or kidnapping to be imminently inflicted on anyone.

"(b) An offense under this section is a felony of the first degree."

Section 21.09, Texas Penal Code

"(a) A person commits an offense if he has sexual intercourse with a female not his wife and she is younger than 17 years.

"(b) It is a defense to prosecution under this section that the female was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual intercourse.

"(c) It is an affirmative defense to prosecution under this section that the actor was not more than two years older than the victim.

"(d) An offense under this section is a felony of the second degree."

Also related to these statutes on rape is the provision requiring law enforcement agencies to pay for rape examinations. [See *Health*]

Prostitution

Section 43,02, et seq., Texas Penal Code

"(a) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

"(b) An offense is established under Subsection (a)(1) of this section whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

"(c) An offense under this section is a Class B misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class A misdemeanor."

Section 43.03

"(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

"(b) An offense under this section is a Class A misdemeanor."

Section 43.04

"(a) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

"(b) An offense under this section is a felony of the third degree."

Section 43.05

"(a) A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a person younger than 17 years to commit prostitution.

"(b) An offense under this section is a felony of the second degree."

Section 43.06

"(a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

"(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjunctory proceeding except a prosecution for aggravated perjury.

"(c) For purposes of this section, 'adjudicatory proceeding' means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

"(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense."

Criminal Nonsupport

Section 45.05, Texas Penal Code

"(a) An individual commits an offense if he intentionally or

knowingly fails to provide support that he can provide and that he was legally obligated to provide for his children younger than 18 years, or for his spouse who is in needy circumstances.

"(b) Proof that the actor has contributed no support or insufficient support to his child, or to his spouse who is in needy circumstances, is prima facie evidence of a violation of this section.

"(c) For purposes of this section, 'insufficient support' means support less than the support needed by a child or spouse to meet the minimal requirements of the child or spouse necessary for food, clothing, shelter, and medical care.

"(d) For purposes of this section, 'child' includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

"(e) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense and a spouse shall be a competent witness.

"(f) It is an affirmative defense to prosecution under this section that the actor could not provide the support that he was legally obligated to provide.

"(g) During the pendency of a prosecution under this section, the court, after notice and a hearing, may enter temporary orders providing for support and enforce such orders by contempt proceedings.

"(h) Except as provided in Subsection (i) of this section, an offense under this section is a Class A misdemeanor.

"(i) An offense under this section is a felony of the third degree if the actor:

(1) has been convicted one or more times under this section; or

(2) commits the offense while residing in another state."

This statute relates to the provisions of the Texas Family Code which requires a parent or spouse to provide support. [See *Family Relationships.*]

PART II

VIII. THE MARRIAGE RELATIONSHIP

Section 1.01 - Marriage License

"A man and woman desiring to enter into a ceremonial marriage shall obtain a marriage license from the County Clerk of any county in this State. A license may not be issued for the marriage of persons of the same sex. Amended by Acts 1973, 63rd Legislature, p. 1596, ch. 572, § 1, effective January 1, 1974."

Licenses to enter into the marriage may be issued not to "persons" as before, but to "a man and a woman". To emphasize its proscription against "gay" marriages, the Legislature added, "A license may not be issued for the marriage of persons of the same sex."

Section 1.51 - Age Requirements: General Rules

"Except with parental consent as prescribed by Section 1.52 of this code or with a court order as prescribed by Section 1.53 of this code, the County Clerk shall not issue a marriage license if either applicant is under 18 years of age."

The legal age for marriage has been equalized as between males and females. For each, it is 18 years of age without parental consent and 16 years of age with parental consent. A District Court may waive the age requirement for persons between 16 and 18 years of age, and even for persons under 16 years old.

Section 1.52 - Underage Applicant: Parental Consent

"(a) If the applicant is 14 years of age or older but under 18 years of age, the County Clerk shall issue the license if parental consent is given as prescribed by this section.

"(b) Parental consent must be evidenced by a written declaration on a form supplied by the County Clerk in which the person consents to the marriage and swears that he or she is a parent (when there is no judicially designated managing conservator or guardian of the applicant's person) or a judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the applicant's person.

"(c), (d), and (e) Subsections cover procedural requirements regarding consent acknowledgment, filing, etc., with the County Clerk. Amended by Acts 1973, 63rd Legislature, p. 1955, ch. 577, § 7, eff. Jan. 1, 1974."

Section 1.53 - Underage Applicant: Court Order

"(a) A person who is under 18 years of age may petition in his own name in a District Court for an Order granting permission to marry. In all suits filed under this section, the trial judge may advance the cause if he determines that the best interest of the applicant would be served by an early marriage.

"(b) The petition must be filed in the County where a parent resides if a managing conservator or a guardian of the person has not been appointed. If a managing conservator or a guardian of the person has been appointed, the petition must be filed in the County where the managing conservator or the guardian of the person resides. If no person authorized to consent to marriage for the child resides in this state, the petition must be filed in the county where the child lives.

"(c) The petition shall include a statement of the reasons the child desires to marry, whether each parent is living or dead, the name and resident address of each living parent, and whether or not a managing conservator or a guardian of the person has been appointed for the child.

"(d) Process shall be served as in other civil cases on each living parent of the child, or if a managing conservator or a guardian of the person has been appointed, on the managing conservator or guardian of the person. Citation may be given by publication as in other civil cases, except that notice shall be published one time only.

"(e) The Court shall appoint a guardian ad litem to represent the child in the proceeding and to speak for or against the petition in the manner he believes to be in the best interest of the child. The Court shall prescribe a fee to be paid by the child for the services of the guardian ad litem; and the fee shall be collected as are other costs of the proceeding.

"(f) If, after a hearing, the Court, sitting without a jury, believes marriage to be in the best interest of the child, it shall make an Order granting the child permission to marry.

Added by Acts 1973, 63rd Leg., p. 1955, ch. 577, § 7, eff. Jan. 1, 1974."

Section 1.91 - Proof of Certain Informal Marriages

"(a) In any judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been executed under Section 1.92 of this code; or

(2) they agreed to be married, and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

"(b) In any proceeding in which a marriage is to be proved under Subsection (a)(2) of this section, the agreement of the parties to marry may be inferred if it is proved that they lived together as husband and wife and represented to others that they were married.

"The case of *Collora v. Navarro*, 574 S.W.2d 65 (Texas 1978), states that there are three elements in a valid common-law marriage: (1) an agreement presently to be husband and wife, (2) living together as husband and wife, and (3) holding each other out to the public as such. The agreement may be implied or inferred from evidence that establishes the cohabitation and holding out to the public as husband and wife."

IX. VOIDABLE MARRIAGES

Section 2.41 - Underage

"(a) The licensed or informal marriage of persons under 14 years of age, unless a court order has been obtained as provided in Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency, or Court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the 14th birthday of the underage party, or it is barred. A suit by a parent, managing conservator or guardian of the person may be brought at any time before the party is 14 years of age, but thereafter must be brought within 90 days after the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

"(b) The licensed or informal marriage of a person 14 years of age or older but under 18 years of age, without parental consent as provided in Section 1.52 or 1.92 of this code or without a court order as provided by Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party, or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency or Court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the date of the marriage, or it is barred. A suit by a parent, managing conservator, or guardian of the person must be brought within 90 days after the date the petitioner knew or should have known of the marriage or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

"(c) In any suit under this section the marriage is voidable at the discretion of the Court sitting without a jury. In exercising its discretion, the Court shall consider all pertinent facts concerning the welfare of the parties to the marriage, including whether or not the female is pregnant. Amended by Acts 1971, 62nd Leg., p. 2507, ch 826, § 1, eff. Jan. 9, 1971; Acts 1973, 63rd Leg., p. 1602, ch. 577, § 11, eff. Jan. 1, 1974."

An underage marriage entered into without permission of parents or Court may be annulled by the parents or by the underage party; suing by next friend;

if suit is brought within 90 days after the person bringing suit knows of the marriage. This applies to ceremonial and common-law marriages.

In any suit under this section the marriage is voidable at the discretion of the Court, who "shall consider all pertinent facts concerning the welfare of the parties to the marriage, including whether or not the female is pregnant."

X. DISSOLUTION OF MARRIAGE

(A) Grounds for Divorce

Section 3.01 - Insupportability

"On the petition of either party to a marriage, a divorce may be decreed without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconc liation."

Evidence required to satisfy the requirements for divorce without fault is left to the discretion of the Court. Evidence, including testimony of the wife that there was no hope in her mind that she and her husband could reconcile their differences was sufficient to support a finding of insupportability and a granting of divorce without fault.

Marriage of Stockett, 570 S.W.2d 151 (Tex.Civ.App.—Amarillo 1978, no writ).

Section 3.02 - Cruelty

"A divorce may be decreed in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable."

Section 3.03 - Adultery

"A divorce may be decreed in favor of one spouse if the other spouse has committed adu tery."

Texas cases have ruled that adultery as a ground for divorce is not limited to adultery committed before separation of the parties. *Bell v. Bell*, 540 S.W.2d 432 (Tex.Civ.App. — Houston [1st District] 1976, no writ). The fault of one of the parties in breaking up the marriage is a factor the Court may consider in making a division of the property.

Section 3.04 - Conviction of Felony

"(a) A divorce may be decreed in favor of one spouse if since the marriage the other spouse:

(1) has been convicted of a felony;

(2) has been imprisoned for at least one year in the state penitentiary, a federal penitentiary, or the penitentiary of another state; and

(3) has not been pardoned.

"(b) A divorce may not be decreed under this section against a spouse who was convicted on the testimony of the other spouse."

Section 3.05 - Abandonment

"A divorce may be decreed in favor of one spouse if the other spouse left the complaining spouse with the intention of abandonment and remained away for at least one year."

Section 3.06 - Living Apart

"A divorce may be decreed in favor of either spouse if the spouses have lived apart without cohabitation for at least three years."

Section 3.07 - Confinement in Mental Hospital

"A divorce may be decreed in favor of one spouse if at the time the suit is filed:

(1) the other spouse has been confined in a mental hospital, a state mental hospital, or private mental hospital, as defined in Section 4, Texas Mental Health Code, as amended (Article 5547-4, Vernon's Texas Civil Statutes), in this state or another state for at least three years; and

(2) it appears that the spouse's mental disorder is of such a degree and nature that he is not likely to adjust, or that if he adjusts it is probable that he will suffer a relapse."

(B) Defenses

Section 3.08 - Defenses

"(a) The defense of recrimination is abolished.

"(b) Condonation is a defense only if the Court finds that there is a reasonable expectation of reconciliation.

"(c) The defense of adultery is abolished.

Amended by Acts 1973, 63rd Leg., p. 1603, ch. 577, § 12, eff. Jan. 1, 1974."

Use of adultery as a defense is no longer possible; thus, the respondent cannot say that the petitioner's own act of adultery prohibits the petitioner from getting the divorce.

Section 3.58 - Temporary Orders

"After a petition for divorce or annulment or to declare a marriage void is filed, the Court or Judge may make temporary orders respecting the property and parties as deemed necessary and equitable.

Amended by Acts 1973, 63rd Leg., p. 1605, ch. 577, § 22, eff. Jan. 1, 1974."

Entered by the Trial Court relating to property, such as the filing of an inventory and appraisement, are considered interlocutory, and therefore not appealable. *Wells v. Wells*, 539 S.W.2d 20 (Tex.Civ.App.— Houston [1st District] 1976, writ dismissed).

Section 3.59 - Temporary Support

"After a petition for divorce or annulment is filed, the Judge, after due notice may order payments for the support of the wife, or for the support of the husband until a final decree is entered."

During the pendency of a divorce action, the court "may make temporary orders respecting the property and parties as deemed necessary and equitable". Thus, a spouse may get temporary support and/or an order restraining the other spouse from harassment and confiscation or disposition of property.

The order entered in a divorce action for temporary support of the parties is interlocutory, and therefore not appealable. *Wells v. Wells, Supra*.

Section 3.63 - Division of Property

"In a decree of divorce or annulment the Court shall order a division of the estate of the parties in a manner that the Court deems just and right, having due regard for the rights of each party and any children of the marriage."

Factors that bear on an uneven disposition of property are: (1) fault, (2) relative earning capacity, and (3) prior education.

XI. PROPERTY RIGHTS

Homestead Protection

Article 16 §§ 50, 51, Texas Constitution

"Section 50. The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; nor may the owner or

claimant of the property claimed as homestead, if married, sell or abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void. This amendment shall become effective upon its adoption.

Adopted November 6, 1973.

"Section 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value Ten Thousand Dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired. This amendment shall become effective upon its adoption.

Adopted Nov. 3, 1970; Nov. 6, 1973."

These amendments provide that a single individual may take advantage of the homestead protection previously allowed only for families. It also requires the consent of both spouses to abandon the claim of homestead protection.

The homestead exemption is further described in TEX.REV.CIV.STAT.ANN. art. 3833 as follows:

"The statutory definition of a single person's rural homestead is limited to 100 acres rather than the 200 acres described in the Constitution, but this apparent conflict has not been resolved by the courts."

Exempt Property

Section 271, Texas Probate Code

"Immediately after the inventory, appraisement, and list of claims have been approved, the court shall, by order, set apart for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased, all such property of the estate as is exempt from execution or forced sale by the constitution and laws of the state. Amended by Acts 1979 66th Leg., p. 35, ch. 24, §2, eff. Aug. 27, 1979.

This statute provides that property which is protected from seizure for debts

be set aside while settling an estate for the benefit of a widow and any unmarried daughters still at home.

Separate Property

Section 5.03, Texas Family Code

> "A subscribed and acknowledged schedule of a spouse's separate property may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property is located. As to real property, a schedule of a spouse's separate property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the deed of records of the county in which the real property is located.
>
> Amended by Acts 1973, 63rd Leg., p. 1605, ch. 577, § 25, eff. Jan. 1, 1974."

Section 5. 21, Texas Family Code

> "Each spouse has the sole management, control, and disposition of his or her separate property."

A spouse has the sole power to manage his or her separate property except where no notice has been given to others who may purchase or seize it for debts of the other spouse.

Community Property

Section 5.22, Texas Family Code: Management and Control of Community Property

> "(a) During marr age, each spouse has the sole management, control, and disposition of the commmunity property that he or she would have owned if single, including but not limited to:
>
> (1) personal earnings;
>
> (2) revenue from separate property;
>
> (3) recoveries for personal injuries; and
>
> (4) the increase and mutations of, and the revenue from, all property subject to his or her sole management, control, and disposition.
>
> "(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the sole management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or agreement.

"(c) Except as provided in Subsection (a) of this section, the community property is subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney in writing or other agreement.

Amended by Acts 1973, 63rd Leg., p. 1606, ch. 577, § 26, eff. Jan. 1, 1974."

Section 5. 24, Texas Family Code: Protection of Third Parties

"(a) During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in his or her name, as shown by muniment, contract, deposit of funds, or other evidence of ownership, or if it is in his or her possession and is not subject to such evidence of ownership.

"(b) A third person dealing with a spouse is entitled to rely (as against the other spouse or anyone claiming from that spouse) on that spouse's authority to deal with the property if:

(1) the property is presumed to be subject of the sole management, control, and disposition of the spouse; and

(2) the person dealing with the spouse:

(A) is not a party to a fraud upon the other spouse or another person; and

(B) does not have actual or constructive notice of the spouse's lack of authority.

Amended by Acts 1973, 63rd Leg., p. 1606, ch. 577, § 27, eff. Jan. 1, 1974."

These sections state the rules for control of community property obtained by either spouse.

Property Agreements

Section 5. 41, et. seq., Texas Family Code

"(Sec. 5.41(a) Before marriage, persons intending to marry may enter into a marital property agreement as they may desire.

"(b) The agreement must be in writing and subscribed by all parties.

"(c) A minor capable of marrying but not otherwise capable of entering into a binding agreement may enter into a marital property agreement with the subscribed, written consent of the guardian of the minor's estate and with the approval of the probate court after the application, notice, and hearing required in the Probate Code for the sale of a minor's real estate.

"(d) A marital property agreement does not prejudice the rights of preexisting creditors.

"(e) A marital property agreement may be recorded in the deed of records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected or to be affected is located. As to real property, a marital property agreement is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the county in which the real property is located.

Amended by Acts 1973, 63rd Leg., p. 1608, ch. 577, § 31, eff. Jan. 1, 1974."

This section permits antenuptial agreements regarding property ownership during marriage. Such agreements will not be effective, however, in changing the character of property as community or separate property, as the character of property is determined by the constitutional definitions of community and separate property.[1]

"Section 5.42(a) At any time, the spouses may partition between themselves, in severality or in equal undivided interests, all or any part of their community property. They may exchange between themselves the interest of one spouse in any community property for the interest of the other spouse in other community property. A partition or exchange must be in writing and subscribed by both parties.

"(b) Subject to the rules stated in Subsection (c) and (d) of this section, property or a property interest transferred to a spouse under a partition or exchange becomes his or her separate property.

"(c) A partition or exchange does not prejudice the rights of preexisting creditors.

"(d) A partition or exchange agreement may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected is located. As to real property, a partition or exchange agreement is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the county in which the real property is located.

Amended by Acts 1973, 63rd Leg., p. 1608, ch. 577, § 32, eff. Jan. 1, 1974."

This section allows spouses to make agreements after marriage concerning division and distribution of community property. This section can become important in view of the statutes relating to management and control.

---

[1]It is not possible by agreement before or after marriage to determine that each party's earnings will remain that party's separate property. However, a proposed 1980 Texas Constitution Amendment if passed, would permit spouses to enter into agreement that income from separate property shall remain the separate property of that spouse.

Property Liabilities

Section 5.61, et seq., Texas Family Code

"Section 5.61(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable for other rules of law.

"(b) Unless both spouses are liable by other rules of law, the community property subject to a spouse's sole management, control, and disposition is not subject to:

(1) any liabilities that the other spouses incurred before marriage; or

(2) any nontortious liabilities that the other spouse incurs during marriage.

"(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by him or her before or during marriage.

"(d) All the community property is subject to tortious liability of either spouse incurred during marriage.

"Sec. 5.62(a) A judge may determine, as he deems just and equitable, the order in which particular separate or community property will be subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

(1) a spouse's separate property;

(2) community property subject to a spouse's sole management, control, and disposition;

(3) community property subject to the other spouse's sole management, control, and disposition; and

(4) community property subject to the spouse's joint management, control, and disposition.

"(b) In determining the order in which particular property will be subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence upon which the suit is based."

These statutes establish the limits of liability of one spouse out of his or her separate or community property for specific types of debts of the other spouse.

Section 5.01 - Marital Property Characterized

"(a) A spouse's separate property consists of:

(1) the property owned or claimed by the spouse before marriage;

(2) the property acquired by the spouse during the marriage by gift, devise, or descent; and the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

"(b) Community property consists of the property, other than separate property, acquired by either spouse during marriage."

This section characterizes marital property as separate or community. The importance of understanding this characterization is discussed in the comments below.

The community or separate nature of property such as vested pension funds and insurance policies should also be considered in a property settlement agreement.

Section 5.02 - Presumption

"Property possessed by either spouse or on dissolution of marriage is presumed to be community property."

This section points up the need to keep one's separate property intact, and traceable, in the event of divorce or death of either spouse. The ability to manage, control, and dispose of property depends on its characterization as *"separate"* or *"community"* property. Each spouse has sole management control, and disposition of his or her separate property. The liability of one's property for the debts, tort liability, and contracts of the other spouse is also dependent on this characterization. Section 5.22, sets forth the type of community property subject to sole management and control. Sections 5.41, 5.42 and 5.61 of the FAMILY CODE, all deal with property agreements—exchanges, liabilities and agreements in contemplation of marriage. They spell out what a spouse in Texas may do regarding both types of property, and generally provide more flexibility for the wife than she had under prior law.

Section 5.25 - Unusual Circumstances

"(a) If (1) a spouse is unable to manage, control, or dispose of the community property subject to his or her sole or joint management, control, and disposition, and (2) a spouse disappears and his or her location remains unknown to the other spouse, except under circumstances in which Section 5.26 of this code is applicable, and (3) a spouse permanently abandons the other, or (4) the spouses are permanently separated, then not less than 60 days thereafter the capable spouse or remaining spouse, or abandoned spouse, or either spouse in the case of permanent separation, may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property (described or defined in the petition) that would otherwise be subject to the sole or joint management, control, and disposition of the other.

"(b), (c), (d), and (e) Subsections cover procedural requirements

under the Court's direction and are found under the designated reference in this Section.

"(f) After hearing the evidence, the Court, on terms it deems just and equitable, shall enter an Order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during the marriage. The Court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment of all or a portion of the proceeds of sale of the property to the Registry of the Court, to be disbursed in accordance with the Court's further directions.

"(g) The jurisdiction of the Court is continuing, and on motion of either spouse, after notice has been given . . . the Court shall amend or vacate the original Order if:

(1) the incapable spouse's capacity is restored;

(2) the spouse who disappears reappears; or

(3) the abandonment or permanent separation ends.

"(h) An Order authorized by Subsection (f) of this section affecting real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the Order is recorded in the Deed Records of the county in which the real property is located. Amended by Acts 1973, 63rd Leg., p. 1606, ch. 577, § 28, eff. Jan. 1, 1974."

Section 5.26 - Spouse Missing on Public Service

"(a) If a spouse is reported by an executive department of the United States to be a prisoner of war or missing on the public services of the United States, then not less than six months thereafter the spouse of the prisoner of war or missing person may file a sworn petition stating the facts that make it desirable for the petitioner to manage, control, and dispose of the community property (described or defined in the petition) that would otherwise be subject to the sole or joint management, control, and disposition of the other.

"(b), (c), and (d) Subsections are procedural requirements covered in this Section.

"(e) After hearing the evidence, the Court, on terms it deems just and equitable, shall enter an Order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during the marriage. The Court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment on all or a portion of the proceeds of sale of the property to the Registry of the Court, to be disbursed in accordance with the Court's further directions.

"(f) The jurisdiction of the Court is continuing, and on motion of either spouse, after notice stating that the motion has been filed and stating the date of the hearing, accompanied by a copy of the motion, has been issued and served on the respondent as in other cases, the Court shall amend or vacate the original Order if the spouse who was a prisoner of war or missing returns.

"(g) An Order authorized by Subsection (e) of this section affecting real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the order is recorded in the Deed Records of the county in which the real property is located. Added by Acts 1971, 62nd Leg., p. 2712, ch. 884, § 1, eff. June 10, 1971. Amended by Acts 1973, 63rd Leg., p. 1607, ch. 577, § 29, eff. Jan. 1, 1974."

These provisions (Sec. 5.25 and 5.26) allow unusual circumstances for the appointment of one spouse to be manager of the community property which had been under the prior management of the other spouse. These circumstances include inability of one spouse to manage, as in a prolonged illness, the disappearance or abandonment of one spouse, or the disappearance or imprisonment of a spouse serving the United States Government.

XII. HOMESTEAD RIGHTS

Section 5.81 - Sale, Conveyance, or Encumbrance of Homestead

"Whether the homestead is the separate property of either spouse or community property, *neither spouse may sell, convey, or encumber it without the joinder of the other spouse* except as provided by Section 5.82, 5.83, 5.84, or 5.85 of this code or by other rules of law."

Section 5.82 - Separate Homestead: Incompetent Spouse; Sale Without Joinder

"If the homestead is the separate property of a spouse and the other spouse has been judicially declared incompetent, the owner may sell, convey, or encumber it without the joinder of the other spouse."

Section 5.83 - Separate Homestead: Unusual Circumstances; Sale Without Joinder

"If the homestead is the separate property of a spouse and the other spouse (1) is incompetent (whether judicially declared incompetent or not), (2) disappears and his or her location remains unknown to the owner, (3) permanently abandons the homestead and the owner, or (4) permanently abandons the homestead and the spouses are permanently separated, then not less than 60 days thereafter the owner may file a sworn petition giving a description of the property and stating the facts that make it desirable for the owner to sell, convey, and encumber the homestead without the joinder of the other spouse.

Amended by Acts 1973, 63rd Leg., p. 1609, ch. 577, § 33, eff. Jan. 1, 1974."

Section 5.831 - Separate Homestead: Spouse Missing on Public Service; Sale Without Joinder

"If the homestead is the separate property of a spouse and the other spouse is reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States, not less than six months thereafter the owner may file a sworn petition giving a description of the property and stating the facts that make it desirable for the owner to sell, convey, or encumber the homestead without the joinder of the other spouse.

Added by Acts 1973, 63rd Leg., p. 1609, ch. 577, § 34, eff. Jan. 1, 1974."

Section 5.84 - Community Homestead: Incompetent Spouse; Sale Without Joinder

"If the homestead is the community property of the spouses and one spouse has been judicially declared incompetent, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse."

Section 5.85 - Community Homestead: Unusual Circumstances; Sale Without Joinder

"If the homestead is the community property of the spouse and if (1) a spouse is incompetent (whether judicially declared incompetent or not), (2) a spouse disappears and his or her location remains unknown to the other spouse, (3) a spouse permanently abandons the homestead and the other spouse, or (4) a spouse permanently abandons the homestead and the spouses are permanently separated, not less than 60 days thereafter the competent spouse, the remaining spouse, the abandoned spouse, or the spouse who has not abandoned the homestead in a case of permanent separation, who desires to sell, convey, or encumber the community homestead of the spouses, may file a sworn petition giving a description of the property and stating the facts that make it desirable for the petitioner to sell, convey, or encumber the homestead without the joinder of the other spouse.

Amended by Acts 1973, 63rd Leg., p. 1906, ch. 577, § 35, eff. Jan. 1, 1974."

XIII. EXEMPTIONS - Vernon's Annotated Civil Statutes

Article 3833 Homestead - Section (b) Temporary renting of the homestead shall not change its homestead character when no other homestead has been acquired.

Acts 1973, 63rd Leg., p. 1627, ch. 588, § 1, eff. Jan. 1, 1974.

Article 3835. Interest in land exempt from satisfaction of liabilities.

"The homestead of a family or a single, adult person, not a constituent of a family, and a lot or lots held for the purposes of sepulchre of a family or a single, adult person, not a constituent of a family, are exempt from attachment, execution and every type of forced sale for the payment of debts, except for encumbrances properly fixed thereon.

Amended by Acts 1973, 63rd Leg., p. 1628, ch. 588, § 2, eff. Jan. 1, 1974."

Article 3836. Personal property exempt from satisfaction of liabilities.

"(a) Personal property (not to exceed an aggregate fair market value of $15,000 for each single, adult person, not a constituent of a family, or $30,000 for a family) is exempt from attachment, execution and every type of seizure for the satisfaction of liabilities, except for encumbrances properly fixed thereon, if included among the following:

(1) furnishing of a home, including family heirlooms, and provisions for consumption;

(2) through (7) subsections covering such items as farm and ranching implements, tools, equipment, clothing, animals for traveling, automobile, truck, livestock, household pets, cash surrender value of any life insurance policy and current wages for personal services.

"(b) The use of any property not exempt from attachment, execution and every type of forced sale for the payment of debts to acquire property described in Subsection (2) of this article, or any interest therein, to make improvements thereon, or to pay indebtedness thereon with the intent to defraud, delay or hinder a creditor or other interested person from obtaining that to which he may become entitled shall not cause the property or interest so acquired, or improvements made to be exempt from seizure for the satisfaction of liabilities under Subsection (a) of this article.

"(c) If any property or interest therein or improvement is acquired by discharge of an encumbrance held by another, a person defrauded, delayed, or hindered by that acquisition as provided in Subsection (b) of this article is subrogated to the rights of the prior encumbrancer.

"(d) A creditor must assert his claim under Subsection (b) and (c) of this article within four years of the transaction of which he complains. A person with an unliquidated or contingent demand must assert his claim under Subsection (b) and (c) of this article within one year after his demand is reduced to judgment.

Amended by Acts 1973, 63rd Leg., p. 1628, ch. 588, § 3, eff. Jan. 1, 1974."

XIV. PARENT-CHILD RELATIONSHIPS CONSERVATORSHIP POSSESSION AND SUPPORT OF CHILDREN

Section 14.01 - Court Appointment of Managing Conservator

"(a) In any suit affecting the parent-child relationship, the Court may appoint a managing conservator, who must be a suitable, competent adult, or a parent, or an authorized agency. If the Court finds that the parents are or will be separated, the Court shall appoint a managing conservator.

"(b) A parent shall be appointed managing conservator of the child unless the Court finds that appointment of the parent would not be in the best interest of the child. In determining which parent to appoint as managing conservator, the Court shall consider the qualifications of the respective parents without regard to the sex of the parent.

"(c) A qualified person or authcrized agency designated managing conservator of the child in an unrevoked or irrevocable affidavit of relinquishment of parental rights executed pursuant to Section 15.03 of this code shall be appointed managing conservator to the child unless the Court finds that appointment of the person or agency would not be in the best interest of the chi d.

"(d) A person appointed manag ng conservator who is not a parent of the child shall each 12 months after his appointment file with the Court a report of facts concerning the child's welfare, including his whereabouts and physical condition. The report may not be admitted in evidence in any subsequent suit affecting the parent-child relationship."

Section 14.02 - Rights, Privileges, Duties, and Powers of Managing Conservator

"(a) Except as provided in Subsection (d) of this Section, a parent appointed managing conservator of the child retains all the rights, privileges, duties and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

"(b) A managing conservator who is not the parent of the child has the following rights, privileges, duties, and powers, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order allowing access to the child:

(1) the right to have physical possession of the child and to

establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to provide the child with clothing, food, shelter, and education;

(4) the right to the services and earnings of the child;

(5) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric and surgical treatment;

(6) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(7) the power to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child; and

(8) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the power to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

"(c) A person or authorized agency designated managing conservator of a child in an affidavit of relinquishment executed pursuant to Section 15.03 of this code to a possessory conservator until such time as these rights, privileges, duties, and powers are modified or terminated by court order.

"(d) The appointment of a managing conservator does not create, rescind, or otherwise alter a right to inherit as established by law or as modified under chapter 15 of this code."

Section 14.03 - Possession of and Access to Child

"(a) If a managing conservator is appointed, the Court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others.

"(b) On the appointment of a possessory conservator, the Court shall prescribe the rights, privileges, duties, and powers of the possessory conservator.

"(c) The Court may not deny possession of or access to a child to either or both parents unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

"(d) If the Court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the Court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of a child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. Such relief shall not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The Court may issue any necessary orders to enforce said decree."

Section 14.04 - Rights, Privileges, Duties, and Powers of Possessory Conservator

"A possessory conservator has the following rights, privileges, duties, and powers during the period of possession, subject to any limitations expressed in the decree:

(1) The duty of care, control, protection, and reasonable discipline of the child;

(2) The duty to provide the child with clothing, food, and shelter;

(3) The power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

(4) Any other right, privilege, duty, or power of a managing conservator expressly granted in the decree awarding possession of the child."

Section 14.05 - Support of Child

"(a) The Court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he is 18 years of age in the manner and to the persons specified by the Court in the decree. In addition, the Court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the Court in the decree.

"(b) If the Court finds that the child, whether institutionalized or not, requires continuous care and personal supervision because of a mental or physical disability and will not be able to support himself, the Court may order that payments for the support of the child shall be continued after the 18th birthday and extended for an indefinite period.

"(c) The Court may order the trustees of a spendthrift or other trust to made disbursements for the support of the child to the extent the trustees are required to make payments to a beneficiary who is required to make support payments under this section. If disbursement of the assets of the trust is discretionary in the trustees, the Court may order payments for the benefit of the child from the income of the

trust, but not from the principal.

"(d) Unless otherwise agreed to in writing or expressly provided in the decree, provisions for the support of a child are terminated by the marriage of the child, the removal of the child's disabilities for general purposes, or the death of a parent obligated to support the child."

Section 14.06 - Agreements Concerning Conservatorship

"(a) To promote the amicable settlement of disputes between the parties to a suit under this chapter, the parties may enter into a written agreement containing provisions for conservatorship and support of the child, modifications of agreements or orders providing for conservatorship and support of the child, and appointment of joint managing conservators.

"(b) If the Court finds the agreement is *not* in the child's best interest the Court may request the parties to submit a revised agreement or the Court may make orders for the conservatorship and support of the child.

"(c) If the Court finds that the agreement is in the child's best interest, its terms shall be set forth in the decree and the parties shall be ordered to perform them.

"(d) Terms of the agreement set forth in the decree may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as contract terms unless the agreement so provides."

Section 14.07 - Best Interest of Child

"(a) The best interest of the child shall always be the primary consideration of the Court in determining questions of managing conservatorship, possession, and support of and access to the child. If the child is 14 years of age or older, he may, by writing filed with the Court, choose the managing conservator, subject to the approval of the Court.

"(b) In determining the best interest of the child, the Court shall consider the circumstances of the parents. In the event of the death of the parents, the grandparents may be considered but such consideration shall not alter or diminish the discretionary power of the Court.

"(c) In a non-jury trial the Court may interview the child in chambers to ascertain the child's wishes as to his conservator. Upon the application of any party when the issue of managing conservatorship is contested, the Court shall confer with a child 12 years of age or older and may confer with a child under 12 years of age, but in either event the results of such interview shall not alter or diminish the discretionary power of the court. The Court may permit counsel to be present at the interview. On the motion of a party or the Court's own motion, the Court shall cause a record of the interview to be made when the child is 12 years of age or older, which record of the interview shall be made

part of the record of the case."

General Commentary on Section 14.01 through 14.07:

These sections of the FAMILY CODE are concerned with the custody, possession, and support of the children. Either spouse may be granted custody of the child depending on the Court's decision to determine what circumstances are in the child's best interests. The Court may order *either*, or *both*, parents to support the child.

XV. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Section 15.01 - Termination When Parent is Petitioner

"A parent may file a petition requesting termination of the parent-child relationship with his child. The petition may be granted if the Court finds that termination is in the best interest of the child."

Section 15.02 - Involuntary Termination of Parental Rights

"A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the Court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a Court under Section 34.05 of this code; and

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) Termination is in the best interest of the child.

"Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 31, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1793, ch. 727, § 1, eff. Aug. 27, 1979."

Section 15.03 - Affidavit of Relinquishment of Parental Rights

"(a) An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before any person authorized to take oaths.

"(b) The affidavit must contain:

(1) The name, address, and age of the parent whose parental rights are being relinquished;

(2) The name, age, and birthdate of the child;

(3) The names and addresses of the guardians of the person and estate of the child, if any;

(4) A statement that the affiant is or is not presently obligated

by court order to make payments for the support of the child;

(5) A full description and statement of value of all property owned or possessed by the child;

(6) Allegations that termination of the parent-child relationship is in the best interest of the child;

(7) One of the following, as applicable:

(A) The name and address of the other parent;

(B) A statement that the parental rights of the other parent have been terminated by death or court order; or

(C) A statement that the child is not the legitimate child of the father and that an affidavit of status of child has been executed as provided by Section 15.04 of this code;

(8) A statement that the parent has been informed of his parental rights, powers, duties, and privileges; and

(9) A statement that the relinquishment is revocable, or the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time.

"(c) The affidavit may contain:

(1) A designation of any qualified person, the State Department of Public Welfare, or any authorized agency as managing conservator of the child;

(2) A waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02 (1)(K) of this code, or in a suit to terminate joined with a petition for adoption under Section 1603 (b) of this code; and

(3) A consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

"(d) An affidavit of relinquishment of parental rights which designates as the managing conservator of the child the State Department of Public Welfare or an agency authorized by the State Department of Public Welfare to place children for adoption is irrevocable. Any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution."

Section 15.04 - Affidavit of Status of Child

"(a) If the child is not the legitimate child of the father, an affidavit shall be executed by the mother, whether or not a minor, witnessed by

two credible persons, and acknowledged before any person authorized to take oaths.

"(b) The affidavit must state that:

(1) The mother is not and has not been married to the father of the child;

(2) The mother and father have not attempted to marry under the laws of this state or another state or nation;

(3) Paternity has not been established under the laws of any state or nation; and

(4) One of the following, as applicable:

(A) The father is unknown and no probable father is known;

(B) The name of the father, but the affiant does not know the whereabouts of the father;

(C) The father has executed a statement of paternity under Section 13.22 of this code and an affidavit of relinquishment of parental rights under Section 15.03 of this code and both affidavits have been filed with the Court; or

(D) The name and whereabouts of the father; or

(E) The name of the probable father of the child.

"(c) The affidavit of status of child may be executed at any time after the first trimester of the pregnancy of the mother."

Commentary:

These sections specify significant procedural steps in terminating or relinquishing parental rights. The unwed mother is afforded new legal protection.

XVI. ADOPTION

For reference purposes, the subject content of the following Sections as listed appear in Vernon's Texas Codes Annotated: FAMILY CODE, pp. 45-248, Chapter 16, Subchapter A: **Adoption of Children**

Section 16.01 - Who May be Adopted
16.02 - Who May Adopt
16.03 - Prerequisites to Petition
16.031 - Social Study: Time for Hearing
16.04 - Residence With Petitioner
16.05 - Consent Required
16.06 - Revocation of Consent
16.07 - Attendance Required
16.08 - Decree
16.09 - Effect of Adoption Decree
16.10 - Withdrawal or Denial of Petition
16.11 - Abatement
16.12 - Direct or Collateral Attack

Chapter 16, Subchapter B: **Adoption of Adults**

Section 16.51 - Who May Adopt
16.52 - Consent
16.53 - Petition
16.54 - Attendance at Hearing
16.55 - Effect of Adoption Decree

Also see V.T.C.S. Art. 466-2 (Amended by 66th Legislature — Chapter 47. Human Resources Code) *Adoption Services for Hard-to-Place Children.*

XVII. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

Sections 21.01 through 21.66 of the FAMILY CODE enables one to have judicial enforcement of prior support decrees. Additionally, these sections set out the legal remedies obtainable when a "support decree" has been violated. Subject content includes General Provisions, Criminal Enforcement, Civil Enforcement, and Registration of Foreign Support Orders. All statutes became effective Jan. 1, 1974.

XVIII. REMOVAL OF DISABILITIES OF MINORITY

Section 13.01 - Petition

"(a) A minor who is a resident of this state and is at least 18 years of age, or at least 16 years of age, living separate and apart from his parents, managing conservator, or guardian and is self-supporting and managing his own financial affairs, may petition to have his disabilities of minority removed for limited purposes or for general purposes.

"(b) A minor who is not a resident of this state and is at least 18 years of age may petition to have his disabilities of minority removed for a limited purpose or for general purposes if he is an adult under the laws of the state of his residence, though not yet 21 years of age.

"(c) A minor may institute suit under this section in his own name and need not be represented by next friend."

Section 31.03 - Venue

"(a) If the petitioner is a resident of this state, the petition shall be filed in the district court of the county where the petitioner resides.

"(b) If the petitioner is not a resident of this state, the petition may be filed in any district court."

Section 31.04 - Guardian Ad Litem

"The Court shall appoint a guardian ad litem to represent the interests of the petitioner at the hearing."

Section 31.05 - Nonresident: Appearance

"If the petitioner is not a resident of this state, his disabilities of minority may be removed for a limited purpose without personal appearance of the petitioner. The petitioner may appear through an attorney or a guardian at litem."

Section 31.06 - Decree

"After a hearing, the Court may remove the disabilities of minority as requested in the petition if found to be in the best interest of the petitioner. The decree shall specify the purposes for which disabilities are removed."

Section 31.07 - Effect of General Removal

"Except for specific constitutional and statutory age requirements, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, *including the capacity to contract.*"

Section 31.08 - Registration of Decrees of Another State or Nation

"(a) Any non-resident minor who has had his disabilities of minority removed in the state of his residence may file a certified copy of the decree or judgment removing his disabilities in the Deed Records of any county in this state.

"(b) When a certified copy of the decree or judgment of a court of another state or nation is filed as provided by Subsection (a) of this section, *the minor has the power and capacity of an adult*, except as limited in Section 31.07 of this code and by the terms of the decree or judgment filed."

General Commentary:

These statutes provide for the removal of disabilities of minority under certain circumstances, thus enabling a minor to manage his or her own affairs as an adult, including the capacity to contract. This is often significant when a minor becomes the recipient of a loan, grant, or scholarship.

XIX. CONSENT TO MEDICAL TREATMENT

Section 35.01 - Who May Consent

"Any of the following persons may consent to medical treatment of a minor when the person having the power to consent as otherwise

provided by law cannot be contacted and actual notice to the contrary has not been given by that person:

(1) a grandparent;

(2) an adult brother or sister;

(3) an adult aunt or uncle;

(4) an educational institution in which the minor is enrolled that has received written authorization to consent from the person having the power to consent as otherwise provided by law;

(5) any adult who has care and control of the minor and has written authorization to consent from the person having the power to consent as otherwise provided by law; or

(6) any court having jurisdiction of the child."

Section 35.02 - Consent Form

"Consent to medical treatment under Section 35.01 of this code shall be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment."

Section 35.03 - Consent to Treatment by Minor

"(a) A minor may consent to the furnishing of hospital, medical, surgical, or dental care by a licensed physician or dentist if the minor:

(1) is on active duty with the armed services of the United States of America;

(2) is 16 years of age or older and resides separate and apart from his parents, managing conservator, or guardian, whether with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence, and is managing his own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of any infectious, contagious or communicable disease which is required by law or regulation adopted pursuant to law to be reported by a licensed physician or dentist to a local health officer;

(4) is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;

(5) is 18 years of age or older and consents to the donation of his blood and the penetration of tissue necessary to accomplish the donation; or

(6) consents to examination and treatment for drug addiction, drug dependency, or any other condition directly related to drug use.

"(b) Consent by a minor to hospital, medical, surgical, or dental treatment under this section is not subject to disaffirmance because of minority.

"(c) Consent of parents, managing conservator, or guardian of a minor is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

"(d) A licensed physician or dentist may, with or without the consent of a minor who is a patient, advise the parents, managing conservator, or guardian of the minor of the treatment given to or needed by the minor.

"(e) A physician or dentist licensed to practice medicine or dentistry in this state or hospital or medical facility shall not be liable for the examination and treatment of minors under this section except for his or its own acts of negligence.

"(f) A physician, dentist, hospital, or medical facility may rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to his own medical treatment under this section."

General Commentary:

These new statutes enable a minor to receive medical treatment without the consent of an adult, under specific circumstances, which include:

(1) Diagnosis and treatment of any infectious, contagious or communicable disease which is required by law to be reported to the proper authority by a physician or dentist;

(2) Examination and treatment for drug addiction;

(3) Medical treatment or hospitalization—other than abortion—of unmarried pregnant female;

(4) Medical treatment for a minor who is managing his (her) own affairs and living apart from the parents, managing conservator or guardian.

xx. DEFINITION OF LEGAL TERMS:

ad litem: for purposes of a suit that is being litigated:

A guardian ad litem is a guardian appointed to prosecute or defend a suit on behalf of a party incapacitated.

authorized agency:	one party authorized to do certain acts for, or in relation to the rights or property of the other.
tort:	A private or civil wrong, or injury for which the law gives redress. A wrong independent of contract. (A violation of a duty imposed by general law or otherwise upon all persons occupying a relation to each other and who is involved in a given action.)
contract:	a promissory agreement between two or more parties that creates, modifies, or destroys a legal relationship.
petitioner:	the party bringing action.
respondent:	the person against whom action is filed, or who opposes the prayer of the petition in legal proceedings begun by the petitioner.
joinder:	a joining of parties as Plaintiffs or Defendants in a suit.
personal property:	movable property, chattels, belongings of a personal nature.
real property:	relating to land as distinguished from personal or movable property.
separate property:	property owned or claimed by spouse before marriage; property acquired by spouse during marriage by gift, devise or descent; or the recovery for personal injuries received by spouse during marriage, except any recovery for loss of earning capacity during marriage.
community property:	consists of property other than separate property acquired by either spouse during marriage.
managing conservator:	person appointed by the Court to have custody of the child.
possessory conservator:	relates to visitation of the child; one given the right to visit the child.
disaffirmation:	to refuse to confirm; to annul or repudiate.
muniment:	the instruments of writing, and written evidences which the owner of lands, possessions, or inheritances has, by which he/she is enabled to defend the title of his/her estate.
judicial:	belonging to the position of the judge.
judicial designation:	having the character of judgment or formal procedure.
subrogate:	to put in the place of another; substitute; i.e., an act of subrogation substitutes one for another as a creditor so that the new creditor succeeds to the former's rights.

Funded as a joint project by
the State Bar of Texas, the
Texas Young Lawyers Association,
American Association of University Women, Texas Division,
and Texas Federation of Business and Professional
Women's Clubs, Inc.

The Texas Young Lawyers Association has a limited number of additional copies of this handbook available. Make your request for additional copies to:

Texas Young Lawyers Association
P.O. Box 12487
Austin, Texas 78711

MARGIE MORRILL

[redacted]

8/15/81

WOMEN'S CREDIT RIGHTS CARD

Keep it handy . . .

It has what every woman needs to know to get the credit she deserves.

Access to credit . . . why it's so important to today's woman

Credit allows you to borrow money . . . to buy a car, home or apartment, charge a blouse, start a business, go back to school, purchase a plane ticket or dine out without paying cash. You can hardly do without credit today. That's why it's important—and now the law—that credit be extended without discrimination to all who qualify.

Who gets credit?

Lenders apply their own credit criteria to decide if you are a good credit risk. Some factors which may be considered include:

- your bill-paying record, and
- your income.

Often, lenders will obtain a credit report on you from a credit bureau. Your bureau file, which details your credit history, may include information from your credit application, listings of your charge accounts and loans, and your payment history. If the report is negative, or if there is no file, getting credit may prove difficult.

ConsumerCard

You have the right* to . . .

Obtain credit in your own name if you meet creditors' criteria.

Use someone other than your husband as co-signer if one is needed.

Refuse to answer questions about your plans for having or raising children.

Keep your own accounts after marriage, divorce, or widowhood as long as you meet creditors' criteria.

Know the specific reason your application for credit is rejected.

Present information to creditors showing that your husband's credit rating, if it is bad, does not necessarily mean that you are unwilling to pay

Have public assistance, alimony, pension and child support considered as any other income.

Have records at credit bureaus in your own name for accounts you share with your husband.

Know what information credit bureaus have in your credit file.

Demand that any incorrect information in your file be changed.

Have your side of the story placed in credit bureau files if unfavorable information cannot be eliminated.

* Under the Federal Fair Credit Reporting Act & Equal Credit Opportunity Act

Some creditors also use a rapid screening technique called "point scoring" to compute credit worthiness. Points are totaled for a variety of items such as length of residence and time on the job.

Are you an "invisible" woman?

Unfortunately, many women have no credit histories. It's almost as if they are "invisible" in the credit world. Some women have been denied credit because of their sex; a practice now illegal. Others have not applied for credit, relying instead on credit carried and reported in their husbands' names. Recent changes in the law make it easier for married women to build a credit record.

You can't begin too soon to establish your own credit identity, whatever your marital status.

- As a single woman starting a career, your need for credit may seem minimal at first, but it will grow as your responsibilities grow.
- As a married woman, you may suddenly find yourself on your own; ready access to credit may be essential.

How do you start a credit history?

There are several steps you can choose depending upon your circumstances.

If you have never used credit before . . .
- Open a savings or checking account in your name.
- Acquire credit or charge cards in your name.
- Establish a pre-arranged loan limit—a credit line—at your bank. As your income builds, consider asking the bank to increase your credit line.

If you are married . . .
- Advise stores or other creditors you want shared accounts reported in your name as well as your husband's—"Mary Jones and John Jones."
- Check the credit bureau to make sure you're on file, and that shared accounts in your husband's file are listed in your file, too.
- When applying for credit, inform the lender of all accounts you share with your husband, even if the credit cards show only his name.

If you are no longer married . . .
- You can still apply for credit on the basis of accounts you used to share with your husband.

The law is on your side. Make it work for you.

Your Women's Credit Rights Card lists many of your legal rights as a consumer in the world of credit.

Your most basic right is the right to be heard. Don't be afraid to exercise your right and your responsibility to speak up and let creditors know you expect them to obey the law.

If you need further help . . .

You may wish to consult the consumer affairs office of the company involved, the Better Business Bureau, your local or state consumer protection agency, or call or write the Federal enforcement agencies listed below:

If your complaint concerns a retail store, department store, small loan and finance company, oil company, public utility company, state credit union, government lending program, or credit or charge card companies, contact the Federal Trade Commission:

Consumer Inquiries
Federal Trade Commission
Washington, D.C. 20580
(202) 523-3598

If your complaint concerns a nationally-chartered bank (National or N.A. will be part of the name):

Consumer Affairs Division
Comptroller of the Currency
Washington, D.C. 20219
(202) 447-1600

If your complaint concerns a state-chartered bank that is a member of the Federal Reserve System:

Consumer Affairs Division
Board of Governors of the Federal Reserve System
Washington, D.C. 20551
(202) 452-3693

Complaints against all kinds of creditors can be referred to:

General Litigation Section, Civil Rights Division
Department of Justice
Washington, D.C. 20530
(202) 633-4713

If your complaint concerns a state-chartered bank insured by the Federal Deposit Insurance Corporation, but is not a member of the Federal Reserve System:

Consumer Affairs Division
Federal Deposit Insurance Corporation
Washington, D.C. 20429
(202) 389-4767 or
(800) 424-5488 (toll free)

If your complaint concerns a federally-chartered or federally insured savings and loan:

Consumer & Civil Rights Office
Federal Home Loan Bank Board
Washington, D.C. 20552
(202) 377-6237

If your complaint concerns a federally-chartered credit union:

Consumer Affairs Division
National Credit Union Administration
Washington, D.C. 20456
(202) 357-1080

Published by the Consumer Affairs Office, American Express Company. Information provided by the Federal Trade Commission.

WOMEN under TEXAS LAW

League of Women Voters of Texas Education Fund

ERRATA SHEET

WOMEN UNDER TEXAS LAW

Please make these corrections in your copy of WOMEN UNDER TEXAS LAW:

p. 20, paragraph 2, line 5: delete study, insert custody

p. 25, paragraph 4, line 5: after female and before without, insert "not his wife" so that the line reads "if he has sexual intercourse with a female not his wife without the female's consent."

In other words, until those three words are deleted from the Texas Penal Code (instead of the LWV booklet) it is not a criminal offense for a man to force his wife to have sexual intercourse with him.

WOMEN under TEXAS LAW

League of Women Voters of Texas Education Fund

Researched and written by Lavora Spradlin Arizaga

Order from League of Women Voters of Texas
1212 Guadalupe Street, Suite 109
Austin, Texas 78701
Price $2.00 per copy plus postage

Contents

Prelude: How it used to be

It was a day for rejoicing! One would have expected dancing in the streets. It was the day after Election Day, November 7, 1972, and an equal rights amendment to the state constitution had been resoundingly approved by the voters of Texas. "Equality under the law shall not be denied or abridged because of sex, color, creed, or national origin" was the law in Texas.

Strangely enough, hardly anyone noticed. The general attitude seemed to be, "Ho-hum, of course it passed. Why wouldn't it?" The Texas legislature had ratified the Equal Rights Amendment to the U.S. Constitution in March of that same year and the big battle to get the proposed state amendment through the state legislature had already been won. Final ratification by the people seemed to be a mere formality. Reading the newspapers on that day after Election Day, one would not have realized that the long, hard struggle for equal rights in Texas was over at last.

In the beginnings of Texas, men and women worked together to build a new life in the west. Texas men valued their women and wanted to share with them their property as well as their lives. They also wanted to protect them. Some of the laws that were developed to do that turned out to be restrictive, handicapping, and, sometimes, demeaning and humiliating rather than protective.

When Texas adopted English common law in 1840, the Congress of the Republic excepted several areas of law. One of these was the law of matrimonial property. Texas retained the Castillian concept of shared gains of marriage in which all property acquired during marriage is common, or community, property, except for any property received as a gift or under a will or by inheritance. As a property concept it was one of co-ownership, but for many years ownership meant nothing at all to the wife as long as her husband was living. She had no control over any property, not even her own separate property, which is that property owned before marriage, and the exceptions to community property described above. During the marriage, referred to as the "coverture" of the woman, the husband had full powers of management of all the property—his, hers, and theirs. According to the law, the husband and wife became one person when they were married and he was it. The only restriction on the husband's powers of property management at that time was that he could not dispose of the family home unless his wife consented and co-signed the necessary documents.

A single woman over the age of twenty-one has always had, in Texas, the same property rights as a man. She, a "feme sole" in the old laws, has been able to own and manage her own property, to transfer it freely, to make contracts, and to carry on all her business affairs. She could get credit or not depending on her own financial holdings and income. However, she, as well as a married woman, was classed along with children, criminals, "idiots and lunatics" for purposes of voting, holding public office, and serving on juries.

The women's rights movement began in the United States in 1848, but there were no organized efforts for women's rights in Texas until 1903 when a Women's Suffrage League was formed in Houston. By 1914, there were twenty-one such clubs in Texas. They were working for full citizenship rights, but especially for the right to vote and for the right to control their own property. The first tiny break-throughs were in the property laws.

In 1911, the Texas legislature enacted a statute allowing a married woman, *with her husband's consent*, to get a court order to allow her to participate in business activities, "removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes." In 1913, laws were enacted that allowed married women to manage their own earnings and their separate property and its income, except that the husband's signature was necessary to convey real estate or to sell securities. If the husband refused to sign, the wife could petition for a court order to permit her to make the sale or transfer without his participation.

In 1916, the Women's Suffrage Association changed its name to "Equal Suffrage Association." In 1918, Texas women gained the right to vote *in primary elections and in nomination conventions*, and 360,000 women registered to vote in the fifteen days allowed for registration. Immediately the campaign was renewed for an amendment to the state constitution to provide full voting rights but it failed. However, the U.S. Congress passed the Voting Rights for Women Amendment on June 4, 1919, and it was promptly ratified by the states. Texas was the first southern state and the ninth state of the Union to ratify it.

In October, 1919, at San Antonio, the Texas Equal Suffrage Association changed its name again. It became the Texas League of Women Voters and the organization immediately launched a voter education program and a broad legislative program which included a minimum wage for working women, funding for maternity-infancy care, and reorganization of the education and prison systems. In the thirties, forties and early fifties, jury service for women was a prime concern of the League of Women Voters. In 1954, the right and obligation of women to serve on juries became law.

The efforts to achieve equal rights continued. Other groups joined in the struggle. The Texas Business and Professional Women's Clubs and the American Association of University Women, Texas Division, led the fight for reform of the property laws. Married women were particularly indignant about the laws that required them to have the consent of their husbands to dispose of their separate property. They were offended by the "privy acknowledgement rule" which required that any time a married woman signed a legal document, she had to go in a room apart from her husband, be told of the effect of the instru-

ment by a notary, and swear that she was signing of her own free will. Although this rule was intended to protect the women from coercion by their husbands, many women considered it foolish, ineffective, and degrading. It was one more instance of treating women as if they were half-witted.

Women were second-class citizens in other areas, too. Men had the right to determine the domicile of the family. Only fathers had the rights and obligations of governing the lives of their children. Women were barred from certain job and educational opportunities. Other instances of discrimination against women existed, but the strongest feeling against discrimination was in the area of property management and that is where the movement began to pick up more support.

In 1957, an effort was made to introduce **a state equal rights amendment** along with reforms of specific laws governing property rights. This started the ball rolling and the equal rights amendment was proposed in every succeeding regular session from then on, gathering more support each time until its passage in 1971. Opponents of the equal rights amendment, including the State Bar of Texas, tried to take the steam out of the drive for the amendment by offering specific reform measures. In 1961, the 57th Legislature amended the Miscellaneous Corporation Laws Act by adding a section that read "married women may be shareholders, officers, and directors of a corporation and may sign articles of incorporation and all other corporation instruments . . . as if they were males." How about that? Not "as if they were feme soles" but "as if they were males." Progress, indeed.

In 1967, a complete new codification of matrimonial property laws was passed. The "privy acknowledgement rule" was eliminated. The definition of separate and community property was put in terms of "spouses" rather than husband and wife, and both spouses were given the same rights to manage both separate and community property. Married women were given the same rights as their husbands to execute powers of attorney and to administer the estate of a deceased spouse.

These reforms pleased proponents of equal rights but did not appease them. The drive for an equal rights amendment intensified until the Sixty-third Legislature passed the resolution to submit it to the people of Texas. There were 13 other amendments on the ballot on November 7, 1972. One was to raise the salaries of the legislators. It failed. One was to hold a constitutional convention in 1974. It passed. These were the two amendments that were mentioned in the newspaper headlines the next day. But the most important amendment that passed that day was the equal rights amendment.

In 1973, the new *Texas Family Code* was passed and signed into law and, in the succeeding sessions of the state legislature, the Texas statutes have been examined carefully and provisions that appear to conflict with the intent of the equal rights amendment have been changed. Discriminatory laws remaining on the books have been uniformly found unconstitutional when brought before the Texas Supreme Court.

1

Property rights

Texas is one of eight community-property states which hold the "shared gains of matrimony" doctrine. All the community property states have differences in the specific laws governing marital property. This handbook explains the Texas law.

The other 42 states and the District of Columbia are called common law states (or separate property states). Generally, these states provide that the earnings and property accumulated by either spouse are the property of that spouse and he or she has complete control over it.

A person moving from another state, whether the previous state is a "community property" state or a "common law" state, needs to understand the Texas marital property laws in order to decide if any changes need to be made in the way that person is handling his or her property.

Whether property is separate or community is important because it determines who has the right to manage the property and what happens to the property in case of death or divorce.

Ownership

A spouse's separate property consists of:

- That property owned before marriage
- That property acquired during marriage by gift, devise, or descent*
- Compensation for personal injuries except that recovered for loss of earning capacity
- Property transferred from one spouse to another by a partition or exchange agreement
- Income or property arising from separate property presently owned or to be acquired, if the spouses have agreed in writing that such property shall be separate
- The income and property which may arise from property which is a gift from one spouse to another

These last two provisions are result of a constitutional amendment which became effective on November 21, 1980. A list of a spouse's separate property may be recorded in the county deed records.

Community property consists of the property, other than separate property, that is acquired by either spouse during marriage. This includes all wages and

*_devise_ is inheritance by will
descent is inheritance without a will

earned income from whatever source and income from community property. It also includes income from separate property unless the spouses have agreed in writing that such income shall remain separate.

Separate funds and community funds should be kept in different accounts and careful records kept. Otherwise they may become so commingled that the separate funds can not be traced and will lose their identity. Remember that *income* from *separate property* is *community property* unless there is a written agreement to the contrary. Of course, some people do not care that the property is commingled. They want to share all their property with their spouses. But for those people who want a clear division for whatever reason, separate accounts and careful records are necessary.

If most of the assets of the family are the separate property of one spouse, there is danger in the spouses' making agreements partitioning community property, existing or to be acquired, and/or providing that the income from separate property shall be separate property. An agreement that one's earnings shall be separate property is very dangerous for a homemaker or a prospective homemaker. (Experts disagree on whether or not this can be done under the new law.) In the event that such an agreement should be made, the spouse with little or no separate property may be left with little or nothing. No such agreement should ever be signed unless each party has adequate legal counsel. No one attorney, even with the consent of both parties, should represent both parties to such an agreement.

Management

Each spouse has the sole management, control, and disposition of his or her separate property, and that community property that he or she would have owned if single, including, but not limited to, personal earnings and revenue from separate property. If community property subject to the sole management of one spouse is mixed with other community property, it is all subject to joint management unless the spouses provide otherwise by power of attorney or other agreement. Property is presumed to be subject to the sole control of a spouse if it is held in his or her name or if it is in his or her possession and is not subject to such evidence of ownership as a title or deed. This is to protect people dealing with one of the spouses.

A suit for one spouse to manage the community property which is subject to the control of the other spouse may be filed in the following circumstances: one of the spouses becomes unable to take care of his or her property; one disappears or abandons the other; or the spouses are permanently separated.

Liability

A spouse's separate property is not subject to liabilities of the other spouse unless both are liable by other rules of law. Community property subject to a spouse's sole management is not subject to liabilities that the other spouse incurred before marriage or to any nontortious liabilities that the other spouse incurs during marriage; "nontortious" means not pertaining to a personal injury—in other

words, liabilities caused by a violation of business or property law. All the community property is subject to tortious liability of either spouse incurred during marriage.

Homestead

The homestead may not be sold or mortgaged without the agreement and signatures of both spouses, whether it is separate or community property, except where one spouse has disappeared, abandoned the other and the homestead, or has been declared incompetent. On the death of one of the spouses, the homestead may not be partitioned among the heirs so long as the surviving spouse or the guardian of the minor children of the deceased person lives there. Forced sale of a homestead is possible only for nonpayment of taxes, the purchase price of the homestead, or improvements to the homestead. Single persons, male or female, also have homestead rights.

Disposition of Property by Will

Who make make a will? A person in Texas over the age of eighteen, or who is or has been married, or who is in the armed forces of the U.S. or the maritime service, and who is of sound mind, may make a will. That person may leave everything and anything he or she owns to whomever he or she chooses, with one exception. If there are no other resources available for the support of a surviving spouse or minor children, property that is exempt from execution or forced sale (such as a homestead, or the car, or tools of a trade, or basic household furnishings) will be set aside for the support of such surviving spouse or minor children. If there is no such exempt property, an allowance for the family will be made out of the funds of the estate. A person who has an estate to dispose of cannot leave his family penniless, to be supported by the county.

Disposition of Property Without a Will

When a person dies, if there is a surviving spouse and children, the **separate property** will be divided as follows: the surviving spouse will receive one-third of the personal property (money, stocks, bonds, tangible objects) and a life estate in one-third of the "lands" (real property). A life estate is an interest in property which ends when the original recipient dies. The children, or their descendants, will immediately get two-thirds of the separate property, both real and personal, and on the death of the surviving spouse, will get the other one-third of the real property.

If there is a surviving spouse, but *no children*, the surviving spouse will get all of the *separate* personal estate and one-half of the *separate* real estate. The other half of the real estate will go to the father and mother of the decedent (the person who died) or to their descendants.

If there is *no surviving spouse*, the *separate* property will go to the children of the decedent or their descendants. If there are no descendants, the property will go to his or her parents. If one of them is dead, half will go to the surviving

parent and the other half will go to the brothers and sisters of the decedent or to their descendants. If one parent survives and there are no brothers and sisters, all goes to the one parent. If there are no parents and no descendants of the parents, then the separate property will be divided between the maternal and paternal grandparents or their descendants. Remember the estate of Howard Hughes?

Community property will be divided in the following manner: if there is a surviving spouse and children, the spouse gets half (that half that was his or hers all along) and the children or other descendants get the other half; if there are no children or grandchildren or great-grandchildren, etc., the surviving spouse will get all of the community property.

Are you confused? Be sure to make your will!

Some people would like to see inheritance laws changed so that a surviving spouse who is the parent of all the children of the person who died would receive all his or her property when that person dies without a will.

Problems to Consider

1. Nancy and Ned North moved to Texas from a common law state. They both have good jobs. In a few years, they plan to start a family. Nancy plans to stay at home until the children are in school. Should Nancy and Ned execute a written agreement that their earnings shall be separate property? An agreement that income from separate property shall be separate property?
2. Wendy Widow has two adult children. Their father died two years ago. Wendy is thinking of marrying again. She wants to make sure that all the property that she and her husband accumulated during their marriage goes to their children on her death. What should she do?

2

Marriage

The policy of the state of Texas in regard to marriage is expressed in the *Texas Family Code:* "In order to provide stability for those entering into the marriage relationship in good faith and to provide legitimacy and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless strong reasons exist for holding it void or voidable. When two or more marriages of a person to different spouses are in question, the most recent marriage if presumed to be valid until the validity of a previous marriage is proved."

Texas law provides for both ceremonial and informal marriages. Either kind must be between a man and a woman. A license may not be issued for the marriage of persons of the same sex and a common law marriage between persons of the same sex does not exist under Texas law.

Types of Marriage

A **ceremonial marriage** is one for which a marriage license has been obtained from the county clerk and a ceremony has been conducted by an authorized person.

To get a license, both applicants must provide proof of identity and age, a medical examination certificate or an exemption order, a declaration that the applicant is not presently married and has not been divorced within the last 30 days, and a declaration that they are not related to each other as a parent, grandparent, brother, sister, aunt or uncle. If an applicant is under 18 but over 14, either parental consent or a court order is required. If an applicant is under 14, parental consent is not sufficient; a court order is required. A court order may exempt an applicant from the medical examination requirements if the court is shown sufficient grounds and is satisfied that the exemption will not adversely affect the public health and welfare.

At least one of the prospective spouses must appear in person before the county clerk with all the necessary documents including an affidavit of the absent party containing the required declarations and the reason he or she could not appear personally. The ceremony may be conducted by a licensed Christian minister or priest, a Jewish rabbi, an officer of a religious organization who is authorized by the organization to conduct marriages, a justice of the peace, any state or federal judge in the state, or a retired judge who is 65 years old or older and has served as a judge for an aggregate of 15 years.

A statute enacted in 1973 provides that the State Board of Health may require females, of childbearing capability, who apply for marriage licenses to

present evidence of immunological response to rubella (German measles). To date the State Board has not established such a requirement.

An informal marriage (common law marriage) is one where a man and a woman have agreed to be married, lived together in Texas as husband and wife, and, in Texas, represented to others that they were married. The marriage may be formalized by executing a declaration of informal marriage which is recorded by the county clerk. The same proofs and declarations as for a formal marriage are needed except the medical examination. In addition, an oath as to the circumstances of the informal marriage is needed for this formalization. However, the declaration and registration are not essential to prove the validity of the marriage. Any evidence that is admissible in a court of law may be used to prove the informal marriage; and, if one exists, the obligations of the parties to each other and to their children are as binding as they are within a ceremonial marriage; and the marriage can only be dissolved in the same way.

A marriage is void if it is one entered into with an ancestor or a descendant by blood or adoption, with whole or half or adopted brothers or sisters, with aunts or uncles; or if either of the partners was previously married and the prior marriage is not dissolved.

A suit to have a marriage declared void may be brought only if the purported marriage took place in this state or if either party lives in this state. The marriage may be declared void as part of another judicial proceeding concerning the presumed spouses (for example, in a suit about property rights or a will contest). When a marriage is declared void, it is as if it never happened. There are no rights and duties to each other. There is no community property.

A marriage is voidable and subject to annulment for a number of reasons but may not be challenged in a legal proceeding begun after the death of either party. Reasons for annulment are:

- One of the parties was underage and did not have the appropriate parental consent or court order
- The person seeking the annulment was under the influence of drugs or alcohol at the time of the marriage to the extent that he or she did not have the capacity to consent to the marriage
- Either party was permanently impotent at the time of the marriage and the petitioner did not know of the impotency at the time of the marriage
- The other party used fraud, duress, or force to induce the petitioner to get married
- The petitioner did not have the mental competency to consent to the marriage or to understand the nature of the ceremony
- The other party was mentally incompetent and the petitioner didn't know or have reason to know of the mental disease or defect
- One of the parties had been divorced within the 30-period preceding the date of the marriage ceremony and the petitioner didn't know or have reason to know of the divorce.

In all of these instances, the petitioner can not have voluntarily co-habited with the other party since the effects of the drugs or alcohol ended, or since

being released from the duress or force, or during any period of lucidity sufficient to recognize the marriage relationship, or since learning of the fraud, disability or barrier to the marriage.

Except as specified above, the validity of a marriage is not affected by any fraud, mistake, or illegality in obtaining the marriage license. Nor is it affected by a lack of authority of the person conducting the marriage ceremony if there was a reasonable appearance of authority by that person and if at least one party to the marriage believed in the validity of the marriage and acted accordingly.

Obligations

Each spouse has the duty to support the other spouse and each parent has the duty to support his or her minor children. A spouse or parent is liable to any person who provides necessaries to those to whom support is owed. The *Texas Penal Code* provides that an individual who intentionally or knowingly fails to provide support for his minor children or his spouse in needy circumstances is guilty of criminal nonsupport. This is a Class C misdemeanor ($2,000 fine, not more than one year in jail, or both). If he or she has been convicted of the same offense one or more times, or commits the offense while residing in another state, the individual is guilty of a felony of the third degree (from two to ten years in the Texas Department of Corrections and a possible fine of up to $5,000).

A person who is mentally incompetent and has no estate of his or her own must be supported by his or her spouse. If the spouse is unable to do so, then the father or mother of such person must assume that responsibility. If neither of the parents can do so, then the children or grandchildren must do so. If they can not, then the county will.

Problems to Consider

3. Susie Safe had a beautiful wedding when she married Joe Blow in Austin four years ago. They now have two lovely children. Last week Mary Contrary came to Susie's house and told her that Joe and Mary had lived as husband and wife in Dallas for six years and that they had two children. Mary and her children have not seen or heard from Joe for the last five years. Whose marriage is presumed to be valid? If Mary proves in a court of law that she and Joe had a common law marriage, what does that do to Susie's marriage? If Joe wants to be legally married to Susie, what does he have to do? If Joe wants to be rid of Susie, what does he have to do? If Joe wants to be rid of both Mary and Susie, what does he have to do?

3

Divorce

Grounds

The most common ground for divorce is that "the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation." This is the no-fault divorce. No-fault does not mean uncontested. Uncontested means that the parties agree on all points where there might be disagreement such as property division or child care and support, and the court has nothing to decide except that the requirements of the law have been met. A suit can be no-fault and still be contested.

Other grounds for divorce are:

- Cruelty
- Adultery
- Abandonment
- Conviction of a felony which has not been pardoned
- The spouses have lived apart without co-habitation for at least three years
- The other spouse has been confined in a mental hospital for at least three years and is not likely to recover permanently.

Filing

To file a petition for divorce, one of the parties must have lived in Texas for six months and in the county of filing for 90 days. In a divorce suit, as in any civil action, all parties whose interests are directly affected by the suit must be notified (cited). All necessary parties must then "appear and answer" before the court, unless one can not be found or unless one has signed a waiver. A waiver usually states that the respondent has read and understood the petition, and agrees that the petition may be amended and the hearing held and the decree granted without further notice to the respondent. A waiver should not be signed unless the respondent has absolutely no objection to any outcome of the suit.

If one of the necessary parties can not be found, he or she must be *cited by publication*. This means that the citation, but not the petition, will be pubished in a newspaper in the county of the suit and, sometimes, in the county where the respondent was last known to have resided. If the publication of the citation does not stir up a response within the time specified (and it usually doesn't), the court will appoint an attorney ad litem (for the case) for the absent party.

If there are children under 18, born or adopted of the marriage, a suit for

dissolution of a marriage must include a suit affecting the parent-child relationship. An attorney ad litem, who will be paid by the parents of the child unless the parents are indigent, will be appointed to represent the child or children.

Temporary Orders

After a petition for a divorce is filed, any *temporary orders* necessary for the preservation of the property and/or the protection of the parties may be sought. The court may also order *counseling* of the parties by a person appointed by the court. If the report of the counselor indicates that there is a possibility of reconciliation, the hearing may be postponed another 60 days for more counseling. Expenses of counseling may be taxed against either or both parties.

Temporary orders that may be requested are:

- For a sworn inventory and appraisement of all the property and debts of the parties
- For the support of either of the spouses until a final decree is entered
- To produce certain relevant books, papers, documents, and tangible things
- To pay attorney's fees and future court costs
- To keep one of the spouses out of the residence
- To restrain a spouse from harassing the other by telephone or in writing
- To restrain a spouse from threatening or hurting the other spouse or a child of either
- To restrain a spouse from harming or hiding property of the parties

Division of Property

The court shall order a division of the property of the couple in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage. The community property does not have to be divided down the middle. It is possible that the spouse who needs more will get more. That's assuming that there is something to get; 100% of nothing is nothing. Separate real property will not be taken away from its owner but separate personal property may be, if appropriate (to provide for support of the children, for example). Courts prefer that the parties work out their own contractual property settlement which the court will then approve (unless it is patently unfair).

The court can only divide property of the spouses owned during the marriage. Any promise of future payments from future assets (other than child support) can come only by way of a contract between the spouses. More complete and fair financial arrangements can be achieved if both parties are adequately represented by separate legal counsel.

In an *agreed property settlement*, which can and should be incorporated into the divorce decree, it is possible to provide for alimony and for payment of educational expenses of children over the age of eighteen. To get such an agreed settlement someone has to have the money, or the potential of having the money, and a reason to pay it (guilt, compassion, tax breaks, a sense of fairness, fear of consequences for failure to do so, etc.).

The Decree

A divorce will not be granted until at least 60 days have elapsed from the day the suit was filed. Either party may demand a jury trial except in a suit to void the marriage of a child. The husband or wife can be a witness for or against each other in a suit under the *Texas Family Code.*

The court responds to petitions and motions with rulings, orders, and decrees. A *divorce decree* usually contains several orders. The court is rarely permitted to act on its own motion. To get the orders you want and need you must ask for them in your petition. The petition may be amended as many times as necessary as long as all parties required to be notified are notified and have an opportunity to respond. This is why it is important that the parties have adequate legal counsel. You must ask for what you want, and give good reasons why you should have what you want; and it must all be set out clearly so that the orders will be clear and therefore enforceable.

The court may award costs to any party, except that costs may not be adjudged against a spouse who is divorced on the grounds of confinement in a mental hospital.

Neither party to a divorce may marry another person for a period of thirty (30) days after the date of the decree but they may remarry each other at any time.

Problems to Consider

5. Eric discovered that Anna was having an affair. He wants a divorce but he doesn't want the whole world to know that she was making a fool of him. On the other hand, he has been the breadwinner all these years and he doesn't want to give her a darn thing. All the bank accounts and stocks are in his name and she doesn't know where they are or how much they are. On what grounds should he file for divorce? What can Anna do to keep from being kicked out of her house without a penny?

4

Parent-child relationship

As used in the *Texas Family Code*, "child" is a person under 18 years old who is not and has not been married, or who has not had the disabilities of minority removed for general purposes. A "managing conservator" is a person who, by court order, has the legal custody of a child and most of the customary rights and duties of a parent. A "possessory conservator" is a person who has visitation rights and certain specified parental rights and obligations as ordered by a court.

A child is the legitimate child of its mother. A child is the legitimate child of its father if the child is born or conceived before or during the marriage of its father and mother, or if its mother and father have attempted to marry in compliance with the laws of this or another state or nation, or if the man's paternity is established under the provisions of the *Texas Family Code*.

Adoption

The parent-child relationship exists between an adopted child and the adoptive parents as if the child were born to the adoptive parents during the marriage. Any adult is eligible to adopt a child or another adult. Adult adoption is the only means whereby persons of the same sex, unrelated by blood, may establish a legal relationship which entitles one to inherit from another under the laws of intestacy. A child over the age of 12 or an adult must give his or her consent in order to be adopted. The consent of a managing conservator, if one has been appointed, must be obtained. If a petitioner is married, both spouses must join in the petition for adoption. There must be a decree terminating the parent-child relationship with each living natural parent of the child before the child can be adopted unless one of the natural parents is married to the petitioner (a step-parent adoption).

When a child is adopted, the court records of the termination and adoption proceedings are sealed, and a new birth certificate is issued. The contents of the sealed records may not be revealed to anyone without a court order.

Artificial Insemination

If a husband consents, in writing, to the artificial insemination of his wife, any resulting child is the legitimate child of both of them. If a woman is artificially inseminated, the resulting child is not the child of the donor unless he is the husband. This apparently rules out any parental rights of the donor in a "surrogate mother" situation.

Rights and Obligations

Unless there is a court order to the contrary, or a properly executed affidavit of relinquishment of parental rights (similar to the old "consent to adoption"), the parent of a child has the following rights, powers, and duties:

- The right to have physical possession of the child and to establish its legal domicile
- The right to the services and earnings of the child
- The right to inherit from and through the child
- The power to consent to the marriage of the child or to medical, psychiatric, or surgical treatment
- The power to receive payments for the support of the child and to hold or disburse any funds for the benefit of the child
- The duty of care, control, protection, moral and religious training, and reasonable discipline
- The duty to support the child, including providing the child with clothing, food, shelter, medical care, and education
- The duty to manage the estate of the child, unless a guardian of the estate has been appointed

A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage caused by the child. The child's parent or the person responsible for support of the child must pay attorneys' fees whenever it is necessary that the child be represented by an attorney.

The legal rights and obligations of the parent-child relationship cease, except for inheritance rights, when the child reaches the age of eighteen or becomes emancipated, unless the parent or the child becomes mentally incompetent.

Suit Affecting the Parent-Child Relationship

A suit affecting the parent-child relationship may include one or more of the following pleas:

- To determine whether or not a parent-child relationship exists (as in a paternity suit or a case involving artificial insemination)
- To terminate the relationship
- To appoint a managing conservator and possessory conservators
- To order support or other duties
- To grant access to a child (perhaps to some of the grandparents)
- To modify any orders of this nature.

Such a suit may be brought by any person with an interest in the child, including the child (through a representative approved by the court), or any authorized agency.

In any suit affecting the parent-child relationship, the court *may appoint a managing conservator*, who must be a suitable, competent adult, or a parent, or an authorized agency. If the court finds that the parents are, or will be, separated, the court *must* appoint a managing conservator. In determining which parent to appoint as managing conservator, the court shall consider the qualifications of the respective parents without regard to the sex of the parent. A qualified person or authorized agency, who has been designated as managing conser-

vator in an unrevoked or irrevocable affidavit of relinquishment, shall be appointed as such unless the court finds that such appointment would not be in the best interest of the child. The best interest of the child is always the primary consideration of the court in the determination of questions of managing conservatorship, possessory conservatorships, support of and access to the child.

Rights and Obligations of Conservators

A managing conservator has all the rights, powers, and duties of a parent enumerated above, subject to the rights awarded to a possessory conservator and any limitation imposed by court order, except that a managing conservator who is not a parent of the child may not inherit from or through the child. If a managing conservator is appointed, the court may appoint one or more possessory conservators and set the times and conditions for the possession of or access to the child for the possessory conservators and others. The court may not deny possession of or access to the child to either parent unless it finds from the evidence that possession or access is not in the best interest of the child, *and* that the parental possession or access would endanger the physical or emotional welfare of the child.

A possessory conservator, during the period of possession, has the duty of care, control, protection, and reasonable discipline of the child; the duty to provide the child with food, clothing, and shelter; the power to consent to emergency medical and surgical treatment; *and any other right, duty, or power of a managing conservator expressly granted in the decree.* This last provision makes it possible for the court to allow joint custody. Any possible combination of responsibilities for care and support may be ordered if the court can be convinced that it will be in the best interest of the child.

Child Custody and Support

Some women are becoming alarmed about changes taking place in the area of child custody and child support. More fathers are asking for and getting custody of their children in divorce cases. Some women are being ordered to pay child support. What is going on here? How can this be right?

The Texas Supreme Court has specified some of the criteria to be used by the courts in determining the "best interest of the child" which is the standard by which the determinations of child custody (managing and possessory conservatorships) and child support are made. The criteria specified, which are not intended to be all-inclusive, are:

- The desires of the child
- The emotional and physical needs of the child now and in the future
- Any emotional or physical danger to the child now or in the future
- The parental abilities of the individuals seeking custody
- The programs available to assist these individuals to promote the best interest of the child
- The plans for the child by these individuals or by the agency seeking custody
- The stability of the home or proposed placement

- The act or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one
- Any excuse for the acts or omissions of the parent.

If the child is 14 years old or older, he or she may, by a writing filed with the court, choose the managing conservator, subject to the approval of the court.

In a nonjury trial the court may interview the child privately to find out with whom he or she wants to live. Upon request of any party where the issue of managing conservatorship is contested, the court *must* confer with a child who is 12 or older, but the court makes the final decision as to who gets custody and on what terms. A record of the interview with the child of 12 or older can be made part of the record of the case.

The "best interest of the child" standard for naming a managing conservator pre-dates the equal rights laws by many years. It is used in all states of the U.S. whether or not a state has an equal rights amendment. The doctrine was developed to reform the old laws that considered children the property of their fathers, rather than as persons with needs to be met. The result of considering the needs of the children led to placing the children, particularly those of "tender years," in the care of the parent who had been most involved with their primary care, usually the mother, unless that parent was proved to be "unfit." A bitter divorce with ugly charges often caused continuing difficulties over visitation rights and, of course, child support. "No-fault" divorce pleadings are designed to alleviate some of this bitterness.

Usually the father was, and still is, in better financial circumstances than the mother, so he would be ordered to make child support payments. These payments, if ordered (and it has never been automatic that child support payments are ordered) and if paid, are rarely enough to pay expenses of the children much less those of the ex-wife. Therefore, the mother has to go to work and is no longer able to be the primary caretaker of the children. Nothing works out as expected. Everybody loses.

The myth of fathers supporting their children when they do not have custody is a cruel illusion. A study made in 1971 shows that one year after an order to pay child support, only 38% of the fathers were in full compliance and 42% were paying nothing at all; only 28% were in full compliance at the end of two years; and after six years, 17% were in full compliance and 71% were paying nothing.

One reason for this record for child support payments is that often there is not enough money to support two households, particularly if the parent who is supposed to pay remarries and has other children. Another reason is that the father loses touch with his children. He is cut out of their lives; he has no authority to make any decisions concerning them; he is sometimes denied (albeit illegally) his visitation rights, or the artificial circumstances surrounding visitation rights are so uncomfortable and painful that the father does not exercise the rights that he has. "Weekend fathers" find it very difficult, if not impossible, to establish meaningful relationships with their children.

Either or both parents may be ordered to pay child support. Who pays and how much is determined by the needs of the child and the circumstances of the parties. Payments are made more readily and faithfully when the parent

remains personally involved with the child.

The "best interest of the child" standard and the increasing interest of fathers in getting custody of their children are making both parents and courts try to work out custody arrangements that will enable both parents to retain a loving relationship with their children. In most cases, both parents love their children and want to continue to care for them and to be involved in their lives. It is possible in Texas to work out any combination of rights and duties for the managing conservators and possessory conservators so that, although the husband and wife are divorced, neither one needs to be divorced from the children.

More rational and human custody agreements should help to eliminate child stealing by non-custodial parents which has become almost epidemic. The new federal *Parental Kidnapping Prevention Act of 1980*, which went into effect in July of 1981, was passed to try to control parental kidnapping. It mandates that child study orders of the court with proper original jurisdiction shall be enforced in every state. It also provides that the federal *Fugitive Felon Act* applies to child stealing and to interstate or international flight to avoid prosecution under state felony statutes, and authorizes the use of the Parent Locator Service of the Department of Health and Human Services in custody and parental kidnapping cases as well as in support cases.

Modification of provisions of a decree regarding conservatorship and/or support or other orders may be made for good cause in later proceedings. To change the managing conservator, it must be shown that there has been a material and substantial change of circumstances of the child or a parent or a person affected by the order, and that the retention of the present managing conservator would be injurious to the child, and that the appointment of the new managing conservator would be an improvement. Some people believe that the requirement to prove that "the retention of the present managing conservator would be injurious to the child" is too harsh and unnecessary and should be eliminated.

Enforcement of Child Support Orders

An order to pay child support can be enforced if the person with the duty to pay has the money or can get it without stealing it, *and* if he or she can be found. However, it is a cumbersome process to go to court every time the payments are in arrears; and sometimes it is not worth the time, effort, and money that it takes, even though court costs and attorney's fees can be charged to the defaulting parent.

To enforce child support orders there must be a court hearing to determine that, in truth, the person ordered to pay (the "respondent") has actually not paid. If the court finds that he or she should have paid and has not, the court may:

- Order punishment for *civil contempt* and put the offender in jail until he or she pays
- Order punishment for *criminal contempt* and put the offender in jail for up to six months and assess a fine of up to $500

- *Award a judgment* in the amount of the child support payments in arrears, plus interest, plus court costs and attorney's fees. The judgment places a lien on real property and, armed with a writ of execution, the sheriff can pick up tangible personal property such as a car, boat, stereo, or business inventory, all of which can be sold if necessary to satisfy the judgment.

Writs of garnishment may also be granted which order the garnishee, (a third party holding funds of the debtor—usually a bank or savings and loan association, etc. in Texas) to appear in court and testify as to those funds held for the debtor. The writ will also order the garnishee not to release any of those funds until further order of the court. After the court hearing, the garnishee may be ordered to pay the amount of the judgment out of those funds.

The Texas Constitution prohibits the garnishment of wages. Obviously employers are vehemently opposed to being involved in legal actions caused by their employees' private fiscal and domestic affairs; and, in states where it is allowed, do not look kindly on employees who get them so involved.

States which permit garnishment of wages do not have a better record of payment of child support than Texas does. This is probably because wage garnishment is used principally, if not entirely, with debtors who have no assets other than their wages. Also, such debtors often change jobs frequently, thus requiring a new writ for each new employer.

Termination of the Parent-Child Relationship

The parent-child relationship may be terminated voluntarily or involuntarily. In a termination suit, the parent whose rights have not been terminated will retain all rights and duties unless a managing conservator has been appointed.

Voluntary Termination—A child who is 17 years old, or a child who is 16 years old who is living apart from his or her parent, managing conservator, or guardian, and who is managing his or her own financial affairs, may petition to have the disabilities of minority removed for limited or general purposes. A parent may file a petition requesting termination of the parent-child relationship between that parent and the child. The petition must state why removal of the disabilities and/or termination would be in the best interest of the child and why termination or removal is sought.

Involuntary Termination—A petition may be filed by a person or an agency requesting termination of the parent-child relationship with respect to a parent who is not the petitioner. After a notice and hearing, the termination will be granted if the court finds that it is in the best interest of the child; and that one or more of the following conditions exists:

- The parent has abandoned the child
- The parent let the child stay in conditions or surroundings which endangered the physical or emotional well-being of the child
- The parent engaged in conduct or left the child with persons who engaged in conduct that endangered the physical or emotional well-being of the child
- The parent failed to support the child in accordance with the parent's ability for a period of a year ending within six months of the date of the filing of the petition

- The parent failed to provide adequate support or medical care for the mother during her pregancy and delivery and remained apart from the child or failed to support the child since the birth
- The parent violated an order of the court in regard to the child abuse and neglect laws
- The parent has been the major cause of the child's failure to enroll in school or the child's absence from his home without consent of his legal caretakers for a substantial length of time or without the intent to return
- The parent has executed a voluntary unrevoked or irrevocable affidavit of relinquishment of parental rights.

An irrevocable affidavit of relinquishment of parental rights is one which designates the Department of Human Resources, or an agency authorized by the DHR, as the managing conservator of the child, to place the children for adoption.

If a child is **born alive in spite of an abortion,** parental rights may be terminated except for a parent who had no knowledge of the abortion, or who consented to the abortion solely to save the life of the mother. An authorized representative of the Texas Department of Human Resources may take charge of such child and file for emergency orders to protect the child.

Decree of Termination or Removal

A decree terminating the parent-child relationship or removing the disabilities of minority divests the parent and the child of all legal rights, privileges, duties, and powers with respect to each other, except that the child retains the right to inherit from and through the divested parent unless the court rules otherwise. Removal of disabilities of minority will not relieve either party of the duty to take care of the other should one become incompetent. The decree does not affect the *rights of grandparents* reasonable access to the child where one of the child's legal parents is the child's natural parent. The rights of natural grandparents are cut off when the rights of both natural parents have been terminated.

Problems to Consider

6. Think about Susie and Joe and Mary and their children (page 12). Are Susie's children legitimate? Are Mary's? Does Joe have the rights and duties of a parent in regard to Mary's children? To Susie's? Is he legally obligated to support all of the children? Can Mary win a suit to terminate Joe's parental rights to her children? Can Susie? Would either one want to?
7. Brian and Eloise were divorced. Eloise wanted to go to law school and she agreed that their son, Jimmy, should live with his father. Brian was named managing conservator. Eloise was named possessory conservator and the decree states that she is allowed to see Jimmy and to have him visit her at times that are mutually convenient to Brian and Eloise. Three years later Eloise graduated from law school and got a job. Brian was moved to another city in Texas and travels a lot. Eloise wants Jimmy to live with her now but Brian says no. What can Eloise do?

5

Domestic violence

A new division was added to the *Texas Family Code* in 1979, "Title 4. Protection of the Family." It provides for the application for, and the enforcement of, protective orders for members of a family or household who are being abused by physical force or by the threat of physical force by another member of the household. The purpose is, of course, to reduce the incidence of family violence and to protect the victims. The advocates of the legislation, led by the Texas Council on Family Violence and the Gulf Coast Legal Foundation, were seeking the establishment and funding of shelters for the victims as well as protective orders. They believe that the best way to solve the problem of domestic violence is to provide a separation, by time and distance, of the victims and the perpetrators while the underlying causes are being worked on. However, the legislature has not provided for shelters at the time of this writing.

Before the enactment of Title 4, the only avenues of relief for a victim of domestic violence were for the injured or frightened party to bring charges of assault in a criminal court or, in the case of a spouse, to file suit for divorce and then ask for protective orders. The aggrieved parties are often reluctant to do either. Many abused wives don't want a divorce; they just want their husbands to stop hitting them and the kids. Frequently, a member of a household doesn't want to brand another member of the household as a criminal. Bringing charges often makes the situation worse, because the district attorney will rarely prosecute such a case due to the difficulty of getting sufficient evidence. Police officers are very reluctant to intervene in a family quarrel. More police officers are killed answering calls of domestic violence than in any other kind of police duty. If charges are brought, whether or not the case is prosecuted and the aggressor convicted, the perpetrator of the violence will likely be more angry and violent when he or she gets home again.

A protective order under Title 4 may prohibit a person:

- From committing family violence
- From communicating with a specified member of the family or household
- From taking away a child member of the family
- From going to or near the place where the endangered person may be
- From disposing of property owned or leased by the family, except in the ordinary course of business

It may:

- Grant to a person exclusive use and possession of a residence or other specified property
- Provide for a person's possession of and access to a child

- Require support payments for a spouse and children
- Require one or more persons to counsel with someone qualified to provide psychological or social guidance
- Prohibit or require specific acts necessary or appropriate to prevent or reduce the likelihood of family violence

A temporary protective order for 20 days may be obtained without the presence of the aggressor (ex parte), and may be extended for additional 20-day periods on the request of an applicant or on the court's initiative. A person violating such an order may be punished for contempt with a fine of up to $500 or up to six months in jail, or both.

If the accused person appears in court and loses the case, the protective orders are not considered temporary and they may be issued for a period of one year. Anyone violating these orders may be punished for contempt as described above, and also may be punished for a criminal offense with a fine of up to $2000 and/or up to one year in jail.

A copy of the orders will be sent to the chief of police of the city where the applicant resides or to the sheriff of the county if the applicant doesn't live in a city.

This legislation is so new that not many people know about it or are convinced that it is useful. Without a safe place to go until protective orders go into effect and the roots of the problem can be attended to, victims may still be afraid to take action. It does offer a remedy to members of a household who haven't previously had the right that a spouse has had—to file for a divorce and then get protective orders. Under *Title 4, any* member of a household who is being victimized by another member of the household is now eligible to seek protective orders. This could be of benefit, for example, to elderly persons who are being abused by their grown children or grandchildren. Only time will tell if these protective orders can be used to good effect.

Problems to Consider

8. Almost every Friday, Kenneth comes home drunk and beats up Frieda. He also slams the children around but so far has not done any apparent permanent damage to them. Frieda dropped out of high school to marry Kenneth and they moved to Texas last year, so Frieda does not have any family or close friends in town. Frieda says that when Kenneth is sober he is pretty nice to her and the children; but she is afraid that one of these Fridays he will hurt her or the children really bad. She says that she loves him and doesn't want to leave him. She doesn't know how can she find a place to live or how can she pay the rent and buy groceries. Anyhow, he has threatened to kill her if she tries to leave. What can Frieda do?
9. Harold, 45 years old, has been out of work for some time. He has moved in with his parents who are both over seventy years old and not in the best of health. Harold forces his parents to sign over their Social Security checks to him. Once, when his father protested, Harold beat his father until he was unconscious; now neither of his parents dares to refuse him. What can Harold's parents do?

Postlude: And now, what?

In 1963, Hermine Tobolowsky, a leading equal rights' advocate, said, "We have repeatedly stated that it is our objective that every law in the state of Texas shall apply in exactly the same manner to women as it does to men." Has that objective been reached?

Women in Texas now have the power to control their own earnings, to manage their own property, to get credit in their own names, to open charge accounts, to finance automobiles, to buy or sell real estate, to get a bank loan. They can make contracts and run their businesses. They can be officers and directors in a corporation.

Women in Texas have equal access to any state-financed or sponsored educational institution. They can enter veterinary school, law school, medical school, engineering school, or any other kind of school on the same basis as men. Equal access to public education makes it possible to qualify for admittance to the specialized higher educational institutions or to qualify for ever-increasing opportunities in the job market. Job-training programs financed or sponsored by the government are open to women on the same basis as to men. Labor legislation that provides for, among other things, minimum wages, safe working conditions, unemployment insurance, sick leave, retirement benefits, applies equally to women as to men.

Women can no longer be prosecuted for actions which are not criminal if performed by men. Crimes are sex neutral except for rape and here married women are still treated differently from single women; a man may rape his wife legally in Texas. The *Texas Penal Code* says, "A person commits an offense if he has sexual intercouse with a female without the female's consent." Sexual intercourse is defined as "any penetration of the female sex organ by the male sex organ." There are those who believe that rape should be redefined as "the penetration of the sex organ of any female by any person without the female's consent." That would include assaults by males or females using hands, bottles, pipes, corncobs, or whatever.

Mothers as well as fathers now have the authority in Texas to decide what religious and moral training the children shall have, the authority to consent to medical treatment, to decide where the children shall live and where they shall go to school.

What the laws of Texas do not do is to regulate the private lives of men and women in their voluntary relationships with one another. Men may open doors

for women. Men may fix flat tires for women. Men can give flowers and gifts to women. And, vice versa. There have never been laws that said that any of these things had to be done, or that they could not be done. There are no laws of the state mandating or forbidding love or courtesy or thoughtfulness or kindness. Parents may decide between themselves who shall discipline the children and how; they can agree on the kind of religious training the children will have; they can agree that one or the other parent will make the decisions about where they live and where the children go to school. Spouses may make whatever arrangements they want about handling the family finances. The law only enters the picture when there is a dispute or controversy that cannot be resolved by the persons involved. Then justice calls for a decision by a court of law made after consideration of the rights of all the parties and the best interest of any children involved. Now the rights of women, even married women, are the same as the rights of men.

Texas women are among the world's most fortunate women. They are no longer classed with "criminals, idiots, and lunatics." Texas women are now whole, competent, adult persons—full citizens under the law. What they need now is knowledge of their rights, the courage and will to exercise them, and the strength to keep and protect them. □

(A companion publication, *Exercising Your Legal Rights*, is to be published in 1982)

EXERCISING your LEGAL RIGHTS

League of Women Voters of Texas Education Fund

EXERCISING *your* LEGAL RIGHTS

League of Women Voters of Texas Education Fund

Researched and written by Lavora Spradlin Arizaga

Order from League of Women Voters of Texas
1212 Guadalupe Street, Suite 109
Austin, Texas 78701
Price $2.00 per copy plus postage

Contents

1

Your legal rights

Since 1972 Women in Texas have been guaranteed equality under the law by the Texas Constitution. Article I, Section 3a states, *"Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin."* There are also many federal and state statutes prohibiting such denial or abridgement, some of which have been in force much longer.

What does "equality under the law" really mean? It means that all those rights or privileges or duties previously bestowed or imposed *by law* on white Protestant men are now also bestowed or imposed on men *and* women of any color, race, religion, or national origin. It means that women can own and manage their own property in the same way that men can. Women can buy, sell, mortgage, get credit, open bank accounts, establish trusts, make contracts, or make wills on exactly the same basis as men can. It means that educational and vocational opportunities that are governed or financed by any governmental institution or agency are open to women on the same basis as to men. It means that the rights and obligations of mothers to and for their children are the same as those of fathers. It means that in a divorce community property (that property earned or accumulated during the marriage) will be divided on the basis of what is just and equitable, considering the needs of the spouses and the children of the marriage; and that custody and support of the children will be determined by the needs of the children and the capabilities and resources of each parent regardless of sex. It means that in opportunities for employment and advancement, women are entitled to the same consideration and the same benefits as men.

Now you know what the law says and what the law means. Why is it then that many Texas women don't yet *feel* equal? Why are some women hesitant to seek certain kinds of employment? Why are there still so few women in top executive positions? Why are women still paid less than men? Why is it that many women seem to be running a race knee-deep in water with an opponent running on firm ground?

There are two major reasons—a lack of knowledge of the law, and traditional attitudes toward women held by both men and women.

2

On your own

Knowledge of the law

Women need to know the law—not only the general laws of equal rights but also the specific laws and regulations dealing with the particular issue at hand. Before you apply for a job, find out what the job description is and what qualifications are required. Be sure that you have those qualifications. Then if you are denied the job and you suspect it is because of your sex or age (or any of the proscribed categories) you may be able to do something about it.

Before you apply for a loan, find out what the requirements are for qualifying for such a loan and be sure that you can meet those requirements.

Before you buy or sell property, look at other property in the area. Talk to various realtors about property values, about what they can do for you, and about their fees and commissions.

Before you sign a contract of any kind, whether it is to employ a realtor, to get a job, to divide property in a divorce, to buy a house, or whatever, read the contract carefully and make sure that you understand all the provisions of the contract and that you agree to them.

Contracts

There is no such thing as a standard contract. A contract is whatever the parties have agreed to. Certain kinds of contracts are required by law to be in writing but, in many instances, oral contracts can be legally binding. Oral contracts may be difficult to prove should there be a dispute, so it is safer to have a written contract whether or not it is required by law. The key to a binding contract is that all parties have agreed on *what* each is to do when and how.

Certain businesses, groups, or even individuals have printed forms that they use as a basis for their contracts; but a printed form is not Holy Writ. Any part of a contract may be changed if all the parties agree on the changes, as long as any particular provision is not against the law. (There are laws governing the amount of interest that can be charged for some kinds of loans, laws governing some kinds of fees, etc.) There are times that you will have to agree to conditions in a contract that you are not happy about—unusual working conditions, say, because you really want the job, or leaving the draperies in the house because you really want to

sell the house. But the important thing is to be sure that you understand all the provisions of the contract so that you can make an intelligent decision. Don't allow yourself to be pressured into signing anything that you don't understand.

Job rights

Diffulty in getting a job or in dealing with a job-related problem (such as salary, promotion, working conditions, etc.) often can be resolved through discussion with personnel officers or supervisors. You have a right to complain if

- an employer refuses to let you file an application but accepts others;
- a union or employment agency refuses to refer you to a job opening
- a union refuses to accept you into membership
- you are fired or laid off;
- you are passed over for a promotion for which you are qualified;
- you are paid less than others for comparable work;
- you are placed in a segregated seniority line; or
- you are left out of training or apprenticeship programs;

AND *the reason for any of these acts is your sex, race, color, religion, national origin, age, or, in some instances, your handicap.*

The major laws prohibiting discrimination are the following:

(1) **Title VII of the Civil Rights Act of 1964 as amended in 1972** covers most employers of 15 or more employees, public and private employment agencies, labor unions with 15 or more employees, and joint labor-management committees for apprenticeship and training.

(2) **Public Law 95-555 enacted in 1978** banned discrimination based on pregnancy. The law now requires that women affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment-related purposes, including receipt of benefits under fringe-benefit programs, as other persons similar in their ability or inability to work.

(3) **The Age Discrimination in Employment Act of 1967 as amended in 1978** applies to all public employers, private employers of more than 20 employees, certain employment agencies, and labor unions. This Act prohibits discrimination against persons aged 40 to 70 in any area of employment on account of age.

(4) **The Vocational Rehabilitation Act of 1973** prohibits discrimination against handicapped persons by federal contractors or subcontractors.

(5) **Executive Orders 11246, 11141, and 11478** prohibit discrimination in federal government employment, by federal contractors or subcontractors, and in federally assisted construction contracts.

(6) **Texas Law 6252-16** (Vernon's Annotated Civil Statutes) prohibits discriminatory actions by state or local government officers or employees on the basis of race, religion, color, national origin, or sex.

Financial affairs

A single woman usually knows her financial status. A married woman whose husband is the sole wage-earner and manager of the household finances frequently does not. All property earned or accumulated during the marriage is community property, except for gifts and inheritances, and unless there is a written agreement making income from *separate* property *separate*. Every woman should know what the family income is, and where the savings and checking accounts are. She should know how to balance a checkbook, how to open a bank account, and how to compare various financial services paying interest. She should know the value of the house and any other real estate belonging to the family. She should know the amount of mortgage payments and taxes, the balance of the mortgage, and the amounts of other monthly payments such as utility bills, doctor and dentist bills, clothing, groceries, school fees, and books and supplies. She should know if there are any certificates of deposit, stocks, bonds, mutual funds, insurance policies, or pension plans, and where they are located. She should know the value of the household furnishings, gold, silver, paintings, art objects, boats, and cars.

Attitudes

Some women have been brought up in households in which everyone deferred to the men and women were held in little or no esteem. Such women, regardless of their intelligence, talents, or capabilities, find it difficult to feel (and it is *feeling* rather than *belief*) that they are entitled to respect and consideration. Other women, though apparently cherished and adored, have been treated as decorative objects, and have been dependent on their looks or charming ways to gain recognition.

People who have grown up in such families frequently continue to see women as dependent creatures whose only purpose is to attend to the physical and emotional needs of men while being supported and directed by men. Even when these men and women know that they are equal under the law, feelings and attitudes developed over a lifetime are difficult, if not impossible, to overcome.

Asserting your rights

Knowledge of your rights is the first step to achieving equal status. Assertion of your rights is the next step. Assertiveness is not belligerency, not rudeness (a great fear of the dependent woman). Assertiveness is taking action to resolve a problem with the assumption that it will be resolved fairly. Assertiveness is walking confidently, with your head held high, to apply for a job, to take out a loan, to return a defective applicance, to correct an incorrect billing, to ask for a raise, to resolve a dispute with a contractor—to make your point, whatever it may be. If you don't feel that

confidence, fake it! Practice walking briskly, introducing yourself, shaking hands firmly. Practice what you want to say on your family or friends or in front of the mirror. Be prepared! Have with you all documents that are pertinent to the problem—receipts, letters, financial statements, applications, recommendations, transcripts. Have with you a copy of the rules and regulations that govern the procedure at hand. If those on the other side of the dispute are not following the law or their rules or regulations, point that out firmly and politely.

Here is an example of how research and persistence can get results. The County Appraisal district, in its first year of operation, reappraised all property in the county at 100% of market value. When Jane, a resident of a small town completely surrounded by a larger city, received the new figure on which all future tax assessments would be based, she realized that the amount was at least 40% higher than the value of comparable properties in her neighborhood, according to recent sales figures. Before the deadline for formal protest, Jane visited the tax office in her town to get accurate reappraisal figures for all the properties on her block. She also obtained square footages for the houses. After calculating the square foot value of these houses plus the land appraisals, she realized that, although all land values on her block were the same, there was a wide variation in the square footage appraisal values. After consulting her neighbors, she visited areas of comparable houses in the neighboring city and noted addresses of houses similar in size to her own. After a visit to the County Appraisal Office to consult the voluminous computer printouts for values of the houses she had selected in the larger city, Jane realized that her house was valued at almost 50% more than were those in the city. Jane filed a formal protest and, before the deadline, requested an appointment with the Equalization Board. Between the time of the protest and the appointment with the board she received an offer of a small reduction from a member of the appraisal district staff. Despite considerable pressure from the staff, Jane rejected the offer as being inadequate and appeared before the board. After she described the steps she had taken to document the inequities and made clear that she considered the land value to be fair and the house value to be the point at issue, the board granted her request and lowered her appraisal to approximately the level of those in the city and closer to actual market value in her neighborhood. Jane's neighbors who followed her lead also received satisfactory reductions.

Always try to resolve the problem at the lowest level. Start with phone calls and letters. Assume the people you are dealing with also want to resolve the problem quickly and easily. Again, be polite but firm. Explain what has happened and what you want done about it. This attitude can work wonders, but it doesn't *always* work. If you don't get the results you want on the first try, don't stop there. Ask to talk to the supervisor; if that doesn't get results, you may need to work your way up the hierarchy, but don't waste time. You may need to go directly to the top, because in some

problems there is a limit on the time in which one may file a complaint with the appropriate authorities. Some civil suits have a four-year limitation on initiating legal action (two is more common) but a complaint about discrimination in employment under Title VII of the Civil Rights Act must be filed with the Equal Employment Opportunity Commission (EEOC) within 180 days of the last discriminatory act. EEOC may attempt to conciliate the charge prior to investigation. If this fails, EEOC will hold a fact-finding conference and issue a determination concerning the merits of the charge. If EEOC fails to issue a determination within 180 days of the filing of the charge, you may request a Right-to-Sue Letter. After issuance of the Right-to-Sue Letter, you have 90 days in which to file suite in a court of law. Failure to comply with these procedural requirements will result in dismissal of a Title VII complaint. The time limit is shorter for age-discrimination suits; there are no administrative prerequisites for filing a suit under the Equal Pay Act.

If, like the folks in Kansas City, "you've gone about as fur as you kin go" through personal efforts and you still have not gotten results, what do you do? Are there administrative procedures that you must follow before you can file in a court of law (as in the discrimination cases described above)? Are there administrative procedures that are optional? Are mediation services available or appropriate? (Both parties must agree to mediation.) Is your claim one that can be filed by you yourself in a justice of the peace court? J.P. courts handle Class C misdemeanors (criminal cases that are punishable by a fine not exceeding $200) and civil cases where the damages do not exceed $10,000.

If these approaches are not available or suitable, or if you cannot decide which, if any, to use, it is time to consult a lawyer.

3

With professional help

Choosing a lawyer

The ideal way to choose a lawyer is to choose one whom you already know and trust and who regularly deals with the kind of problem you have. But most people are not in a position to do this. The next best way is to get recommendations from people whose judgment you trust. Friends who have had problems similar to yours, and who were satisfied with the performance of their lawyers, are an excellent source. Lawyers and judges whom you know can suggest attorneys who handle your type of case. Your minister, doctor, or C.P.A. may be able to recommend some who, if your problem is not in their areas of expertise, can point you in the right direction. Other sources are the Lawyer Referral Service of your city or county bar association, the Lawyer Referral Service of the State Bar of Texas, P.O. Box 12387, Austin, TX, 78711, or, as a last resort, the Martindale-Hubbell Law Directory in your local library. Of course, you can look in the Yellow Pages of your telephone directory (probably the worst way to find an attorney!).

When you have a list of lawyers who, preferably, have been recommended by someone you trust, move to the next step. Call the one that sounds best for you. Ask if she or he handles your kind of problem. Ask what the fee is for an initial interview. If the answers are satisfactory, make an appointment.

At your first conference with the attorney, state briefly what the problem is and what result you want. Ask what your chances are of winning. Ask how long it should take to reach a conclusion. Ask how much the fee will be, what it covers, and how it is determined. There are some fairly routine procedures for which an attorney may charge a flat fee, but usually there is an hourly charge. A deposit may be required for initial court costs and certain expenses, and a retainer fee for the first ten hours or so. A lot of time will be spent on research, interviewing, and preparing documents before you see any concrete results. An attorney may work on a contingent-fee basis; if you win a money judgment in court or through negotiations, the attorney will be paid a percentage of that amount. If you get nothing, the attorney gets nothing. The percentage for the attorney is negotiable. Often it is one-third of the settlement but it may be as high as 60%. Whether or not the percentage comes before or after expenses are paid is also negotiable. There must be a large amount of money at stake and a very good chance of winning before an attorney will accept a case on a

contingent-fee basis.

Your attorney will need your name and address, home and office phone numbers, and the names, addresses, and phone numbers of all other parties and possible witnesses. You can save time and money if you have that information with you on your first visit. Depending on the type of case, there will be other information needed—previous marriages and divorces, dates and places, names and birth dates of children, etc. If you don't have all the information with you (and one never does) get it to your attorney as quickly as you can. If your write down the facts of your problem, the interview will be more productive. You will be less likely to leave out important information that will require more phone calls and conferences, more time spent, more money owed! Tell your attorney the truth, the whole truth. It can be disastrous for your case if facts unfavorable to you come out at trial for the first time. Unfavorable facts can often be prepared for and their effects minimized if your attorney knows about them well in advance.

If you do not like the lawyer or the advice given at the initial interview, do not retain that person. Go home and start the process over again. When you retain an attorney she or he will be working for you. It is your case. It is your goals that are to be sought. Your attorney will advise you about the law and its requirements, the proper procedures, and how you can help. Once you have retained an attorney, all negotiations with other parties should be done by your attorney. You should be able to expect that you will be kept informed on the progress of your case and be provided with copies of documents filed and letters sent on your behalf. If you are dissatisfied at any point you can discharge your attorney and retain another. After a suit has been filed, the judge in the case must approve a substitution of attorney.

Progress of a suit

There are reams of paper filed in any law suit. All of them become public record for the whole world to see (except for certain records in adoption proceedings and juvenile cases). But a law suit is not just a paper battle. Usually the applicant, petitioner, or plaintiff will have to testify under oath in open court as to the truth of the statements made in the documents, and must be prepared to answer questions from the judge and the attorneys of any other parties to the suit. In a contested case, all relevant details will be brought out in court and made a part of the public record whether or not they were a part of the initial pleadings. You need to be aware of this so that you won't be surprised when you are obligated to answer all kinds of embarrassing questions. This is why, too, you must tell your attorney all the facts so your case can be prepared in a way to minimize the effect of possibly damaging testimony given at the trial. Sometimes certain testimony is inadmissible as evidence, and with foreknowledge your attorney can keep

it out of the hearing of the jury.

After each document or group of documents is filed, there will be a waiting period for the other party to receive notification of that filing and to respond. The response may be a general denial, specific denials of part or all of your allegations and requests, or a counterclaim that you will have to respond to within a certain amount of time. The time allowed is usually twenty to thirty days from the receipt of the documents. The opposing party may ask for more time or may ask that the case be heard in another county. Either party may file motions for discovery of information necessary to prosecute or defend the case. The other party may file objections to these motions. There must be hearings on motions for orders that force someone to do something. The date of a hearing may be agreed upon by the parties, or may be set by the petitioner who must prove that the respondent has received adequate notice of the hearing. If the respondent does not have sufficient time to prepare his response, he may file a request for a "continuance" which is a postponement to a later date. Continuances are also granted when some kind of emergency befalls one of the parties or attorneys, or, sometimes, an important witness.

Temporary orders are often sought to prevent one party from harassing or harming another, to prevent the removal or dissipation of property, to halt some action (sometimes construction of some sort), or to provide for the care or support of one or some of the parties. Temporary restraining orders can usually be obtained for up to ten days without a hearing. For orders lasting longer, the other party must have an opportunity to be heard.

Much time elapses before each step of a law suit for notification of each party, information gathering, location of witnesses, and preparation of necessary documents. During this time the attorneys are, or should be, negotiating minor as well as major points in dispute. They are trying to work out a settlement that will satisfy all parties.

It may take from three to five years to get a civil case to trial. Divorce suits rarely take less than six months even when both parties want the divorce and think that they agree on the division of the property and the custody and support of the children. Many cases are settled out of court, sometimes on the morning of the trial. But if you are determined to have your day in court, you will eventually get there; and you will have a jury trial if either party has made application and paid a small fee. Otherwise the judge will serve as the fact finder as well as the interpreter of the law.

Winning or losing

If you win your case **in a civil suit for money damages**, you will receive a judgment against the other party or parties for the amount of money awarded, and perhaps attorney's fees and court costs. HURRAH! Everything is over and all right now, right?

Not necessarily! You can't put a judgment in the bank. You can't pay the plumber with a judgment. You still have to collect the money. If the person ordered to pay doesn't do so, your attorney will have to get a writ of execution ordering the sheriff to pick up property of the judgment debtor. But you can't get a writ of execution until the time has expired for the opposing parties to ask for a new trial or to file an appeal. And if the request for a new trial is granted or if the appeal is filed, you must await the results of those hearings before the judgment, if affirmed, can be enforced.

If you lose in the trial court, you can ask for a new trial and/or appeal your case to a higher court if you can show that the law was not properly interpreted or followed. Either way, much more time and money will be spent before a final resolution.

In the divorce court

A simple divorce

Billy and Amy have been married for two years. They both have jobs. They have no children and do not own a house or other real property. They decide they want to get a divorce. Bill moves to another apartment, taking his clothes and other personal possessions, the stereo, and the TV. Amy keeps all the rest of the furniture. Amy retains an attorney, who prepares the original petition for divorce and files it. The attorney prepares a waiver of citation for Bill. Amy takes a copy of the petition and the waiver of citation to Bill. The petition asks for the divorce and that each spouse shall keep the property in his or her possession and that Amy's name be changed back to her maiden name. Bill signs the waiver of citation before a notary. It shows that he has seen the petition and that he agrees that it can be heard by the court without further notice to him. The waiver is filed, and sixty days after the filing of the original petition, Amy goes to court with her attorney and gives evidence before the judge. The judge signs the divorce decree prepared by Amy's attorney and it's all over. This is the simplest divorce possible.

"Pro se" divorce

Some people try to get their own divorce (a "Pro Se" divorce); but many judges refuse to hear such cases because all the papers have to be technically complete and correct, and it is rare that a non-lawyer will have the expertise to prepare them. The judges do not have the time or the inclination to serve as counsel for the parties.

Complications

Questions of child custody, child support, and division of property can cause long delays while the parties try to reach agreement. If either spouse is determined not to be divorced, he or she can create many obstacles

which can only be overcome with time and perseverance. Sometimes the choices that must eventually be made to reach agreement are so difficult that the initiating party gives up.

Examples to consider

1. Ruth and Bob worked out an agreement about the division of their property and the custody and support of their daughters. They got their divorce and everything worked fairly well for the first three years. Then Bob moved to another state. He couldn't have the girls on the weekends now so he wanted them on school vacations and for longer periods during the summer. Transportation costs became a significant factor. Bob married again; his new wife had children from a previous marriage. Costs of taking care of the daughters increased; Ruth found it hard to make ends meet. She was paying more than half the cost of the care of the children and her income was less than half of Bob's. She asked Bob for more child support. He refused. She filed a petition to modify the amount of child support. In response, he denied that he should pay more child support and filed a request to be made managing conservator. The hearing date was set, then postponed. Ruth offered to withdraw her petition if Bob would withdraw his. Bob decided it would be cheaper to have his daughters with him and that it was injurious to the girls to stay with their mother and her friend. He refused to withdraw his claim.

   How will it turn out? Will she keep her daughters and get more money? Will she lose custody and possibly have to pay child support? Will she keep custody and get no change in child support payments? It all depends on what evidence is presented, how it is presented, and how the judge or jury responds to it.

2. Betty Sue has been wanting a divorce for more than ten years. Her husband is a very influential citizen. They have two children. She says that he is a brilliant man, a good provider, and a good father; but living with him is driving her crazy. He won't talk to her. When forced to say something to her, he "cuts her down and makes her feel like nothing." She has pleaded with him to go to a marriage counselor but he won't discuss it. She went to a marriage counselor. She went to her minister. She went to attorneys. Every time she went to an attorney, her husband knew about it immediately and berated her for being so foolish. She had a nervous breakdown, spent some time in the hospital, and has been under the care of a psychiatrist for a number of years. She is afraid that if she doesn't get away from her husband, she will get so sick that she will be "put away" in a mental institution permanently. Twice she has actually filed for divorce. The last time she did so, her husband filed an application for her involuntary hospitalization in a psychiatric hospital and got an order of protective custody. That order would have kept her in the hospital until a hearing on her need for involuntary hospitalization could be held. If she had signed a waiver saying she did not want to be at the hear-

ing, it could have been held without her and she could have been involuntarily hospitalized for up to 90 days. After 60 days of involuntary hospitalization a petition could have been filed for *indefinite* hospitalization. Betty Sue's fears that she was going to be locked up permanently had seemed about to be realized. She did not sign the waiver but she did agree to stay in the hospital voluntarily until her doctor released her, on condition that the application for involuntary hospitalization be withdrawn. It was withdrawn and Betty Sue instructed her attorney not to move forward with the divorce suit.

If you are the petitioner in a divorce suit you *can* win your divorce, *if you persist.* You *may not* win the orders you want regarding property settlement and child custody and support; but any person who really wants a divorce in Texas can get one.

Special problems of divorce arise in the *enforcement* of the property settlement, the child-custody arrangements, and, most of all, the child-support orders. Non-compliance with visitation orders, orders to deliver property, or to execute documents transferring property can be enforced by contempt only. You have to file a motion in the appropriate court and request a hearing. Then the papers, which will order the disobedient party also to appear at the hearing, must be served personally. If you find the disobedient parent and get the papers served, evidence may be presented by all parties involved; and witnesses may be called just as in any other hearing. The court must find that the parent who was ordered to perform certain acts (return the child, pay a certain amount) was able to do them, and has not done them. For failure to pay child support, the court can find a parent in contempt of court; and the parent may be sent to jail until the order is complied with. If the court is assured that the delinquent child-support payments will be paid along with prompt current payments, the delinquent parent may be put on probation for up to two years. Child-support arrearages may also be reduced to judgment and collected as any other judgment. But you have to catch the delinquent first.

In the probate court

Applications, petitions, and motions regarding probate, administrations, guardianships, and mental illness matters are filed with the county clerk and heard in the county court. In those counties where there is no statutory probate court or county court at law exercising the jurisdiction of a probate court, contested matters *may* be transferred by the judge of the county court to the district court on his own motion and *must* be transferred on the motion of any party.

When a person dies, with or without a will, the transfer of that person's property must be done through the probate court. When there is some kind of business transaction involving the estate of a child or a mentally

incompetent person, a guardian of the estate of that child or incompetent person must be appointed by the probate court.

Examples to consider

1. When Percy died he left a **self-proved will**—a will transferring all his property, signed before two witnesses, and accompanied by a properly executed **self-proving affidavit** which he and the two witnesses had signed. In the will he named an **independent executor** who proceeded to file the will for probate. After a court hearing the executor received letters testamentary (authorization to manage the estate). An inventory and list of claims of the estate were filed, then the executor paid the bills, paid the taxes, and distributed the property with no further court action.

2. Louise and George didn't expect George to die of a heart attack at the age of 36. George hadn't made a will. He didn't think it was necessary. He didn't have anything to leave. They owned a house ($6,000 equity), two old cars, some furniture, and a joint bank account with about $2,000 in it. After the funeral Louise filed an **Affidavit of Distributees (Small Estates With Judges Order or Approval)** with the county clerk. It was posted on the court house door for ten days and then the judge signed it and it was filed in the Small Estates Records of the county. This procedure is available where the assets of the estate, excluding homestead and exempt property, do not exceed $50,000. It is sufficient to transfer ownership from the person who died to those persons entitled to it, in this case to Louise and their eight-year old daughter, Elsie. *But*, George had an insurance policy for $25,000. The beneficiaries were Louise and Elsie. The insurance company sent Louise a check for $12,500 but couldn't send the other half until a legal guardian had been appointed for Elsie. So Louise had to retain an attorney, file **an application for guardianship** in the county court, post bond, and agree to make an annual accounting to this court until Elsie reaches the age of eighteen or until the money is used up, whichever comes first. Then she will have to submit a final accounting to close the guardianship. This could have been avoided if George had named only his wife as beneficiary on his insurance policy. But without a will, if Louise wants to sell the house before Elsie is eighteen or if there were bank accounts or shares of stocks in George's name only, she still would have to take out a guardianship for Elsie. And if the value of the estate exceeded $50,000 she would also have to apply for letters of administration, appear in court to prove that she was entitled to them, and be under the orders of the court until the administration of the estate is closed.

   If George had left a self-proving will naming Louise as his independent executrix and leaving her all the property, she would only have had to file the will for probate and to appear at one court hearing to get authority to windup the affairs of the estate without further hearings or supervision.

3. Ruth was divorced, with two children, aged six and two. She

4

Summing up

There are dozens, perhaps hundreds, of different scenarios of what can happen in probate court or in divorce court or in other civil courts. You can never predict the outcome. Once a suit is filed, other interested parties may bring up all kinds of related but unexpected issues to refute your claims and establish their own. So, *think ahead*, arrange your affairs in such a way that you will have as little court action as possible. Try every avenue to resolve your problems out of court. Going to court is no picnic. But if, after you have weighed the possible advantages and disadvantages of going to court and after you have done everything you can to resolve your problem out of court, you take that recourse, choose your attorney carefully and forge ahead.

Go forward with the knowledge that you have equal access to the justice system of the United States. You are guaranteed the equal protection of the laws of Texas and of the United States. You are entitled to respect and consideration, and, most of all, you are entitled to justice.

U.S. National Security: Facts & Assumptions

League of Women Voters Education Fund

"What is the U.S. role in the world? "How much should the U.S. spend for defense?"

League members posed these questions to fellow citizens in their communities. A sampling of the responses:

"We are the protector of the West."

"The United States should not consider itself the world's policeman."

"We must honor our alliances and work with our friends. We can't just put ourselves out there all alone."

"What is the Soviet threat? I don't really know what the Russian people are thinking, but I don't feel threatened by the Russian people."

"We need to spend enough dollars on defense to do the job, even if that means higher spending."

"Spend more on social programs, less on the military."

"I don't know enough; I leave those decisions to the experts."

"We should bring Third World leaders to our country to teach them to be leaders."

A report of a League of Women Voters Education Fund Conference held in cooperation with the Johnson Foundation and with the support of the Ford Foundation and the Rockefeller Foundation.
June 9–11, 1983

This account was written by Deborah Goldman, conference coordinator.

Introduction

Two centuries ago, Thomas Jefferson wrote from the rural calm of his Monticello home that the greatest repository of democracy is the public. Jefferson penned these words at a time when the U.S. population was less than 4 million, the weapons of war consisted of the musket and cannon, and the United States' most powerful potential adversary was more than 4,000 miles away, several weeks' journey across the sea.

What does the Jeffersonian ideal mean in a nuclear age—when oceans no longer protect the United States from intercontinental nuclear missiles that can cross the seas in less than 30 minutes? How do 235 million Americans get involved in setting national security policies when decisions can—quite literally—determine the fate of the earth? What are the facts and assumptions a citizen must consider in evaluating U.S. military policy and defense spending priorities in the 1980s?

To consider these and other questions, 50 League of Women Voters leaders from 49 states and the District of Columbia met in June, 1983 at Wingspread, the conference center of the Johnson Foundation, in Racine, Wisconsin for a League of Women Voters Education Fund conference on "U.S. National Security: Facts and Assumptions." The two-day meeting was held in cooperation with the Johnson Foundation and with the support of the Ford Foundation and the Rockefeller Foundation. The League leaders were joined by government officials, academic specialists and independent analysts in discussing issues of U.S. foreign and military policy, defense spending and arms control. Ever-present at the conference was the admonition of Thomas Jefferson that in a democracy the public must be involved in setting national policy. The search for a way to encourage that involvement was on.

The conference was only a beginning, however, a first step in preparing state League leaders to conduct citizen education efforts throughout the United States on these critical issues. Before coming to Wingspread, participants had conducted at least four community interviews to gain insight into public attitudes on the U.S. role in the world, on our military commitments abroad and on defense spending (see "The Citizen's Voice: How Much for Defense?"). These interviews played an important role in the conference as participants related "the experts' " briefings to issues of concern back home.

The Framework: The Citizen's Role

In recent years, many Americans have shown increased interest in national security affairs. Polls indicate, for example, that Ronald Reagan's tough defense posture was a key factor in his 1980 presidential victory. Two years later, more than one-half million Americans rallied in New York in support of the UN Second Special Session on Disarmament. And the following spring, the U.S. Catholic Bishops issued their pastoral letter questioning the morality of nuclear weapons.

The desire to get involved is real, but the question before the public remains: How can we as a nation move these issues from the rarified atmosphere of the National Security Council to the living rooms and community halls of the republic?

Larry Smith, a former congressional staff member with 14 years of experience in military affairs, played a unique role at Wingspread, as he helped participants develop an approach to increase citizen awareness about national security issues. Smith set the stage for the conference by positing that citizens have equal standing with the President, senators and generals when it comes to answering five basic questions:

- What is the U.S. *strategic purpose*?
- What are the untestable *premises* of U.S. national security policy?
- What are the *unknown* facts?
- What are the *value judgments* on which policies are based?
- What is the *interrelationship* between the above judgments and other factors?

"The answers to these questions," said Smith, "cannot be demonstrated. We need to make explicit to our fellow citizens that these five questions are in many ways most central to the national security debate. If we can identify them and separate them from issues of fact, we can then relegitimize the proper participatory role of the citizen." Smith challenged the League to help the public answer these citizen questions.

The Nature of National Security

One of the most basic judgments a citizen must make in this area concerns the very nature of national security. What factors "secure" a nation? A healthy economy? A just social order? A strong national defense? Preeminence in the world? Participants struggled with this concept throughout the conference as they tried to balance military and nonmilitary aspects of national strength.

Professor John Lewis Gaddis of Ohio University helped in this process by providing a historical overview of the past 40 years of U.S. national security policy. He noted that the term "national security" came into vogue after World War II when it appeared that the United States had achieved this elusive goal. With the United States enjoying a monopoly over nuclear weapons and unrivalled economic power, it seemed to many that Americans had indeed achieved both domestic and global security. But within just a few short years this feeling changed to one of peril, as the United States embarked on an international mission to contain communism.

Gaddis noted that postwar U.S. national security policy has successfully kept the country out of war with the other major powers. Despite this overall success, Gaddis described four problem areas in this period:

The inability to distinquish clearly between vital interests and peripheral threats. "What keeps us from paranoia is the discipline of defining interests; of saying to ourselves, this is worth fighting for and this isn't, this threat is dangerous and this isn't."

The failure to establish priorities. "One of the most persistent illusions in American thinking about national security has been the belief that means are unlimited and that one need not, as a consequence, go through the painful and unpleasant business of establishing priorities."

The failure to maintain consistency. "It seems to be a fact in this country that each new Administration's basic approach to national security policy is determined not by a calm, deliberate and objective assessment of interests and threats, but by a desperate determination to do something new, something that will avoid association with the discredited policies of the previous Administration."

The tendency to choose short-term over long-term solutions. "It behooves those who think about these matters to try to anticipate and to monitor closely the results of their policies, lest in attempting to solve short-term problems, they create long-term difficulties further down the line."

After hearing Gaddis outline these weaknesses in U.S. policy, a member of the audience challenged the military basis of U.S. national security policy, questioning whether the use of conflict resolution mechanisms, such as the UN, might not be more productive. Gaddis acknowledged being skeptical of such solutions because "one thing history teaches is that the most stable arrangements in international relations are not those created by design but those that emerge organically. The basic organic system that has done best in keeping the peace has been the balance of power." The world would be better served, according to his view, by fine-tuning this system than by overhauling it altogether.

The U.S. Role in the World

What is the appropriate role for the United States in the world? Should the United States be "number one" and play the world's policeman? What is the U.S. relationship with the other superpower—the Soviet Union? What are key U.S. interests abroad? Should we protect these interests alone or as a member of alliances? Conference participants turned next to consider these questions,which form the basic premises of U.S. foreign and military policy.

As in most discussions of U.S. foreign policy, much attention was focused on one country—the Soviet Union. Throughout the conference, varying analyses of the "Soviet threat" led to different conclusions about U.S. commitments abroad and about defense-spending needs. The three foreign policy experts on this first panel—Condoleezza Rice of Stanford University, Robert Pranger of the American Enterprise Institute, and retired foreign service officer Thomas Hirschfeld—all agreed that for the most part, U.S. foreign policy since World War II has been based on an exaggerated assessment of the danger posed by the Soviet Union.

Condoleezza Rice called the U.S.-Soviet relationship a paradoxical one with both competitive and cooperative aspects and argued that the goal in superpower relations should be "to manage the competitive elements while stimulating the cooperative components." According to Rice, the competitive aspects of U.S.-Soviet relations—different social and economic systems, conflicting ideologies, histories, geopolitics and perceptions of national security—have gotten out of control, with the result that Americans tend to interpret every Soviet gain as an American loss, and vice versa. To counter this dangerous impulse, Rice urged that the United States focus more on the cooperative aspects of relations with the Soviets. Rice contends that sufficient incentives for cooperation exist: both countries face an economic drain caused by large military expenditures; both have recently witnessed the limits of their power in the Third World; both Soviet and U.S. allies in Europe are interested in detente; and both superpowers share a fear of ultimate nuclear annihilation.

How, then, are we to manage U.S.-Soviet relationships? According to Rice, the two superpowers should seek areas of economic cooperation, work towards arms control agreements and recognize that every Third World conflict is not an extension of the superpower rivalry. Americans must recognize that differences will continue to exist and that the United States has many strengths in relation to the Soviets—including strong allies, a sound economy and a vibrant democracy. She cautioned conference participants that unless the United States "finds a way to manage our relationship with the Soviets and to play this more as a positive sum game than a zero sum game, we may actually be in a game that both sides will lose."

Thomas Hirschfeld underscored the value of the alliance system in U.S. foreign relations. The North Atlantic Treaty Organization (NATO), the most important Western alliance, was formed after World War II when the allies concluded that the security of one depended on the security of all. The essence of NATO, Hirschfeld pointed out, is the commitment contained in

Professor William Kaufmann chats between sessions with three League delegates.

Article 5 of the North Atlantic Treaty that an attack against any party is perceived as an attack against all. However, what cements the alliance is not the legal document (which mandates consultation but not military involvement), but the underlying "web of common commitments"—similar political and economic systems, mutually beneficial trade relations, shared histories and a common potential adversary. In this sense, Hirschfeld argued, recent warnings that the NATO alliance is in trouble are exaggerated.

Despite this positive diagnosis, however, Hirschfeld noted six problem areas between the United States and its European allies:

- Disagreement over a Soviet policy, especially between the United States and Germany, where detente is a "national imperative."
- Differences over "division of labor." The United States wants the Europeans to develop contingency plans to increase their forces in Europe in the event that the United States needs to shift forces to the Persian Gulf.
- Economic tensions, most notably the 1982 pipeline conflict and differences today over technology tranfers to the Soviet Union.
- Disagreements over burden sharing. The U.S. wants the Europeans to take on a larger share of the NATO defense while the Europeans argue that they can't afford it and that U.S. cuts might undermine the credibility of a common Western defense.
- Conflicts over the deployment of 572 ground-launched cruise and Pershing II missiles (the "Euromissiles") scheduled to begin in December 1983 (see page 19).
- Debates over NATO military doctrine. Current NATO policy is one of *flexible response*, a strategy that poses a "seamless web" of responses to aggression, moving from use of conventional weapons to theater nuclear weapons to strategic nuclear forces. Current policy leaves open the option of introducing nuclear weapons to a conventional conflict (a policy called "first use"). Recently, several former high-level U.S. officials recommended that NATO adopt a policy of "no first use" of nuclear weapons. Hirschfeld stated that the proposal could become "something the allies will argue about at great length, which will use up all the energy and all the electricity, [but in the end] nothing much will happen except a great deal of steam." Hirschfeld supports the position of General Bernard Rogers (Supreme Allied Commander in Europe) that the better course is to improve NATO conventional forces and thereby raise the nuclear threshold in Europe.

Outside of Europe, Hirschfeld noted, the most significant U.S. ally is Japan, an island nation with which we share common political and economic interests. The 1960 Mutual Security Treaty, which was renewed in 1970, committed both the United States and Japan to consider an attack on one as an attack on the other. Although the Japanese constitution limits Japan to self-defense forces only, Japan currently spends $11.5 billion a year on defense and maintains 400,000 men in uniform. The current Japanese government proposes that Japan take on a greater share of Pacific defense, extending its security perimeter one thousand miles offshore to counter the presence of Soviet submarines. However, opposition to these moves remains strong within Japan.

Though most U.S. rhetoric and strategy have focused on the Soviet Union,

Crisis in the Saudi Oil Field: What Should U.S. Policy Priorities Be?

After listening to the issue experts, League participants turned their attention to their own values, premises and priorities for U.S. foreign and military policy. Since crisis situations force policy choices, conferees were asked to decide what the United States should do in the event revolutionary forces threatened to topple the Saudi Arabian monarchy and disrupt the flow of oil. They were given a hypothetical scenario that described a heightening of Middle East tensions, including increased revolutionary activity against the Saudi regime, destruction of a major Saudi oil field, reports of Soviet troop movements in the Middle East, skyrocketing oil prices, and panic in Europe and Japan. Participants met in small groups to decide how the United States should respond to such a situation.

After lengthy discussions, the small groups arrived at surprisingly similar objectives for U.S. policy in this hypothetical crisis. "Our first priority is to avoid war," was the report from every group. After that, the decision was to "ensure access to oil, but not at any cost." Next in priority was the desire to stabilize Saudi Arabia and the world economy and to maintain good alliance relations. Considered least in importance *in this scenario* was the need to limit Soviet influence in the area.

League participants suggested a variety of strategies to meet these objectives: immediate communication with the Soviets to stabilize the situation; consultation with allies through direct channels and through the United Nations; sharing of oil supplies with Europe and Japan; and energy conservation measures at home. Some participants suggested economic sanctions; a freeze on arms to Saudi Arabia; a boycott of Saudi oil; and intervention to stabilize financial markets. Other groups urged a show of force in concert with our allies; putting the Rapid Deployment Force on alert; and sending the Sixth Fleet to the area. In these ways, conference participants answered the *citizen* questions about U.S. foreign and military policy for this scenario. Participants concluded that such an exercise is a useful tool in helping citizens think through the implications and premises of policy choices. By raising the fundamental question about appropriate U.S. role in the world, citizens can begin to get involved in assessing U.S. national security priorities.

NATO and Japan, Robert Pranger pointed out that most conflicts in the postwar period have occurred in the Third World. Pranger led the group through a brief chronology of these events, highlighting their unpredictable character. "When Truman took office in 1948," Pranger asked, "did he foresee Korea? When Ike took office in 1952, was he thinking about Mossedegh in Iran or Nasser in Egypt? In 1956 was he thinking about Castro in Cuba, Iraq's fall as a monarchy, or Lebanon? When Kennedy entered office in 1960, was the Cuban missile crisis or Vietnam first on his lips in the

Inaugural Address? Was Nixon talking about Jordan's civil war or, for the matter, China? Did Carter foresee in 1976 that his last year in office would be almost totally preoccupied with the Iranian hostage affair and Afghanistan? Was Reagan in 1980 talking much about Lebanon or Central America?"

The United States, Pranger asserted, has no policy to deal with these unpredictable "off-case scenarios," which require a great deal of flexibility. Former President Carter addressed the problem by establishing a Rapid Deployment Force (RDF) composed of existing U.S. troops in Europe and elsewhere. President Reagan has asked for $2.2 billion in funding for the RDF for Fiscal Year (FY) 1984 and has initiated plans to increase its capability. But Pranger asserted that the Rapid Deployment Force exists on paper only; there is no RDF short of military plans to pull U.S. forces from troop commitments elsewhere. Moreover, Pranger cited the body of opinion that many Third World problems—including human rights, terrorism, drug trafficking, access to key resources, economic development—cannot be resolved with military means. In many respects then, these issues pose the greatest challenge to U.S. foreign and military policy.

U.S.-Soviet Strategic Balance: How to Play the Numbers Game

All too often, charts comparing U.S.-Soviet military strength do nothing but add confusion to the national security debate. What, asks the frustrated citizen, do all those numbers mean? Is there superpower parity, as some maintain, or is the Reagan administration correct in its claim that the United States is behind the Soviet Union?

To highlight the problem, League participants viewed two films on the U.S.-Soviet strategic balance. "Countdown for America," produced by the American Security Council, presents evidence that the Soviets have achieved strategic superiority; "How Much is Enough: Decision-Making in the Nuclear Age" by Andrew Stern disputes this premise.

Who is right? They both are—in a way—said discussion leader Larry Smith. Both films draw from the same pool of facts and put forward "correct" information. The difference, however, is in what is emphasized, what is

Christine Carlsten takes notes while Charlotte Glauser analyzes workshop materials.

ignored and how terms are defined. A citizen can learn to make sense of the numbers and charts by reading between the lines to discover the judgments upon which the numbers are based.

Smith further illustrated his point with a closer look at two booklets on the U.S.-Soviet military balance: *Soviet Military Power (1983)*, published by the Defense Department, and *The Other Side of the Story* by Senator Carl Levin (D MI). Smith demonstrated how each source picks facts that are friendly to its arguments and defines terms in ways that support its case (see comparisons, pp. 10, 11, 12).

Smith noted that there are two different ways to approach comparisons of forces. The first is based on the premise that what is most important is *perception of strength*. According to this view, U.S. force needs are determined by the numbers necessary to convince others, especially the USSR, that we are strong. The second is a *functional* approach which first outlines the purposes of U.S. forces and then determines what is necessary to fulfill these purposes. According to Smith, this approach returns the numbers game to the citizen's court because it allows citizens—and organizations such as the League—to refocus attention on the underlying questions: What is the U.S. role in the world? What forces do we need to fulfill that role?

What is the Role of Military Force in U.S. Relations?

An assessment of U.S. force needs begins with an analysis of the uses—and limitations—of military strength. Philip Odeen, a member of the National Security Council during the Nixon administration, outlined four roles for military power in promoting U.S. interests abroad:

Deterrence The primary purpose of the U.S. military, Odeen said, is to deter war, to convince potential adversaries that the price of aggression is too high. A credible deterrent, according to Odeen, is based on maintaining strong and ready conventional and nuclear (strategic) forces. In terms of strategic policy, the United States maintains a triad of land-based missiles (ICBMs), submarine-based missiles (SLBMs) and bombers to confuse and complicate an enemy attack. Since the United States will not fire its missiles first, according to Odeen, it must maintain strategic forces that can withstand a Soviet first strike with such strength that the Soviets would never launch the initial attack. Whatever the strength of our military, however, Odeen emphasized that its deterrent value diminishes as the threat becomes less vital to U.S. interests. (For example, U.S. military strength is more credible in deterring an attack on the homeland than in deterring Soviet invasion of Afghanistan.)

Fighting wars If deterrence fails, the purpose of military forces is to fight and win a war. In wartime, Odeen stressed, leadership, morale, training and supplies are as important as numbers and strength of forces. These factors are often neglected in times of tight budgets, a problem Odeen believes the Reagan administration has addressed by allocating more funds for these "readiness" factors.

Presence Sometimes, Odeen commented, the United States supports

Alton Keel (right) makes his point to conference facilitator Larry Smith and League delegate Sandra Reinecke.

diplomatic measures with a "show of force," such as maneuvers in Central America or the stationing of Marines in Lebanon.

Psychological Military power often gives clout to U.S. foreign policy by promoting a perception of strength. This, too, Odeen noted, has limits, as the painful experience in Vietnam illustrates.

In commenting on Odeen's overview, Lt. General Harry Griffith, director of the Defense Nuclear Agency, emphasized the psychological role of military strength, particularly in relation to the Soviet Union. In contrast to earlier conference speakers, Griffith stressed the competitive aspects of the superpower relationship and the importance of military power in projecting U.S. leadership throughout the world. As a military man, Griffith said his goal is to "promote peace" by deterring all wars, both nuclear and conventional. He warned the group that "conventional warfare has become so destructive that the firebreak between peace and ordinary war is a lot more important than the firebreak between conventional and nuclear war."

With this warning in mind, League participants addressed issues of the 1984 defense budget.

What Military Capability Does the Defense Budget Purchase?

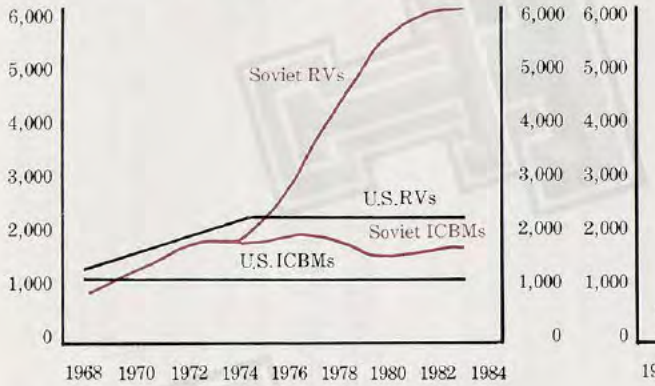
In Congress and in living rooms across the country, there has been intense debate this past year over the question "How much is enough?" League members searched for the premises and judgments underlying various answers as they listened to three analysts—Alton Keel of the Office of Management and Budget (OMB), William Kaufmann of the Massachusetts Institute of Technology (MIT), and Gordon Adams of the Center for Budget and Policy Priorities—clarify issues in the debate. Alton Keel, director of National Security and International Affairs at OMB, based his budget analysis on the premise that "the first responsibility of government should be

continued on p. 13

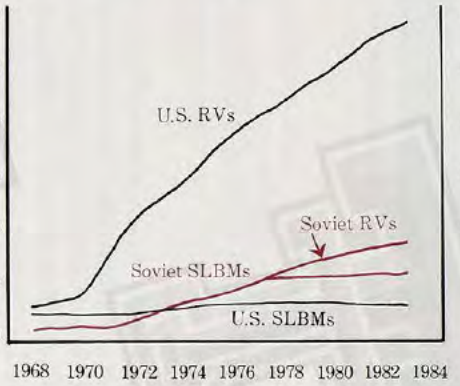
Comparing Warheads

Soviet Military Power

U.S. and Soviet ICBM Launcher and Reentry Vehicle (RV) Deployment 1968–1983

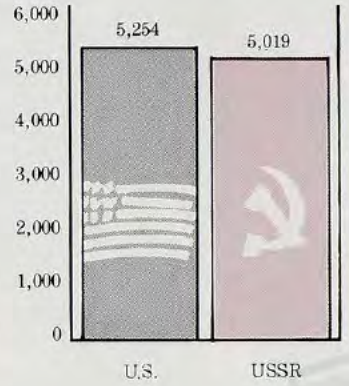


U.S. and Soviet SLBM Launcher and Reentry Vehicle (RV) Deployment 1968–1983



The Other Side of the Story

Warhead Production 1970–1981



Definitions
ICBM: intercontinental ballistic missile or land-based missile
SLBM: submarine-launched ballistic missile
In this chart "launcher" (either ICBM or SLBM) means a missile.
Reentry Vehicle (RV): the part of the missile that reenters the atmosphere and hits the target. In these charts "RV" is the same as "warhead."

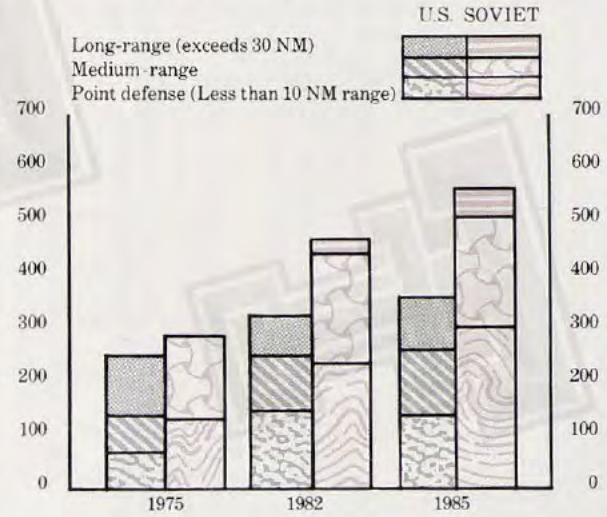
*For this comparison, focus on the "RV" line in *Soviet Military Power*.

Behind the numbers: The difference here is in what is included and what is not. *Soviet Military Power* uses *two* charts to present information on the number of warheads: one for submarine-launched missiles (p. 23) and one for land-based missiles (p. 19). *The Other Side of the Story* combines these in one chart.

Comparing Anti-Aircraft Weapons

Soviet Military Power

Comparative Surface Warship[1] SAM Launchers[2]

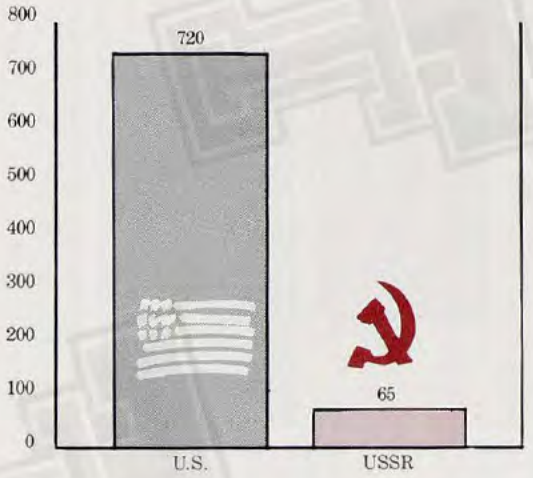


[1] Includes carriers, cruisers, destroyers and frigates.

[2] Counts each arm of launcher.

The Other Side of the Story

Carrier Based Fighter/Attack aircraft



Definitions Surface Warship SAM Launcher: surface to air missiles carried on ships. They shoot at enemy aircraft.
Carrier based fighter/attack aircraft: airplanes launched from aircraft carriers at sea. They engage in aerial dog fights with enemy aircraft.

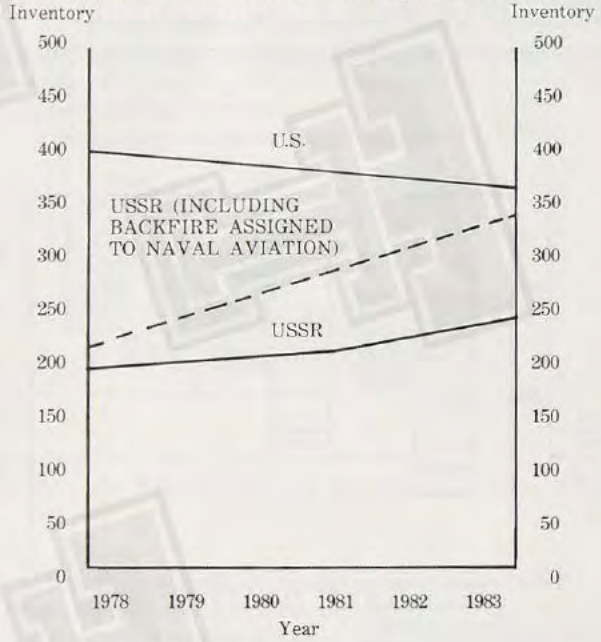
Behind the numbers: These different weapon systems perform the same function. Both SAMs and fighter/attack aircraft shoot down enemy aircraft. SAMs are launched from ships, while fighter/attack aircraft fight in the sky.

Does one need both pieces of information to compare relative military strength?

Comparing Bombers

Soviet Military Power

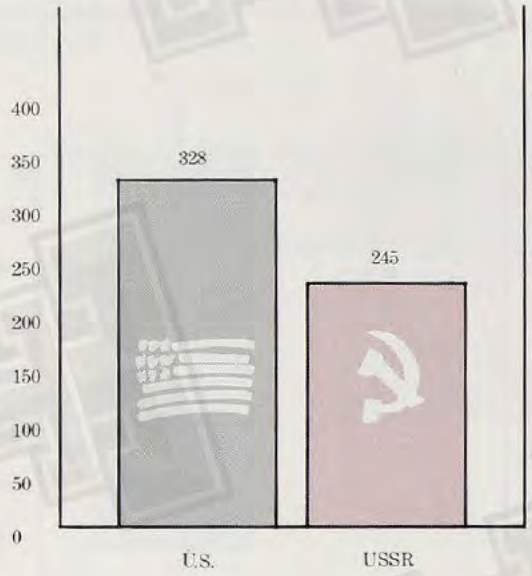
U.S. and USSR Intercontinental-Capable Bombers[1]



[1] U.S. data include B 52, FB 111a; Soviet data include Soviet Air Force BEAR, BISON and BACKFIRE.

The Other Side of the Story

Heavy and Medium Bombers



Behind the numbers: The difference here is one of *judgment*. *Soviet Military Power* counts the Backfire bomber as an intercontinental bomber; *The Other Side of the Story* does not. The Backfire must be refueled to fly from Soviet bases to U.S. targets and return home. Does it qualify as an intercontinental bomber?

continued from p. 9

to protect its citizens from foreign aggression." From Keel's perspective, the threats to U.S. security are serious. He described a decade of decline in U.S. defense spending, paralleled by an unprecedented Soviet military buildup. As one example, Keel noted that between 1970 and 1981, the Soviets invested $500 billion more than the United States in procurement, research and development, and military construction. U.S. defense spending as a percent of gross national product (GNP) declined by three points in the same period.

Keel described President Reagan's move to reorder U.S. budget priorities and to restore military strength as an effort to reduce the threat from the Soviet Union. If accepted by Congress, the President's plan, Keel explained, would increase defense spending over the next five years to approximately 8 percent of GNP (from its 1981 level of 5.5 percent). The bulk of the increases are targeted for investments in strategic systems although the President's defense buildup also targets funds for readiness (military pay, operations and maintenance expenditures, and retirement pay). According to Keel, the Reagan administration already has achieved dramatic improvements in U.S. military capacity in such areas as mission capability of aircraft, sustainability of forces and achievement of naval manpower goals.

After listening to Keel's presentation, a League member from Nebraska posed a concern, raised in her interviews back home, that "we are spending too much on defense and thus hurting the economy." Keel's reply was that "we can afford to spend what's required on defense. We're spending less as a percent of national wealth than we have in the past, and, in fact, we can't afford *not* to spend what's required."

William Kaufmann, who served as a Pentagon consultant for more than 20 years, strongly disputed the Administration's assessments of U.S. force requirements. "There are other ways of dealing with so-called perceptions than building more gadgetry," he said. It is more productive, according to Kaufmann, to consider U.S. objectives first and then decide what kinds of forces we need to meet those objectives. Using this functional approach, Kaufmann has calculated that the United States could meet all its current military objectives with only a 5-percent real annual increase, thereby spending $188.5 billion less in budget authority than President Reagan has proposed in his five-year plan.

Kaufmann outlined three major ways the United States could save defense dollars:

Eliminate duplication of forces, such as the development of two missiles capable of destroying hardened military targets (the land-based MX and the submarine-launched Trident II) and four systems that can penetrate Soviet air defenses (the B-1 and Stealth bombers and two types of air-launched cruise missiles).

Slow down the pace of modernization, giving the troops time to adapt to new weapons and leaving more time to plan and troubleshoot.

Cease development of systems with marginal capabilities, such as $42 billion naval battlegroups, a very expensive way, he emphasized, to deliver aircraft.

Kaufmann also questioned the effectiveness of the Pentagon procurement process, arguing that an inflated assessment of the Soviet threat has put research and development on an unrealistic and costly fast track.

continued on p. 16

The Citizen's Voice: How Much for Defense?

Before coming to Wingspread, League participants interviewed four members of their home communities on questions of U.S. foreign and military policy and defense spending (see "The Interview"). League members met in workshop sessions at Wingspread to discuss the results of their interviews.

"I interviewed five people," said the delegate from New Mexico, "and four of them said we're spending too much on defense. A teacher noted that we should spend more on social programs. A policeman wants more for law enforcement and a scientist at the Los Alamos lab wants more for scientific research."

"That makes me wonder whether there are some regional differences here," said the delegate from South Carolina. "In my southern community I found nobody willing to spend less, even though I tried to get a diversity of opinions in my interviews. I talked to the Republican editor of our local newspaper, a liberal Democratic county councilmember, the minister of a large black church and a union official. I thought I'd get a variety of opinions, and yet I got four people who do not believe we're spending too much. The black minister and the union official both said 'it's devastating to my people,' but they still favor spending what we're spending."

Two very different responses, reflecting the diversity of views throughout the country. A common thread weaves through both, however. In each case, the respondents care deeply about the question and believe they have the right to be heard. This was a dominant strain in all of the interviews conducted by League leaders. And yet, another theme also emerged, as reflected in this comment from Ohio: "A banker told me that she doesn't know enough about these issues and will leave the decisions to the experts." League interviewers discovered that there is a significant group of Americans like the banker who feel overwhelmed and frightened by questions of military policy and who retreat from making judgments in this area.

Still, the majority of those interviewed in this informal sampling had strong opinions on the issues—opinions that for the most part would support reducing current levels of military spending. "Defense needs are exaggerated," said one. "The overkill in nuclear weapons is unbelievable," said another. But when asked what to cut, few offered concrete proposals. Many suggested reductions in nuclear weapons, but few were aware that nuclear systems account for only a small percentage of the military budget. Some respondents mentioned cutting waste in the procurement process and encourag-

ing U.S. allies to contribute more.

The interviews provided clear indication that many Americans have strong views on the question "How much for defense?," but that few have answers to the question: "What will we buy with our defense dollars?" Americans have a tremendous fear of the horrors of nuclear war but very little understanding of other military policy issues. Here, then, League members discovered another focus for educational efforts—to help citizens understand the military capability that the defense budget purchases and to relate these budget issues to larger questions about the U.S. role in the world.

The Interview

1. *What factors do you think contribute to U.S. national security?* Are some more important than others? If so, why? Do we need to worry about what other countries are doing? How serious is the Soviet threat?

2. *What do you think should be the U.S. role in the world?* Does the U.S. have interests to protect and promote abroad? If so, which are the most important? Can the United States protect and promote its interests alone, or does the U.S. need to develop and maintain alliances? Are some more critical than others?

3. *What do you think should be the function of military power in fulfilling the world role of the U.S.?* What is the appropriate role of nuclear weapons in fulfilling those objectives? What is the appropriate role of conventional forces in fulfilling those objectives?

4. *There is much discussion as to the amount this country should spend for national defense. How do you feel about this—do you think we are spending too little, too much or about the right amount?* What would you change in the way the U.S. spends its defense dollars? What do you think is the current balance of spending between conventional and nuclear weapons? What should be the balance between conventional and nuclear spending? A moment ago you talked about the amount the U.S. should spend on defense. What impact do you think that amount of defense spending would have on the rest of the economy?

5. *What is your main source of information about foreign and military affairs?* What would you be willing to do to learn more about these issues? And what kinds of information about foreign and military affairs do you think you most need and want to learn?

6. Do you have any other general comments or feelings that you would like to share with me?

continued from p. 13

Gordon Adams introduced a third perspective—that of considering the effects of the military budget on the rest of the economy—for evaluating how much is enough. Based on his research, Adams has concluded that the overall impact of defense spending is negative. For example, he noted that 70 percent of federal research and development money goes for military-related research, leaving few federal dollars to improve productivity in the civilian sector. In addition, Adams indicated that defense spending creates the wrong *kind* of jobs—capital- rather than labor-intensive—and he questioned whether the United States should "rely for job creation in the future on that sector of the economy whose potency for job creation is declining." Finally, Adams noted that increases in defense spending are one cause of escalating federal deficits although he conceded that the main source of growing deficits is declining revenues. (Earlier, Alton Keel of OMB had told the group that equivalent federal spending for defense or social programs creates roughly the same number of jobs, and that, moreover, the purpose of military spending is to secure the nation, not to create employment.)

Gordon Adams critiqued Alton Keel's use of facts and figures, noting that the decline Keel cited in defense spending in the 1970s corresponded to the end of the U.S. commitment in Vietnam. Adams also took issue with Keel's statement that the Reagan administration calls for a real growth rate of 8 percent in the military budget; according to Adams, if one calculates what is actually spent (outlays) and not just what is authorized, the numbers show that there has been a 46-percent real rate of growth in the defense budget since President Reagan took office.

Adams concluded that since the current level of defense spending has many negative budgetary and economic effects, the United States should look for alternatives to military solutions in its foreign relations. He suggested a more vigorous pursuit of arms control with the Soviets, including a treaty to ban "Star Wars" space technology and improved use of economic and diplomatic solutions in the Third World.

The Defense Budget Process

In order to get involved in national security debates, citizens must understand the defense budget process. Lt. General Harry Griffith began this process by outlining for the conferees how the military budget is put together within the Department of Defense. Griffith described a two-year process that begins with a planning stage in which objectives are set, moves through a programming stage in which force levels necessary to meet those objectives are determined, and finally reaches a budgeting phase in which force needs are translated into budget requests (see chart, p. 18). At each point in funding this $250 billion operation, information flows up and down from heads of the services and defense agencies to the Office of the Secretary of Defense and the Defense Resources Board (a coordinating body established by the Reagan administration). At the end of the process, after consultation with the Office of Management and Budget, the President submits the budget to Congress.

Gordon Adams took issue with Griffith's description of the defense budgeting process, arguing that "there really is a problem of relating strategies and policies and goals to the weapons being bought." He asserted

Conference Chair Dorothy Powers and panelists Gordon Adams and General Harry Griffith reflect on how defense budgets are set.

that other factors, such as interservice rivalries, bureaucratic self-interest and political considerations, are equally important in shaping the defense budget.

Adams and Griffith did agree that citizens must be involved in the defense budget process. "And the time to get involved is early," said Griffith, noting that "it's easier to kill acorns than oaks." Adams advised that citizens should let congressional leaders know their concerns and should keep up the pressure for accurate information. Moderator Larry Smith summarized the session by returning to the fundamental questions that citizens must help to answer: What do we want our forces to do? What does that mean for defense spending?

An Alternative: Issues of Arms Control

At times throughout the conference, both speakers and League participants alluded to the importance of efforts to reduce tensions in the international arena, citing arms control agreements as one possible route. Lawrence Weiler, involved in arms control issues for over 25 years and a member of the SALT I delegation, provided an "insider's view" of the arms control negotiating process.

Weiler peppered his talk with anecdotes from his own negotiating experiences. He told the group, for example, that the breakthrough on the 1968 Non-Proliferation Treaty occurred on a Sunday sailing outing in Geneva and that a major compromise on the 1972 SALT I agreement was reached at a Finnish folk dance 200 miles north of the Arctic Circle. Behind these humorous anecdotes, Weiler made a serious point: often the people-to-people exchanges outside the formal sessions were critical to the success of the formal negotiations.

Weiler also stressed the importance of public pressure in pushing forward arms control agreements. For example, he said, the fear of Strontium-90 in mothers' milk created a strong advocacy group for a nuclear test ban treaty in the 1960s, while in the 1970s fear of antiballistic missiles (ABMs) in "my backyard" became a movement in favor of the SALT I ABM Treaty. Too

continued on p. 19

How the Pentagon Develops the Defense Budget
Planning, Programming, and Budgeting System (PPBS)

Stage	1. Planning	2. Programming	3. Budgeting
	Set objectives Develop five-year plan. Produce Defense Guidance, the document which translates objectives into policy and strategy.	Decide forces necessary to meet objectives.	Translate first-year needs of five-year plan into budget requests.
The players and the process	The Defense Guidance document is produced and reviewed by the Joint Chiefs of Staff, the Unified and Specified Commanders, heads of the Services and Defense Agencies, and the Office of the Secretary of Defense. The Defense Resources Board coordinates the process.	Each Service submits a prioritized request, called a Program Objective Memorandum. The Defense Resources Board and the Office of the Secretary of Defense review and coordinate the requests. The final decision is contained in the Program Decision Memorandum.	Each Service and Agency produces a budget which reflects the program decisions. The Office of the Secretary and the Office of Management and Budget jointly review the requests. The Secretary of Defense prepares a final budget.
Total time	12 months	7 months	7 months

continued from p. 17

often, Weiler said, bilateral U.S.-Soviet negotiations are clouded in secrecy, insulating them from this public pressure. In contrast, Weiler credits the more public nature of the Intermediate Range Nuclear Forces talks on Euromissiles as a positive development, allowing citizens to get information with which to pressure their leaders. For in Weiler's view, "the most important part of a successful negotiating process is the public."

The Euromissiles Debate

Conference participants next focused on the application of the citizen's approach—the search for premises and values underlying policy debates—to the most controversial arms control issue of 1983: the NATO decision to deploy 464 ground-launched cruise and 108 Pershing II intermediate-range nuclear missiles in Europe. Barring successful negotiations with the Soviet Union to reduce Soviet intermediate-range nuclear forces (INF), deployment of the Euromissiles was set to begin in December 1983. This "two-track decision" (to negotiate and to plan for deployment at the same time) was made in 1979 in response to the Germans' fear of the military dangers posed by Soviet deployment of the new, sophisticated SS-20 intermediate-range missile. German leaders worried that in those days after SALT II negotiations, the United States might ignore this perceived provocation and lower its commitment to European defense. To reassure its allies—and to create an intermediate option between use of conventional and strategic weapons in Europe—the United States joined in the NATO decision to place this new class of U.S. nuclear weapons in five European countries.

Four arms control specialists—Lawrence Weiler; Judith Reppy of Cornell University; Colonel John Pappageorge of the State Department Policy Planning Staff; and Josef Joffe, former editor of *Die Zeit* (Hamburg)—presented their views on this hotly debated topic. As League members listened to the highly charged discussion, they discovered that at the heart of the issue is a political judgment: Are the missiles necessary to cement ("couple") European and American defense?

Colonel Pappageorge maintained that the missiles *are* necessary and that a dangerous gap currently exists in the European defense system that might allow the Soviets to attack Western Europe without fear of U.S. retaliation. "The political challenge of the Soviet SS-20s," he said, "is that they threaten our allies in Europe, but cannot reach the United States. Thus the Soviets hope to split the alliance by calling into question the U.S. commitment that an attack on Western Europe will be considered as an attack on all of us as well." According to Pappageorge, with U.S. cruise and Pershing II missiles in place, any Soviet attack on Western Europe would immediately threaten the Soviets with U.S. involvement, including retaliation with strategic (intercontinental) forces. This, Pappageorge argued, would make the risk of Soviet aggression too high, and thus, ironically, decrease the likelihood of war.

Judith Reppy disagreed. She maintained that current U.S. nuclear and conventional forces in Europe, as well as strong economic and cultural ties, securely link American and West European defense. In her view, deploying the Euromissiles, especially the fast and highly accurate Pershing IIs, would be a dangerous and needless provocation, increasing the likelihood of a

Soviet preemptive first strike. It is not the SS-20s which threaten NATO cohesion, Reppy said, but rather the extremely devisive Euromissiles deployment decision itself. "The outcome of the NATO decision is quite ironic," she noted. "You have the largest public protest in Europe over government policy in two to three decades and you have great disarray in NATO. It's been a costly process."

Speakers also disagreed about the position the United States should take in the INF negotiations in Geneva. For months the official U.S. position was the "Zero Option," which called on the Soviet Union to dismantle all of its intermediate-range forces (the SS-20s as well as older SS-4s and SS-5s) in exchange for a U.S. agreement not to deploy the cruise and Pershing II missiles. The Soviets rejected the offer, arguing that British and French systems (162 missiles) must also be included in the total equation. In March 1983, President Reagan offered, in his "interim proposal," to limit U.S. and Soviet warheads to an agreed-upon equal number, but the Soviets continued to insist that French and British systems be counted. At the time of the Wingspread conference in June 1983 the two sides seemed far from agreement.

Lawrence Weiler argued that the Reagan administration's proposals were not serious negotiating positions. He maintained that the British and French missiles *should* be counted, as they are allied intermediate-range forces capable of striking the Soviet Union. In his view, the real reason for little progress at the INF negotiations was the lack of progress on other arms control fronts, particularly at the Strategic Arms Reduction Talks (START) negotiations. The Soviets, Weiler explained, regard the cruise and Pershing II as long-range missiles (since they can strike Soviet territory) and are only likely to make concessions on INF if they see movement at START limiting other long-range missiles.

German journalist Josef Joffe presents a European view of Euromissiles deployment as the American panelists wait their turn.

Josef Joffe defended the Administration's proposals, noting that Soviet insistence on counting *all* allied missiles means, in effect, that the United States "agrees to zero on the U.S. side." He maintained that British and French missiles should not be included because they are third-party forces not subject to U.S. control and because they do nothing to resolve the essential problem—the challenge the SS-20s pose to commitments to couple the U.S. and European defense.

Ultimately, critics and advocates differ over the judgment of how to live with a central dilemma of the nuclear age—that the same weapons that have kept the peace in Europe for over 40 years also threaten ultimate annihilation. For Joffe, living with nuclear weapons "is like the image of the scorpions in the bottle. No matter which of the scorpions attacks first, the other still has enough sting in him to sting the first one and so they will both die. It's a painful, paradoxical vision, but that's how deterrence works." In Reppy's view, the paradox will only be resolved by thinking of alternative futures. The military element must be downplayed, she said, and a new relationship of detente must be encouraged.

State Initiatives

On the last day of the conference, League participants took center stage as experts on community education. Meeting in morning workshops, they were asked to design model statewide education campaigns on national security issues. The citizen's approach developed throughout the conference shaped the assignment. After two hours of small-group discussion, the following conclusions emerged as starting points for formulating citizen education programs on national security issues:

- There is a high level of public awareness of national security issues but very little understanding of the facts. Hence, there is a great deal of frustration among citizens.
- Information must be organized in a way that helps citizens feel more confident about their knowledge. Merely giving citizens more and more "facts" results in confusion and apathy.
- Opinions about national security are very polarized and emotion-laden. A commitment to bipartisan, objective presentation of the issues must be made at the local level.
- There has been a great deal of emphasis on nuclear weapons issues but very little on conventional weapons and policies, which can be equally as important to U.S. foreign policy and military spending concerns.
- It is necessary to collect data about public concerns and to work with other groups in order to get a broader perspective of local interests.

Participants also suggested a variety of approaches for local citizen education programs. A sampling of these statewide initiatives includes:

- a League of Women Voters Education Fund radio program on national security issues, followed by coordinated small group discussions.
- a League-produced videotape on the issues to be used as a discussion starter at schools, community meetings and on public television.

The "essence" of Wingspread: speaker Judith Reppy (left) discusses the issues with LWVEF staff member Deborah Goldman (center) and delegate Joan Neil (right) at an informal sherry hour.

- a series of public service announcements: "One Minute on National Security."
- a community poll or interviews (modeled after the preconference interviews) to find out what people think about these issues.
- state workshops to train local leaders.
- networking (a Midwest network was set up at the conference).
- people-to-people exchanges.
- use of simulations (such as the Saudi scenario) to help the public examine priorities and policy options.
- a speakers' bureau to reach out to school and community groups.
- an essay contest on national security for high school students.
- professionally developed flip charts for outreach discussions.

Discussion Questions

1. Before you plan your program, you should *assess the level of public understanding and awareness of national security issues in your area.* For example, what are the issues that concern the public most? Are some people more interested in these topics than others? What kinds of assumptions do people make that may bias their understanding of the issues? What is their main source of information on these topics? Are some people afraid to express an opinion on these issues for some reason?

2. Given your assessment of the level of public awareness of the issues, *what information do you think people should have in order to improve their understanding of the issues?* (Consider what has been most helpful to you in learning about these topics, including the past two days at the conference.)

3. As the group begins *to design the model state program,* you might want to consider:

- What audience should be targeted? Should you aim for a general audience or a more selected group? Why? How will you attract that audience?
- What resources are available? (Expertise, facilities, funding, network of local Leagues, regionally based networks, etc.)
- Would it be more effective to work with other groups? If so, in what way?
- Do you have people to help? Will the program attract new volunteers? Retain existing volunteer pool? Develop new leadership?
- How do you budget League time for both study and outreach?

4. When discussing *the format,* consider:

- Should the media be involved? As a vehicle for the program itself, as a publicity tool, or as a reporting mechanism?
- Is it desirable to personalize or localize the issue? How could this be done?
- How can you assure that balanced perspectives will be presented or in some way represented in the program?
- Is it desirable to involve public officials to give the program more visibility and impact?
- What kinds of funds are available and how can more be obtained? Should you have one big program or break it into more specific parts that can be "purchased" by interested funders? Are there small foundations, family trusts, state education programs, corporations or businesses that might be interested in giving funds or in-kind services for all or part of the program?

Conclusion

Conference participants left Wingspread filled with enthusiasm about fleshing out these ideas and implementing them in their home states. Their commitment was even greater after listening to the final speaker at the conference, former Utah state Senator Frances Farley. She described her fight in Utah against the "racetrack" basing mode for the MX missile. Despite great odds, Farley mobilized a successful statewide campaign involving coalition building, citizen outreach and media to inform and activate citizens on this issue. Her story was one of advocacy as well as education, and it graphically illustrated how the public can acquire the confidence, courage and commitment to become involved in issues of military policy and defense spending.

Larry Smith followed up on Farley's experience with his final charge to the participants that they have a crucial role to play in public education efforts. "Design some tools," he challenged, "that will give people confidence to deal with all the information that comes at them. The information itself is around—don't go out and design more. Instead, find some way to help people make use of what's out there." In providing a *methodology* to engage the citizenry in the national security debate, Smith said that the League will help move the republic that much closer to its original Jeffersonian vision. In this way, a nation of 235 million *can* be involved in determining military policy and defense spending priorities. "Jefferson," he concluded, "would be reassured."

Conference Participants

Conference Chair

Dorothy K. Powers, National Security Chair, LWVUS, LWVEF Trustee

League Participants

Julia Holmes, LWVUS Action Chair
Florence Rubin, LWVEF Citizen Education Chair
Jacqueline Osborne, National Security Chair, LWV of Alabama
Cynthia Marquette, National Security Chair, LWV of Alaska
Ellen M. Corkhill, International Relations Chair, LWV of Phoenix, Arizona
Thea Spatz, National Security Chair, LWV of Arkansas
Jane Goldstein, Government Director, LWV of California
Mary B. Strauss, National Security Committee, LWVUS, LWV of Oakland, California
Eleanor Dwight, National Security Chair, LWV of Colorado
Jara N. Burnett, National Security Chair, LWV of Connecticut
Carole Walsh, Natural Resources Chair, LWV of Delaware
Mary R. Weiler, National Security Committee, LWVUS, International Relations Chair, LWV of the District of Columbia
Louisa N. Hilenski, National Security Chair, LWV of Florida
Christine deVries Carlsten, National Security Chair, LWV of Georgia
Catherine Z. Filson, National Security Chair, LWV of Hawaii
Sharon Laughlin, National Security Chair, LWV of Pocatello, Idaho
Joan Neil, National Security Chair, LWV of Illinois
Dorane Fredland, LWV of Indiana
Jonan Haskell, International Relations Chair, LWV of Iowa
Janet A. Meyer, International Relations/National Security Chair, LWV of Kansas
Carol L. Julian, Government/National Security Chair, LWV of Kentucky
Rita S. Grosser, National Security Chair, LWV of Louisiana
Alice A. Johnson, New England Regional Coordinator, LWV of Maine
Virginia Frederick, National Security Chair, LWV of Maryland
Sandra Reinecke, National Security Chair, LWV of Massachusetts
Margo Smith, International Relations Chair, LWV of Michigan
Judith C. Duffy, International Relations Chair, LWV of Mahtomedi Area, Minnesota
Elizabeth Bowne Minn, National Security Chair, LWV of Hattiesburg, Mississippi
Sister Mary Mangan, International Relations Chair, LWV of Missouri
Barbara Irelan, National Security Chair, LWV of Montana
Vera Mae Lutz, Program Chair, LWV of Lincoln, Nebraska
Mary Jane Van Vactor, Treasurer, LWV of Nevada

Virginia A. Higgins, Secretary, LWV of New Hampshire
Ruth Harrison, International Relations Chair, LWV of New Jersey
Jeanne L. Leonard, National Security Chair, LWV of New Mexico
Linda Moscarella, National Security Chair, LWV of New York
Betty T. Lawrence, Vice President, LWV of North Carolina
Margaret E. Smith, National Security Chair, LWV of Ohio
Irene E. Mitchell, LWV of Oklahoma
Susan B. Girardeau, National Security Chair, LWV of Oregon
Charlotte Glauser, International Relations Chair, LWV of Pennsylvania
John Grifalconi, National Security Chair, LWV of South Kingston-Narragansett, Rhode Island
Joyce Elhassani, International Relations Chair, LWV of South Carolina
M.J. Weeks, National Security Chair, LWV of South Dakota
Mona Potter, International Relations Chair, LWV of Tennessee
Marlene Muse, National Security Chair, LWV of Texas
Nancy Cooper, International Relations Chair, LWV of Utah
Priscilla C. Ross, International Relations Chair, LWV of Vermont
Jean Marburg, National Security Chair, LWV of Virginia
Jane E. Shafer, International Relations Chair, LWV of Washington
Karen Lukens, Education Chair, LWV of West Virginia
Joan E. Goodman, National Security Committee, LWVUS, International Relations Chair, LWV of Wisconsin
Mignon S. Hill, National Security Chair, LWV of Wyoming

League Staff

Laureen E. Andrews, Director, International Relations Department, LWVEF
Deborah Goldman, Conference Coordinator, LWVEF
Vicky Harian, Assistant Director, Public Affairs Department, LWVUS
Alice L. Hughey, Senior Staff Specialist, International Relations Department, LWVEF

Speakers

Gordon Adams, Director, Defense Budget Project, Center for Budget and Policy Priorities, Washington, D.C.
Frances S. Farley, former state Senator, Salt Lake City, Utah
John Lewis Gaddis, Professor of History, Ohio University, Athens, Ohio
Lt. General Harry A. Griffith, Director, Defense Nuclear Agency, Washington, D.C.
Thomas J. Hirschfeld, Consultant, Alexandria, Virginia
Josef Joffe, Senior Associate, Carnegie Endowment for International Peace, Washington, D.C.
William W. Kaufmann, Professor of Political Science, Massachusetts

Institute of Technology, Cambridge, Massachusetts

Alton G. Keel, Associate Director for National Security and International Affairs, Office of Management and Budget, Washington, D.C.

Philip A. Odeen, Managing Partner, Coopers and Lybrand Management Consulting Services, Washington, D.C.

Colonel John G. Pappageorge, Policy Planning Staff, State Department, Washington, D.C.

Robert J. Pranger, Director of International Programs, American Enterprise Institute, Washington, D.C.

Judith Reppy, Director, Peace Studies Program, Cornell University, Ithaca, New York.

Condoleezza Rice, Assistant Director, Center for International Security and Arms Control, Stanford University, Palo Alto, California.

Larry K. Smith, Executive Director, Center for Science and International Affairs, Harvard University, Cambridge, Massachusetts

Lawrence D. Weiler, Professor, George Washington University, Washington, D.C.

Johnson Foundation Staff

William Boyd, President

Rita Goodman, Vice-President

Kay Mauer, Conference Coordinator

Sue Poulsen-Krogh, Director, Public Information and Program Extension

Conference Resources

Publications

Arms Control and National Security: An Introduction, The Arms Control Association, 11 Dupont Circle, NW, Washington, D.C. 20036.

Has America Become Number 2? The Committee on the Present Danger, 1800 Massachusetts Avenue, NW, Washington, D.C. 20036.

Intermediate Range Nuclear Force Talks Factsheet, The Roosevelt Center for American Policy Studies, 316 Pennsylvania Avenue, SE, Washington, D.C. 20003.

"The Reagan Defense Budget: A Critique," *Washington Post*, April 10, 1983, Section C, William W. Kaufmann.

"U.S.-Soviet Military Facts," *The Defense Monitor*, Center for Defense Information, Vol. XI, number 6, 1982.

Rethinking Defense and Conventional Forces, Barry E. Carter, Center for National Policy, Washington, D.C., 1983.

Progress in the Quest for Peace and Freedom, President Ronald Reagan, February 22, 1983, U.S. Department of State Policy Paper, no. 455, Bureau of Public Affairs, Washington, D.C.

Soviet Military Power: 1983, Department of Defense, U.S. Government Printing Office, Washington, D.C. 20402.

The Other Side of the Story: Some Military Advantages of the U.S. and Our Allies over the U.S.S.R. and the Warsaw Pact, Senator Carl Levin, May 1983, United States Senate, Committee on Armed Services, Washington, D.C. 20510.

Films

Countdown for America, American Security Council, Boston, VA 22713.

How Much is Enough? Decision-making in a Nuclear Age, Documerica Films, P.O. Box 315, Franklin Lakes, NJ 07417.

LWVEF Publications

Providing for the Common Defense: A Military Policy Reader, #531, $1.25 (75¢ for members).

The Quest for Arms Control: Why and How, #530, $1.25 (75¢ for members).

Dollars for Defense: Translating Military Purposes into Spending Choices, #534, $1.25 (75¢ for members).

Order from League of Women Voters of the United States
1730 M Street, NW, Washington, DC 20036 Pub. No. 538
$2.25 ($1.50 members)

ISBN 0-89959-345-3

C 439

LEAGUE OF WOMEN VOTERS EDUCATION FUND

GETTING OUT THE VOTE

A GUIDE FOR RUNNING REGISTRATION AND VOTING DRIVES

Contents

This handbook is designed for organizations, associations and interest groups that are committed to increasing the participation of citizens in their government through the electoral process. The techniques described can be used effectively by all organizations seeking to register voters, but special guidelines for nonprofit, nonpartisan organizations that do not support or oppose candidates are included.

The handbook was prepared by the League of Women Voters Education Fund, aided by the experience of the more than 1,300 state and local Leagues that are well known and respected in their communities and throughout the nation for providing voters with information and assistance. The preparation and initial printing of this handbook was made possible by a contribution from the National Council of Health Centers (NCHC). The NCHC is distributing this guide to its members' long-term care facilities nationwide.

Researched and written by Marlene K. Cohn and Mary Stone.

ISBN 0-89959-349-6. Pub. #424, $1.25 (75¢ for members).

INTRODUCTION

Voting is the basic political act in a democratic society—a way to select public officials and to ensure that those officials will be responsive and accountable once they take office. That is one of the reasons why many Americans have long been concerned about the low rate of voter registration and participation in this country. Even officials elected by large margins often take office with the support of only a minority of the potential electorate.

In response, more and more organizations are working to register voters and get them to the polls. Such groups are targeting their members, employees, clients, supporters, the citizens they represent and the general public. Their purposes range from an interest in the more effective functioning of our democratic government to support for particular issues or candidates. Organizations have learned that in order to register voters and bring them to the polls it is essential to emphasize the value and effectiveness of voting. Citizens need information about candidates, their qualifications and stands on issues. They must be aware that their vote does make a difference.

In all states except one, voting involves a two-step process. First, potential voters must register. Usually this must be done by a certain deadline before elections (the range is 10 to 50 days). The second step for the voter is actually casting a ballot. Citizens need information and assistance to accomplish both steps of this most basic act of citizenship.

To register large numbers of citizens and get them out to vote requires an organized effort, planned well ahead of election day. It requires accurate and comprehensive knowledge about state election laws and local practices, the cooperation and assistance of local election officials and other organizations, the mobilization of volunteers, effective targeting and publicity, good record keeping and follow-up efforts, dedication and hard work.

1 PLANNING THE DRIVE

Before planning a registration and get-out-the-vote drive, your organization must decide on its goals, the scope and extent of its drive and the level of resources it can commit to the effort. Decisions must be made about whether to target members, employees and clients or to reach out to a larger constituency; whether to include extensive voter information and get-out-the-vote components or concentrate on registration; whether your organization will work alone or try to

form or join a coalition of other organizations committed to the same goal (see box, page 3).

National organizations can give direction, training and technical assistance to their local affiliates on registration and get-out-the-vote campaigns. They can provide an overall title or theme for the drive, a logo or other graphics, general materials and national publicity. But to be effective, actual activities must be planned and carried out at the local level. State laws and local practices vary widely; even in a national election, registration and voting are very much local activities.

When: Defining objectives and limits at the beginning of a drive is essential. You can use your resources to the best advantage if a time frame is set—whether it's a week or a month or more—for your registration drive. To coincide with peak citizen interest in an election, it is most effective to end a registration drive on the deadline for close of registration before the next election. (See Easy Does It.)* You should make preliminary plans for the get-out-the-vote component of your drive at the same time that plans are being formulated for the registration drive so that the time between the registration deadline and election day can be used to remind new registrants to vote and to provide them with information about candidates and issues.

Where: A geographic limit is also useful. Your organization should focus its drive on those areas where it has facilities or affiliates or wherever there is the greatest need.

Who: Within a locality, targeting efforts toward those citizens who are generally underrepresented in the electorate is a reasonable way to use resources efficiently. Researchers who have studied voting behavior report that often those least likely to vote are minority citizens, the young and the poor. The elderly, the disabled and those who speak languages other than English are also underrepresented at the polls, as are citizens with less than average education.

You can obtain information about voting rates in states, localities and census tracts from the U.S. Census Bureau and from state and local election officials. If your drive is aimed at any particular group—women, minority citizens, the young, the elderly—information about where they are located and what the past voting rates have been in the locality will help your organization concentrate its efforts most effectively. In most jurisdictions, registration and voting lists are public records and may be inspected at the elections office. However, elections offices may legitimately charge a fee for providing copies of lists or other records, but such lists may be copied by hand at no cost.

After your group has determined the scope and extent of your

*The wall poster, Easy Does It (Pub #522, $1.00), published by the League of Women Voters Education Fund, provides information about registration and absentee voter regulations in all 50 states, Puerto Rico, the Virgin Islands and the District of Columbia and serves as an excellent planning tool.

Working With Coalitions

Working with coalitions in a registration and voting drive offers many advantages. Joining with other organizations that share the same goals brings the opportunity to share expertise, pool resources, increase the volunteer force and avoid duplication of effort. Different groups bring different assets to a drive. Some offer knowledge of election laws and procedures; some will offer access to office equipment and staff or phone banks, and some can supply large numbers of volunteers. Other valuable organizational resources include well established relationships with election officials, good contacts with the local media, or access to the potential voters you may wish to reach.

It takes time to organize any coalition effort. Ideally, initial meetings should focus on building enthusiasm, sharing ideas and learning about varied areas of expertise. Subsequent meetings can deal with overall planning, progress reports, information sharing and evaluation. Once a steering committee is formed, it can handle detailed planning and supervision. Although this committee should be representative of the groups in the coalition, it also should be small enough to work effectively.

Some cautions: A coalition may include groups that are nonprofit and nonpartisan and groups that support certain issues or candidates. Any such "mixed" coalition must make sure that registration drive materials and activities are strictly nonpartisan, must make registration available to any citizen who seeks to register, and must refrain from supporting or opposing any candidate or party. (See Chapter 4, Nonpartisanship.) Arrangements for approving materials and press releases should be determined in advance. Clear understandings about sharing publicity and credit for success should also be worked out ahead of time. The coalition will work more effectively if common goals and ground rules are established early and on the basis of mutual agreement.

If a coalition effort is not advisable, it still may be possible for organizations conducting registration and get-out-the-vote drives in the same community to exchange information on election laws, areas and populations targeted, problems encountered, scheduled activities and successful and unsuccessful techniques and experiences.

registration and get-out-the-vote drive based on your goals and needs, it is time to make detailed plans. Every drive—at the national level, and especially at the local level—will need a director or coordinator. A steering committee (which can include representa-

tives of cooperating organizations) can assist and advise the director. Steering committee members should be chosen on the basis of the expertise and resources they can bring to the drive and on their reliability in following through on assignments and carrying their share of the responsibilities. Committee members or subcommittees may be given responsibility for the following functions:

- **Information:** research on election laws and procedures, registration statistics, precinct maps, directories, voter lists, location and voting rates of targeted groups;
- **Finance:** fund raising, budgeting, bookkeeping;
- **Public Relations:** contacts with media, press releases, posters, promotional materials;
- **Volunteers:** recruitment, training, assignment, supervision, coffee and snacks, thanks;
- **Registration and Get-Out-The-Vote Activities:** registration at special sites, door-to-door and telephone canvassing, deputization, follow-up vote reminders;
- **Voters Service:** transportation to registration sites and polling places, child-care services, speakers bureau.

2 REGISTRATION

Motivation

In order to vote, citizens must first be registered. In most states, registration must take place at least 30 days before the election, although many states have registration deadlines closer to the election (See Easy Does It). Therefore, potential voters must be convinced of the importance and the necessity of registering to vote before they may have given much thought to the upcoming election. The end of the registration period coincides with the beginning of peak voter interest in a campaign and is therefore a good time to intensify a registration effort.

If you are trying to bring nonvoting citizens into the electorate, you must do more than just send reminders to register before a certain date. You must make the case that voting is important, that it does make a difference. You must convince citizens that voting is more than civic duty—voting is empowerment. In a nonpartisan drive, you cannot endorse candidates or take sides on issues, but you can help potential voters understand that elected public officials make decisions that affect the vital interests of the people—including those who

don't vote.

Information

A citizen must know when, where and how to register to vote. If your organization is going to register voters, you must make sure that such practical information is available or provide it yourself. Registration laws differ from state to state (Easy Does It will give you the basics) and since state laws often allow local election officials considerable discretion in administering the law, local practices may vary from county to county or city to city. You can provide such information in a brochure or flyer (see box, page 8).

Registration Techniques

Five basic registration procedures are used in the United States. Many communities use combinations or variations of these procedures:

- **Centralized registration** requires all registrants to register at one location, such as the courthouse or the county clerk's office.
- **Branch registration** allows multiple registration sites. These may be fixed (libraries, community centers and so on) or mobile (vans, different shopping center locations).
- **Deputy registration** enables the local board of elections to authorize additional persons (deputy registrars) to sign up new voters. Different states and localities have different standards for eligibility of deputy registrars.
- **Registration by mail** allows citizens to mail in their registration forms. More than half of all Americans of voting age now live in states that allow general mail registration; procedures vary from state to state, with some states permitting wider distribution of applications than others.
- **Election-day registration** (in effect in four states—Minnesota, Wisconsin, Oregon and Maine) allows citizens to register up to and including the actual day of an election.

North Dakota has no registration requirement for voting.

The first step in conducting a registration drive is to find out the facts. Visit your local election officials. Tell them that you are planning a registration drive. Ask for their cooperation and assistance. Get answers to the following questions and make this information available to every participant in your registration drive:

- What are the residency requirements for registration and voting? What kind of identification, if any, is required when a person goes to register?
- May 17-year-olds register if they will be 18 by election day? May

Check List for Registration Supplies

- ____ Identifying sign or poster
- ____ Name tags for registrars
- ____ Pens, pencils
- ____ Pads of paper, envelopes
- ____ Forms for recording names and addresses of registrants
- ____ Information on absentee voting
- ____ Polling place list
- ____ List of other registration sites and schedules
- ____ Street directory
- ____ Directions to elections office
- ____ Change for telephone (to call elections office with inquiries)
- ____ Stamps (if necessary to mail forms)
- ____ Phone numbers of registration offices in adjacent jurisdictions

Official Forms

- ____ Registration form
- ____ Change-of-address form
- ____ Change-of-name form
- ____ Change-of-party-affiliation form (if there is party registration)
- ____ Registration forms for neighboring jurisdictions (if permissible)
- ____ Applications for absentee ballots

Make sure registrars are familiar with all the necessary forms. If the jurisdiction is covered under the language requirements of the Voting Rights Act,* registration applications, signs and all other materials must be printed in both English and the specified minority language.

*Jurisdictions in which (a) more than 5 percent of the voting age population are members of a single language minority group—Native American, Asian American, Alaskan native, Spanish heritage—and the group's illiteracy rate is higher than the national illiteracy rate, or (b) a single language minority group comprises more than 5 percent of the population; The 1972 presidential election was conducted in English and the total voter registration turnout for that election was less than 50 percent.

they vote in a primary at 17, if they will be 18 by the general election day?

- What registration procedures are permitted by state law?
- If there is centralized registration, where do voters register? What hours and days are the site open? Are there special extended hours before an election deadline? Are there evening and/or Saturday hours?
- If there is branch registration, where are the sites located? Are they well marked? What hours are registrars on duty?

- If there are deputy registrars, are they officially employed and compensated, or are they volunteers? Are both systems used? What are the qualifications for deputy registrars? Must they be trained? Where and when? How long is deputization valid?
- If there is mobile registration, are schedules available? Is door-to-door registration permitted? Must there be approval by or notification of election officials in advance?
- If there is registration by mail, is the voter's signature testifying that all statements are true sufficient for registration, or is notarization required? Can anyone distribute forms? How many forms may volunteers get? Where and how? Must the voter affix postage? Is the voter notified that registration is complete? Is information about when and where to vote provided?
- If there is registration at special sites must an official registrar be present? Is approval of a site by the elections office required? How far in advance? Are there only certain days and hours when registration may take place?
- Is absentee registration permitted? For what categories of people?
- Are voters removed from registration lists for nonvoting? If so, how often? How are they notified? How may they re-register?

Working with Election Officials

Election officials are an essential source of information about local laws, practices and trends. Moreover, their cooperation can make the difference between a smooth-running drive and a drive beset with obstacles. It is important to inform election officials of your planned registration activities early and to keep them informed throughout the drive. When you visit your local election officials, try to evaluate their attitudes toward the registration process and toward your planned drive. In jurisdictions that do not permit volunteer deputy registrars, local election officials are truly key, because you will need paid registrars to do the actual registering.

You may want to enlist the support of local groups when you seek the cooperation of election officials. Groups such as the League of Women Voters that have developed good relationships with officials and worked with them over the years may be able to introduce your group and its goals. If you are working with a coalition, let election officials know what groups are included.

Discuss potential problems with officials openly and in advance. It is the responsibility of election officials to ensure the integrity of the registration process and they may express concerns that could adversely affect your efforts. Such concerns include:

- the procedures and care required in handling registration documents;
- the work involved in processing unexpectedly large numbers of

registrations, particularly near the deadline—if you give officials due notice, they will have the opportunity to schedule extra workers as needed.

Cooperation with election officials is a two-way process. You must assure that registration forms are complete, legible and accounted for, and that they are submitted to the elections office well before deadlines. If you do your job accurately and carefully, you will be well prepared to make your case if problems do arise. Election

Basic Information for a Registration Brochure

INCLUDE YOUR LOGO AND MOTIVATIONAL MESSAGE

WHO can register

- U.S. citizens, 18 years old and above* (except, in most states, convicted felons and those adjudged mentally incompetent).
- Residents of the jurisdiction.

*Include information if your state law permits 17-year-olds to register if they will be 18 by election day.

WHERE to register

- Board of Elections address and phone number; include 24-hour message number, if office has one.
- Decentralized sites, with addresses and phone numbers.
- Mobile units, if any, with schedules.

WHAT identification is required

- Birth certificate?
- Proof of naturalization?
- Driver's license?
- Other?

WHEN to register

- Hours.
- Days of the week.
- Registration deadline.

WHEN to re-register or notify elections office of changes

- After a name change or an address change (notification of change may be required, even if re-registration is not).
- After a name is removed from the list.

HOW to register by mail (if possible in your state)

- Where forms are available.
- Where to send them.
- Phone numbers to call to request forms, including your organization's, if permitted.

YOUR OFFICE PHONE NUMBER, ADDRESS AND HOURS.

Consider whether you might have a single brochure that includes information on both registration and voting.

Note: This basic information may be already prepared and available from your local election office. Ask before you print your own.

officials generally will not prevent you from carrying out your planned activities if you observe the law and exercise care, but in some places they may delay or deter your efforts. For example, some officials make it difficult to get volunteers deputized as registrars, even when permitted by law, or are unduly restrictive about the number of registration forms that volunteers can get. In jurisdictions where there is no deputization of volunteers, officials may refuse to authorize additional hours or sites for registration. In many cases these problems can be worked out through negotiation.

However, if you are unable to achieve a good working relationship with local officials, you can seek assistance from other local or state officials, the Secretary of State or state elections director (in most states, the Secretary of State is the chief state elections official, but actual election administration may be carried out by the state elections director or office). In 1984, the National Association of Secretaries of State stated its commitment to outreach registration efforts. Another option is to use the local news media to focus attention on the problem.

Doing Your Own Registering

If the law permits volunteers to act as deputy registrars or to distribute applications for mail registration, your organization can bring registration to citizens directly. You can make the most of this opportunity if you plan carefully, use well-trained and motivated volunteers, and secure all necessary permissions from election officials and those in charge of all facilities where registration will take place.

- **Set up booths or tables in public places.** Go where people congregate—to shopping centers, churches or synagogues, college campuses, football games or concerts. Catch people at office buildings, factories, insurance companies, hospitals or on city street corners at lunch time.

- **Go where your target population is.** Bring the registration opportunity to the places that people go for public services—food stamp distribution centers, libraries, motor vehicle registration and license offices. Sign people up as they stand in line for unemployment benefits or register for university classes. Go to nursing homes, senior citizen centers, clinics and child-care centers.

- **Piggy-back on neighborhood meetings or local gatherings.** Set up booths at fairs and bazaars. Bring the registration opportunity to PTA meetings and candidate debates.

- **Use a votemobile.** Consider transforming a car, van or truck into a "votemobile" and driving it in parades, around the city, to factories and schools. The votemobile makes your drive highly visible and can be used to register voters, provide information and remind citizens to vote.

• **Go canvassing door-to-door.** This technique works best if large numbers of unregistered people live in certain neighborhoods. Use precinct registration lists to guide you, but remember that in neighborhoods with high rates of mobility, these lists are quickly outdated. Send volunteer registrars out in pairs—for example, a trained and experienced registrar with a newly recruited neighborhood resident. Provide volunteers with identifying badges and a brief script introducing themselves and their mission.

Some tips for doing your own registering

• Do advance work. Check out sites beforehand. Put up posters and use the media to let people know when you are coming.

• If you set up a registration site outside a factory or office building, operate it during lunch hour or at the beginning of a shift, not when employees are rushing to get home. Get permission from management and the cooperation of unions or employee organizations.

• Give volunteer registrars a comprehensive briefing, including any official training sessions required by election officials.

• Provide sufficient supplies (see Registration Desk Check List on page 6). Make sure registrars are comfortable. Provide a table and chairs and light refreshments for long sessions. Whenever possible, have at least two volunteers working together.

• If possible, sign up registrants on the spot; don't let them take applications home. If permitted, have volunteer registrars deliver or mail completed applications directly to the elections office.

• Check all forms for completeness and accuracy before the registrant leaves the registration area, and then get the forms to the elections office promptly for processing. In the past, some volunteer drives have delayed getting registration forms to the elections office by the deadline, thus disenfranchising citizens who believed they were registered. This kind of mismanagement could defeat your purpose and give your group a bad name.

• Set up a record-keeping procedure and keep lists of the names and addresses of all the voters registered. These lists make it possible to check that the registrations are properly processed and that registrants' names will appear on the voters list. They also are essential for directing get-out-the-vote efforts at the new registrants and for evaluating your drive by checking whether those you registered actually voted (make sure election laws permit this). To assist your get-out-the-vote efforts, make sure that you have each registrant's precinct and telephone number recorded as well.

If you cannot do your own registering

If the law in your community does not permit deputy or mail registration, you can use many of the above techniques to let citizens know where and when to register, to distribute flyers and answer questions. Provide transportation to registration sites and assistance in filling out forms. Work with your local registrar to establish more convenient

branch registration sites and hours.

Getting the Message Out

If you are planning to bring registration information and opportunities to citizens where they live, work, congregate or go to school, you should let them know you are coming. Make your arrangements early enough so that there will be plenty of time to get the word out. If registration is possible only at centralized or branch sites, it becomes essential to let people know where, when and how to register. These messages should be short and snappy. They should grab attention, deliver a quick motivational message and provide basic how-to information (see box, page 8). If your drive has a logo or title, it should become so familiar to your audience that it delivers your message with few, if any, additional words.

Use your media contacts to get newspaper, radio and TV coverage. Write a letter to the editor. Sponsor a poster contest and put up the winners where your targeted audience will see them. If you have the resources, distribute bumper stickers and buttons with your drive's logo. Buy newspaper ads. Use billboards. Get radio and TV stations to run your public service announcements.

Be Prepared!

The mobility of today's population can complicate your registration task. For example, people may reside in one jurisdiction but be registered to vote in another... or they may be uncertain which jurisdiction they live in or where they are registered. Also, many state laws require that in order to register voters in a jurisdiction you must yourself be a registered voter there. Inquire about state laws concerning cross-jurisdictional registration and, where possible:

- Have registration forms available from neighboring jurisdictions;
- If there is doubt, check addresses in a street directory for proper jurisdiction;
- Refer questions to the elections office.

Some people may not know whether or not they are registered. If there is a question:

- Check official registration list;
- Check with the elections office;
- If in doubt, err on the side of duplicate registration—it is better than no registration. (You may want to alert the elections office that there is potential duplication by clipping a note on the registration form.)

Be extra careful in your handling of the registration form; it represents a citizen's access to the electoral process.

Working With Volunteers

A registration effort requires the recruitment, assignment and supervision of many workers. Many different factors motivate people to volunteer their time and effort, including belief in the cause, a wish to be helpful, a need for social contacts and a desire to do useful work. You must consider these needs and motivations when you work with volunteers. Some guidelines:

- Ask volunteers to work for reasonable, limited periods of time. A two-to-three hour shift is a good standard.
- If possible, have two or more volunteers work together.
- Suit the job to the volunteer. Some people like detailed work; others work well with the public. Some volunteers prefer to work from home or at the project office.
- If you can, reimburse volunteers for travel, child-care and other out-of-pocket expenses.
- Make sure volunteers know exactly what they are expected to do. Supply them with written instructions and sample scripts. Provide identification tags or buttons.
- Provide volunteers with all the supplies and equipment they will need. Make sure they know where to get more materials if necessary.
- Make sure volunteers are comfortable. Supply them with tables and chairs and snacks and coffee for long working stretches.
- Check back midway through the shift to evaluate progress, answer questions and deal with problems. Offer praise and encouragement.
- Make volunteers part of the planning process. Ask for advice and suggestions. As on-the-spot participants, they will have good ideas.
- Express immediate thanks. A card or phone call to express appreciation is well worth the time and effort and positively reinforces a volunteer's motivation to participate.
- Have a party. After the drive is over, get everyone together, announce the results and celebrate.

3 VOTING

Registration means nothing unless a citizen actually casts a vote. More than 80 percent of those who are registered do vote. Your challenge is to reach those millions of citizens who do not make it to the polls. (More than 25 million registered voters reported in Census Bureau surveys that they did not vote in the 1982 election.) Groups

Sample Letter to a New Registrant

Congratulations! You are now registered to vote. We want to urge you to take the very important next step—to cast your ballot. The next election will be on [date], a [primary/general] election to select [offices to be filled] and/or decide [issues on ballot] (see the enclosed sample ballot).

As a registered voter in precinct number [ ], your polling place is located at [place plus address]. You can get there on bus number [ ]. If you drive, parking is available at [lots or streets] (see enclosed map and/or bus schedule).

The polls will open at [time] and close at [time].

In this county, we vote by [voting machine/punchcard ballot/written ballot/other] (see enclosed instructions). You can see a demonstration of how to vote at [time] at [place and address] (or at the polls before you vote).

Please call the Voter Registration Project [phone number] if you need transportation to the polls, child care, or care for elderly or disabled dependents while you vote. If you or someone you know will be unable to vote in person on election day, call the Board of Elections [phone number] for an application for an absentee ballot. Application deadline is [date].

The Voter Registration Project [phone number] will be happy to answer your questions about voting. Staff will be available [hours] on weekdays and [hours] on weekends and evenings at our office [address and directions].

At other times, you can leave a message on our answering machine and we will get back to you. You can also call the Board of Elections [phone number] for further information or assistance with absentee voting.

Remember, your vote is important. Now that you are registered, use your right to vote to make your voice heard on election day, [date].

Sincerely,

Director, Voter Registration Project

that register large numbers of people have learned that following up registration efforts with get-out-the-vote reminders, information and other services for voters makes a very significant difference in how many of those registered turn out to vote.

It is important to begin plans for a get-out-the-vote drive before or during your registration drive. Careful organization and record keeping will make follow up easier. Contacts with voters should be made far enough before the election so any special arrangements can be made, including application for absentee ballots. (Check Easy Does It for information on deadlines for absentee ballot applications.) Make plans for the preparation of materials and distribution of information about voting to citizens.

After the deadline for registration is past, announce your results to the press, throw a party for your volunteers and celebrate, but don't disband your organization or consider your work finished. The next step is getting out the vote. The more successful your registration drive has been, the more work you will have to do to ensure that all of those you registered actually vote.

Getting the Facts Straight

To begin, find out what information is provided by your elections office about the locations and hours for polling places and the requirements and procedures for absentee voting. Does your election office send a pre-election mailing to registered voters? Is information available about the mechanics of voting? It is especially important for new voters to have the opportunity to learn how a vote is cast (or for all voters if the system has recently been changed). Step by step directions with simple drawings or cartoons can help make the process easy. A demonstration of the equipment used for voting is even more helpful, if it can be arranged. Fill in the gaps of official information with your own information and make sure this kind of practical knowledge gets to those whom you registered. Send it with voting reminders or distribute it at sites where you conducted your registration efforts.

Getting the Message Out

You can use the same techniques to get out the vote message that proved successful in getting out the registration message. Use radio, television and newspaper ads and spot announcements to remind citizens to vote. Get your organization's leaders on talk shows to report on the results of your registration drive and to push voting. Write guest editorials for your local newspaper. Put up posters in those places where you signed up voters—in stores, social service agencies, workplaces, colleges and nursing homes. Plan ahead to get grocery stores to put the "vote" message on bags and get utility

Script for House-to-House Canvassing or Phone Contact

Hello, my name is [name] and I am a volunteer for the Voter Registration Project. I want to congratulate you for registering to vote and remind you that the election is on [date]. This is a [primary/general] election to select [offices to be filled] and/or decide [issues on the ballot] (if possible distribute or offer to send nonpartisan sample ballot).

Your polling place is at [place and address]. It is open from [hours]. Do you need any help getting there? (Give directions, offer to send map or arrange for transportation as needed.) Do you need anyone to look after your children or anyone else while you vote?

Will you or anyone you know be unable to get to the polls on [date]? (Provide information on absentee voting or send an application as needed.) Do you have any questions about voting? I would be happy to send you information about using the [voting machine, punchcard ballot, other].

If you or anyone you know has any further questions, you can call us at the Voter Registration Project [phone number] or drop in [address] between [hours].

Please remember to vote on [date]. It is so very important for you and our [country/community]. Thank you.

companies to insert it with their bills.

You may find it useful to set up a special phone line for voting (or registration) information and assistance. An answering machine will help provide round-the-clock service. Publicize the phone and the hours it is staffed on your get-out-the-vote materials. You may get questions about voting in other jurisdictions, so be sure your staff is prepared with Easy Does It and the phone numbers of neighboring registrars. The phone will become increasingly busy as election day nears and calls come in from those who need assistance, transportation or child care in order to vote. If possible, make arrangements ahead of time for extra lines and extra staff for election day and the few hectic days just before (extra lines are expensive but election day questions can't be deferred until another day).

It also is important to help voters get information about candidates and issues. Publicize opportunities to see and hear the candidates in person or on radio and television. Distribute nonpartisan voters guides containing information about candidates' qualifications and stands on issues. Help voters learn about and understand ballot questions. Make a special effort to get this information to those sites or precincts where you registered voters. If you wish, make your list of newly registered voters available to all interested party or campaign staffs so that voters will receive information directly from candidates. You may do this even in a nonpartisan drive if you offer your

lists to all parties or candidates for a particular office. Remember that information about candidates and issues as well as about the procedures and mechanics of voting should be bilingual where appropriate.

Motivating Potential Voters

The most effective way to motivate people to vote is by personal contact. If at all possible, have your volunteers get in touch with each of the citizens you registered to remind them to vote. If you want to contact other voters personally as well, get lists of registered voters from your elections office (see Registration chapter). If those lists include information about when registrants last voted, you can target your efforts toward infrequent voters. You may find it more efficient to limit your outreach efforts to those precincts or wards where most of your new registrants live.

If you are going door-to-door, use the same canvassing techniques suggested earlier. Have volunteers work in pairs and provide them with identification and name tags. This kind of personal contact is time-consuming, but it is very effective. The next best contact is by phone. A phone-bank arrangement provides a good working atmosphere, although some volunteers may prefer to work from home. In any case, volunteers should have a written script and a form for reporting feedback.

Volunteers will need a list of polling places for each precinct. They should have information available on the location of polling places, how to get there by car or public transportation, where to park and what hours the polls are open. The elections office may be able to supply computerized lists of registered voters by street address and precincts. Directories that list residents by street address are very helpful when used with a map of precincts.

Provide volunteers with detailed accurate information about the requirements, deadlines and procedures for absentee voting. Have them ask about other registered voters in the household and whether they need applications for absentee voting or other assistance. If there are any questions the volunteer cannot answer, don't rely on the voter to call the elections office. The volunteer should get the necessary information and then call back.

Getting Out the Vote

Find out if there is any way your group can assist voters in getting to the polls. Make arrangements for transportation, child care, or staying with an elderly relative so that the voter can go to the polls. For disabled or elderly voters, find out if there are special arrangements that can be made (for example, transfer to a more accessible polling place, curb-side voting or a special van).

Federal Laws that Provide for Absentee Registration and Voting

The 1955 Federal Voting Assistance Act (as amended in 1968 and 1972) requires that states give absentee voting and registration rights to:

—members of the U.S. Armed Forces while in active service, members of the U.S. Merchant Marine, and their spouses and dependents;

—U.S. citizens temporarily living outside the territorial limits of the United States.

These persons may apply for registration (and for absentee ballots) by filling out the Federal Post Card Application for Absentee Ballot (FPCA) and mailing it to their local election officials. Military personnel can get forms from military base voting assistance officers in the United States or abroad; civilians abroad should contact U.S. consulates and embassies. Actual procedures may vary from state to state.

The Overseas Citizens Voting Rights Act of 1975 provides that all citizens residing abroad can register and vote in federal elections (presidential and congressional) as long as they meet the usual voting qualifications in their home state. Overseas citizens should ask for absentee registration and voting forms from the election officials in their home counties—the counties in which they were last domiciled.

The Voting Rights Act of 1965 (as amended) enables citizens who might otherwise be disenfranchised by a change of residence or by being away from home during a presidential election period to register and vote absentee in presidential elections. A citizen who will be away from home on election day or is registered to vote in one jurisdiction but has moved to another too late to register there for the presidential election can:

—request an absentee ballot, at least seven days before the presidential election, from the previous jurisdiction in which he/she lived and return the ballot to that jurisdiction by the time polls close on election day; or

—vote in person in his/her old jurisdiction, if that is more convenient.

The new jurisdiction may permit a person who has moved after the state's registration deadline has passed to vote a "short ballot" for President and Vice-President only, even though the voter does not meet registration requirements for other offices. Be sure to ask your elections office what its practice is so that you can advise prospective voters accurately.

Personal visits or calls, if possible, should be made well ahead of election day so that any special arrangements can be made. Early visits should then be followed up immediately before election day. Last-minute reminders can be very effective. A phone call, including information on what special arrangements, if any, have been made ("Your mother will be picked up by our van at 2:00 p.m. and the Girl Scouts are expecting your children at the gym at 2:15 p.m.") can be made just before election day. A personalized letter is also effective. At a minimum, follow up your original personal contact with a form letter or flyer to remind the voter where and when to vote. (See sample letter, p.13).

Your organization or coalition should be ready for election day so that you can make good your promises. Have transportation and child-care arrangements set up. Ask radio and television stations to broadcast voting reminders and polling hours. Use a sound truck to remind voters that the polls are open. Have volunteers outside polling places in key locations to answer questions from first-time voters and direct voters who have come to the wrong polling place. You may want to request permission to have poll watchers monitor election procedures.

Remember, the success of your drive will not be measured by the number of new names that are added to the voter lists, but by how many of those voters cast a ballot.

4
NONPARTISANSHIP

Registration and get-out-the-vote drives are conducted by many different groups, both partisan and nonpartisan. While the political parties and campaign organizations supporting candidates obviously are partisan, other organizations take great care to keep their drives nonpartisan, either because it is required by law, or because it enhances the public credibility of the drive—or both.

The Federal Election Campaign Act of 1971, as amended, requires that any registration drive conducted or sponsored by a corporation, labor union or trade association must be nonpartisan (or held in conjunction with a nonpartisan organization).* The Internal Revenue Code mandates the strict nonpartisanship of all registration and get-out-the-vote activities by organizations eligible to receive tax-deductible contributions under Section 501(c)(3) of the code.

*Under federal law, any materials produced for use in connection with a registration or get-out-the-vote drive aimed at the general public (as opposed to an organization's employees or members) must contain the names of all sponsors of that drive.

A nonpartisan organization does not support, oppose or provide aid to any candidate for public office or to any political party. Nonpartisan registration and get-out-the-vote drives may be aimed either at the general public or at a generally defined population group such as young adults or minority citizens. In a nonpartisan drive, registration and voting assistance, information or materials must be offered and made available to all. Such a drive may not be aimed only at those known to support one candidate or political party.

Nonpartisan organizations that take stands on issues (even though they do not support or oppose candidates or parties) should take care to separate their advocacy issues from their registration and get-out-the-vote efforts. They should not, for example, distribute information about their positions on issues at the same time and place where they are registering voters. The separation becomes increasingly important as the election approaches and candidates become identified with certain stands on issues.

With special care, issues can be used effectively and in a nonpartisan way to motivate citizens to register and vote. A voter education effort that alerts citizens to the importance of taking part in governmental decisions directly affecting their lives gives voters a personal stake in voting. If you are registering voters in a food stamp line, for example, you might point to the federal government's responsibility for providing or withholding funds for social services. Efforts aimed at senior citizens could stress the importance of issues such as Social Security and health care benefits. To preserve nonpartisanship, however, these issues must not be identified with the policies or positions of any parties or candidates, including incumbents.

Special sensitivities are needed when you are working with a coalition. Groups working together should be aware of the constraints on organizations that wish to or must remain nonpartisan. Coalition leaders should not be personally or publicly identified with any candidate or political party. Organizations should issue clear directives and guidelines to guard against overzealous or misguided efforts by local groups or individuals, efforts that may cross the fine line between nonpartisan activities and what may be embarrassing or illegal. Volunteers should be instructed that they must not wear campaign buttons or make their personal views about candidates, parties and issues known in any way while they are engaged in nonpartisan registration or get-out-the-vote activities. Any campaign materials or literature should be removed from an area where nonpartisan registration is taking place. Volunteers providing transportation or child-care services for voters during a nonpartisan get-out-the-vote drive should refrain from indicating their views on any candidate or party. If voters request information about candidates, you can offer them nonpartisan voter guides or official sample ballots issued by election officials, or you can refer them to campaign or party headquarters.

Registration and get-out-the-vote drives that are funded by private, tax-deductible foundations must meet certain conditions under the Internal Revenue Code. In this case, and if there are any other major legal questions, the funder and/or the groups conducting the drive should seek legal advice.

Generally, requirements for nonpartisanship should be seen not as impediments to an effective drive but as an opportunity to stress the importance of voting for each citizen and for the preservation of our democratic society.

5 LOOKING AHEAD

After election day, once the results are in, take the time to evaluate your registration and get-out-the-vote drives. In addition, you may want to plan to work together with your group or coalition to assess and secure reform of election procedures and laws. In short, do everything you can to make it easier for future registration drives to get voters enrolled and get them out to vote.

Evaluating Your Results

You can get a general idea of the effectiveness of your drive by looking at overall voter turnout figures, but a more accurate estimate will come from looking at turnout for the groups of voters you targeted. Your local elections office or newspaper can help you get the necessary statistics.

- In targeted precincts (where most of your targeted voters live), compare present voter turnout figures with voter turnout in the last few comparable elections.
- Look at turnout figures for nontargeted precincts for these same election years. Can you spot a trend? Is it comparable to the trend in the targeted precincts?

Census Bureau surveys estimate voting and registration statistics by specific age groups as well as by race and gender within states. It may take as long as two years to obtain these figures, but they can help you evaluate your success in the long run. You must keep in mind, however, that many factors influence voter turnout, including weather, other registration and get-out-the-vote efforts, ease of registering and voting and the political climate in your community during the drive. Nevertheless, careful analysis can help you determine if you used your resources wisely, if a narrower or wider focus would have been more productive, or if outside events affected the turnout.

Compiling a Final Report

Plan to meet with your co-workers, volunteers and coalition partners after the election to review the techniques that worked best and the sites that were most successful. Find out why they worked. If possible, check the list of those citizens you registered against the list of voters to see how many of your new registrants voted. Consider interviewing some registrants to find out why they didn't vote and what assistance or information you could have provided.

All of this information, plus written accounts of your working relationships with election officials and other groups, will form the core of a final report—a legacy for future drives. Include:

- Lists of targeted precincts and/or registration sites;
- Names, addresses and phone numbers of volunteers, the kind of work they preferred and the hours they worked;
- The information on election laws and procedures that you researched and used;
- Samples of letters, written materials, scripts, press releases and advertisements.

Compile these in a large looseleaf binder or other container to guard against components being lost.

Working for Change

Conducting a registration and get-out-the-vote drive offers a unique opportunity to observe and review the electoral process in your community. From your effort, you will have learned firsthand those procedures that open up the process and make access to registration and voting easy for citizens and those that serve as obstacles. You will be able to evaluate how the system assists or impedes groups seeking to register voters.

If you found problems or obstacles, the time between elections is the best time to bring about changes in laws or procedures. A study of the state election code will help you determine which practices can be changed through negotiations with local officials and which will require changes in state law. Much can be accomplished by administrative change. You may be able to persuade local election officials to make more registration forms available or allow more volunteers to act as deputy registrars, for example, especially if you approach them after the hectic election period is over. But other reforms, such as moving registration deadlines closer to election day or providing registration by mail, will require action by your state legislature. Try for such changes in an "off-year"; legislatures are usually reluctant to enact election law changes in an election year.

Your experience, your reports and records and your work for election reform will set the stage for continued drives to register more voters and get them to the polls. Each successful drive will bring our country closer to the ideal of full citizen participation.

For more information. . . .

The League of Women Voters Education Fund has developed the following election-related materials (order from the address below):

Easy Does It. Comprehensive, easy-to-read poster (19" × 24") detailing voter registration procedures and absentee ballot requirements by state, updated for the 1984 election. Essential for any organization doing voter registration, for student groups and election officials. 1984, Pub. #522, $1.00 (75¢ for members).

Choosing the President 1984. Explains the presidential nomination and election process, and provides an unbiased, nonpartisan perspective that goes beneath the political surface to let you see—and understand—how America elects a President. 1984, Pub. #420, $5.95 ($3.00 for members).

Pick A Candidate. A citizen's guide for evaluating candidates at all levels of office, for identifying personal issue priorities and for spotting campaign tactics that distort issues or attempt to build false images. Handy envelope size for easy mailing. Useful for mass distribution by groups working with campaigns, doing voter registration and emphasizing voter education. 1984, Pub. #259, 10/$1.50 (minimum order).

The Women's Vote: Beyond the Nineteenth Amendment. Ideal for providing background on the contemporary electoral scene, for raising public consciousness about the women's vote and for stimulating discussion among opinion leaders, media representatives and voters. 1983, Pub. #425, $1.75 ($1.25 for members).

Election Check-Up: Monitoring Registration and Voting. How-to's of monitoring, with sample checklists easily tailored to any citizen group's effort. 1973, Pub. #270, 35¢.

Administrative Obstacles to Voting. Findings of an LWVEF survey in 251 communities and recommendations for improvements. 1972, Pub. #206, 25¢.

Removing Administrative Obstacles to Voting. Strategies for community action. 1972, Pub. #151, 15¢.

Make an Election a Real-World Lab. Perfect tool for teachers interested in a primary-source approach to elections and politics. Offers practical teaching materials for use in classrooms at all levels. 1979, Pub. #485, $1.25 (75¢ for members).

Vote Poster. 14" × 17". Red letters, black checkmark. One version (#397) has large VOTE logo and "League of Women Voters." One version (#232) also has room for your own message. $1 each, 10/$5, 100/$40.

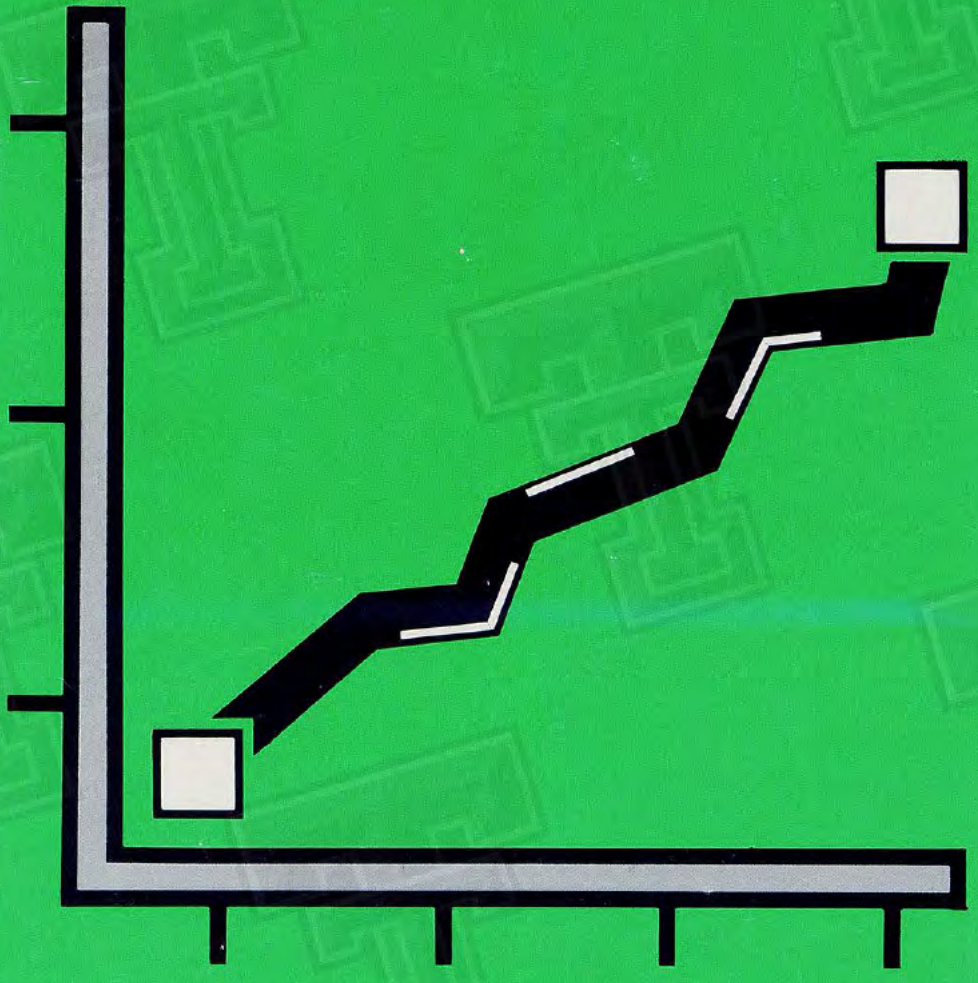
"Go Register Yourself" buttons. White letters on 1 1/2" black metal button. 25/$3.00, 100/$10.

Make check or money order payable to the League of Women Voters of the United States. (Include 50¢ handling charge per order.) All orders must be prepaid.

Order from:
League of Women Voters of the United States, 1730 M Street, NW, Washington, DC 20036.

9/4/84

FACTS ON PACs:



POLITICAL ACTION COMMITTEES & AMERICAN CAMPAIGN FINANCE

LEAGUE OF WOMEN VOTERS EDUCATION FUND

CONTENTS

Researched and written by Mary N. Stone, director, LWVEF Government/Voters Service Department.

OVERVIEW

Campaigning for elective office is expensive, and candidates must place a high priority on raising the money that is so essential for political activity. This fact of political life introduces a dilemma: where are the necessary campaign funds to come from? Public financing is available as an option only to presidential candidates (and most *do* choose it); candidates in other federal races—for House and Senate seats—have no such option available to them. They must therefore raise their campaign funds from private sources—either from their own resources or from other individuals, interest groups and political parties.

Over the years, reformers have expressed concern about the connection between private contributions to congressional candidates and their legislative decisions once they are in office. The possibility of undue influence by large contributors—either individuals or private interests—has been a consistent problem, and one that drives the current debate about the role of political action committees (PACs) in American campaign finance.

More than half a century of efforts to legislate and regulate the financing of federal political campaigns in the United States has produced a complex process. For example, Congress's failure to enact public funding for congressional campaigns at the same time that it enacted it for presidential campaigns has left the nation with a bifurcated system: public money predominates for presidential elections but only private money is available for congressional elections. In this situation, PACs have come to play an important role. PACs exist to raise and spend campaign money. With presidential candidates who accept public funding unable to take PAC contributions in the general election period, PAC contributions have gone largely to congressional campaigns. A quick review of U.S. campaign laws provides a context for looking at the role of PACs in the contemporary scene.

In 1907, the Tillman Act prohibited corporations and national banks from contributing to campaigns for federal office, but the law's reporting procedures were not rigorous. In 1925, Congress passed the Federal Corrupt Practices Act, which limited personal campaign spending in House and Senate election campaigns and required candidates to report their expenses, but the act's spending limitations were unrealistically low. Moreover, many expenditures were exempt from the limits, and committees acting on behalf of a candidate, but "without his knowledge and consent," were not required to report if their activities were within one state. Enforcement of the law was lax, and, not surprisingly, compliance was half-hearted.

By the early 1970s, public agitation over campaign costs and contributions prompted a new federal law. The Federal Election Campaign Act (FECA) of 1971 was the first major overhaul of federal campaign legislation since the 1925 Corrupt Practices Act. The 1971 act was

amended in 1974, 1976 and 1979 (the 1974 amendments were a response to public revelations during the Watergate investigations of illegal and "laundered" cash contributions from corporations and wealthy individuals to the 1972 Nixon reelection campaign committee).

The FECA, as amended:

- ☐ defines campaign contributions and expenditures;
- ☐ establishes contribution limits for individuals, political parties and political committees;
- ☐ sets expenditure limits for parties and presidential candidates accepting public funding;
- ☐ sets requirements for reporting (disclosing) sources and amounts of campaign contributions *and* expenditures; and
- ☐ establishes the Federal Election Commission (FEC) to administer the law, issue regulations and receive reports.

The 1971 Revenue Act provides for public funding of presidential campaigns through a dollar check-off on individual (and joint) federal income tax returns. (By the 1980s, about 27 percent of taxpayers used the check-off option on their tax returns.) For those presidential candidates opting for public funding, *partial* public funding through a matching payment system is available, within limits, for the preconvention campaign period; *total* public funding, up to a specified limit, is provided for the general election campaign. Publicly funded presidential candidates cannot accept private contributions for the general election campaign.

THE DEVELOPMENT OF POLITICAL ACTION COMMITTEES

The present PAC role is the result of the interaction of a number of factors, including the FECA, the regulations issued by the FEC to implement the statute, the long list of FEC advisory opinions that interpret both law and regulations, court decisions that have affected the whole pattern, and actions of campaigners who must live with the system. The current campaign financing picture thus provides an instructive example of a well-meaning but very complex statute, complicated further by the regulatory process and the courts. The combined effect of all these forces is not quite what was intended by early reformers. Few people foresaw the development of the current situation. A little more thought and a little less zeal by advocates of the original 1971 and 1974 reforms might have resulted in a more effective system. As it is, the increasing role of PAC money in congressional campaigns has raised questions about the appropriateness of this source of campaign funds and the possible influence on legislators' decisions.

WHAT ARE PACs?

The term "political action committee" does not appear in the Federal Election Campaign Act. Rather, the FECA speaks of "separate, segregated funds" and "nonconnected committees." Both are PACs—nonparty, noncandidate political committees.

"Separate, segregated funds" are political action committees established by and affiliated with corporations, labor unions, trade associations, membership organizations, cooperatives or corporations without capital stock. These "connected" PACs, organized by and tied to the parent institutions, may solicit and disburse voluntary contributions to candidates. Such PACs are restricted to communicating with their management or members, and families, and may not solicit contributions from the general public. These affiliated PACs have the advantage of having their administrative and fund-raising costs borne by the corporation, union or membership association. About 80 percent of all PACs are of this separate, segregated-fund type, tied to the parent organization and accountable to it.

"Nonconnected" political committees are just that—not connected to one of the types of parent entities listed above. Rather, they are independent political action committees whose purpose is to raise and spend money for campaign purposes. They are not bound by the restrictions that bind separate, segregated funds when it comes to communicating and fund raising; nonconnected PACs *can* raise funds from the public. However, since they lack the advantage of having a parent organization to bear administrative and fund-raising costs, they must pay such costs out of the money they raise. Most use direct-mail solicitation for the bulk of their fund raising.

THE PAC STORY BEFORE THE FECA

The separate, segregated-fund PACs—the connected PACs—developed because of the federal prohibition against *direct* corporate, national bank and labor union contributions to candidates for federal office. By 1947, the Taft-Hartley Act had amended and incorporated the contribution provisions of the earlier 1925 Corrupt Practices Act and had become an important law governing political activities by unions and corporations. The law prohibited both unions and corporations from making contributions in connection with elections to federal office. It was not stringently enforced, however, and in any case was not applied to labor's separate, segregated funds—the pioneer PACs.

The first modern political action committee—CIO-PAC—was organized by the Congress of Industrial Organizations (CIO) in 1943; other PACs followed. These early committees set the pattern of activities that the current FECA now authorizes—a process of channeling voluntary political contributions through separate and carefully distinguished accounts, in which these voluntary contributions (rather than money from the treasury of the parent organization) constitute the funds to be contributed to campaigns.

Following the success of CIO-PAC, other unions developed PACs. The American Federation of Labor (AFL) set up the Labor League for Political Education in 1947, which merged with CIO-PAC in 1955 (when the unions merged) to form the AFL-CIO Committee on Political Education (COPE), which then became the paramount labor PAC. By the time the FECA was enacted, there were almost 40 national labor PACs, as well as many state and local, labor union PACs.

While labor unions moved ahead in developing separate, segregated funds, corporations were active in political campaigns in different ways. Before the 1971 and 1974 campaign finance reforms, the most common pattern was for corporate executives to make political contributions on a personal basis, since corporations themselves were prohibited from giving directly to federal candidates from the corporation's coffers. But the Watergate scandals revealed that corporate funds *were* sometimes contributed illegally. Campaign finance expert Herbert Alexander has reported, for example, that among the illegal contributions in 1972, Braniff Airways gave $40,000 and the Associated Milk Producers gave $100,000 to the Nixon campaign; the milk producers also gave $55,000 to the Humphrey campaign. Both the airline and the milk producers were found guilty and fined.

Despite initial corporate caution about PACs, a few business-oriented PACs were established in the early 1960s. The oldest of these was the American Medical Association PAC (AMPAC), founded in 1961, followed shortly thereafter by Business-Industry PAC (BIPAC), established by the National Association of Manufacturers in 1963.

POST-FECA GROWTH

The 1971 Federal Election Campaign Act authorized the establishment and administration of separate, segregated funds (PACs) by unions and corporations, but the numbers of PACs did not increase immediately. As noted, unions already had major PACs operating in ways that conformed to the new law, and corporations were slow to develop new PACs. It was not until the 1974 amendments to the FECA that PAC growth really took off, particularly for business-related and corporate PACs. (See Chart 1, PAC Growth.)

When the 1971 FECA took effect, there were 113 PACs. In January 1975, when the Federal Election Commission officially began its operations, there were 608 PACs. In December 1983, the number was 3,525. The slow start for PAC growth can be attributed to concern in corporate quarters about the legality of corporations with government contracts establishing political action committees using corporate funds. This concern was eliminated in 1974. While existing law in 1971 did indeed forbid government contractors from directly or indirectly using corporate funds for political contributions, the 1974 amendments modified the definition of governmnet contractor so that unions and corporations that were government contractors *could* establish separate, segregated funds for voluntary political contributions from members or from management and executives.

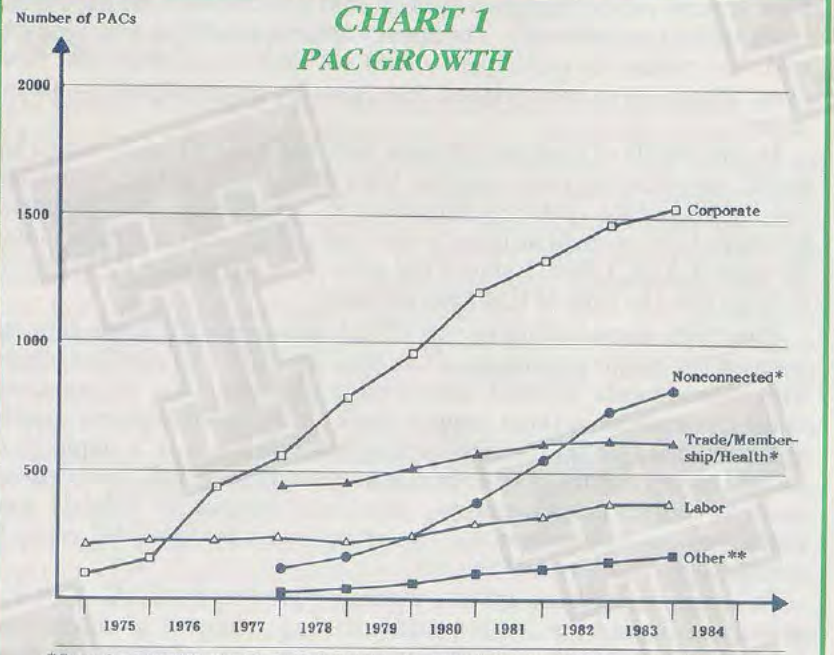


CHART 1
PAC GROWTH

*From January 1975 through December 1976, the FEC did not identify categories of PACs other than corporate and labor PACs. Therefore, numbers are not available for Trade/Membership/Health PACs or Nonconnected PACs.

**Includes PACs formed by corporations without capital stock and cooperatives. Numbers are not available for these categories of PACs from January 1975 through December 1976.

Source: Federal Election Commission

Labor organizations backed both the 1971 FECA and its 1974 amendments and advocated including corporations in the law's coverage in order to gain political support for the bills. One reason was that unions with federal manpower training contracts were fearful that the law, if unmodified, would prohibit unions (as contractors) from using their PACs. Thus arose the irony of labor's support for a law that greatly enhanced the ability of business interests—and business dollars—to be politically active in an open and approved way.

While the 1974 amendments led to a marked increase in corporate PAC growth, the watershed event that legitimized corporate PAC activity was an advisory opinion ("A.O.") issued in 1975 by the FEC. In response to a query from Sun Oil Company, the agency assured the corporation that its SunPAC was indeed a legal separate, segregated fund, that it could solicit voluntary contributions from its employees and that SunPAC could make contributions to federal candidates. The "SunPAC A.O." provided that multiple PACs could be established by corporations and that companies could use a payroll deduction plan to get contributions. The permission to solicit employees was a clear victory for business (it was already clear that the law allowed stockholders to be solicited, although only two percent of corporations use this option). The FEC did require that the employee solicitation pro-

cess ensure *voluntary* participation and provide that no supervisor could solicit a subordinate. The agency also specified that employees be told that refusal to participate would not lead to any reprisals. However, unions were unconvinced that pressure on employees would not occur.

In the annals of campaign finance lore, the SunPAC A.O. was a key event, signaling corporations that their PACs were a legitimate channel for corporate political activity and, specifically, that corporate treasury monies could be used to establish, administer and raise money for such PACs. Chart 1 shows the take-off in corporate PAC growth dating from the time of that 1975 decision.

The 1976 amendments to the FECA subsequently wrote into law some of the major provisions of the SunPAC A.O. and clarified others. The amendments allowed membership organizations, corporations, and corporations without capital stock to establish separate, segregated-fund PACs. The amendments picked up the A.O.'s emphasis on the voluntary nature of contributions and on no reprisals for unwillingness to contribute. Corporate, union and association officials were permitted to decide how the money collected by the PAC could be spent, under the terms of the law.

In order to address labor's concern that the SunPAC A.O. had greatly expanded the target pool available to business for solicitation, the 1976 amendments limited corporate PACs to soliciting voluntary contributions only from their stockholders or from executive and administrative personnel and their families; they restricted unions to soliciting from members and families. Payroll deduction plans for PAC giving by corporate management and labor union members were authorized by the amendments. Twice a year, corporation and union PACs can solicit by mail to obtain contributions from one another's pool. Individual contributions to any one PAC cannot exceed $5,000 in a calendar year.

The 1976 amendments overruled one SunPAC A.O. provision that could have spawned the proliferation of multiple corporate and union PACs from the same parent entity. The amendments provide that all PACs established by a company or by a union must be treated as a single committee for contribution purposes and that no multicandidate PAC* can give more than $5,000 per candidate per election ($10,000 for both primary and general elections). There is no limit in current law on the number of candidates to whom PACs can contribute.

It is important to keep in mind that individuals are restricted to a $1,000 contribution limit for federal candidates. Moreover, an additional advantage for PACs over individuals is the $25,000 per calendar year aggregate limit for individual contributions to candidates, parties and PACs. PACs have *no* aggregate limit and may spend any amount, as long as they do not exceed per-candidate contribution limits.

*To qualify as a multicandidate PAC, the committee must be registered with the FEC for more than 6 months, receive contributions from more than 50 persons and make contributions to five or more federal candidates.

OTHER INFLUENCES ON PAC DEVELOPMENT

Still another important event in the development of PACs was t *Buckley* v. *Valeo* decision. Almost as soon as the 1974 amendme the FECA were effective, a major court challenge was brought by independent presidential candidate Eugene McCarthy, Conservative-Republican senator James Buckley, and General Motors heir and political philanthropist Stewart Mott. In January 1976, the Supreme Court issued its landmark *Buckley* v. *Valeo* decision in which it ruled that the new law's limits on candidates' contributions to their own campaigns, limits on campaign expenditures by candidates, and limits on independent expenditures were all unconstitutional restrictions of the First Amendment right to free speech.

The Court did uphold the law's aggregate expenditure limits for presidential candidates who accept public funding. The Court also left in place overall personal candidate expenditure limits ($50,000) for presidential candidates who accept public financing, ruling that Congress has the right to attach such conditions to the use of public money, and that such conditions flowed from the interests of Congress and the public in preventing political corruption through the campaign process. The Court also left in place the FEC limits on contributions from individuals and groups to federal candidates, to political committees and to political parties.

The Court ruled that independent expenditures—campaign expenditures that are made independently of a candidate or of his/her committee, without collusion, cooperation or consultation—could not be limited by law. This opened the way for widespread independent spending by PACs (and individuals). Since the 1976 decision, nonconnected PACs have taken up the lion's share of independent expenditure activity. (Such expenditures are discussed in more detail below.)

The significance of *Buckley* lay not only in the specifics of the decision, but also in the atmosphere of overall approval that then surrounded the portions of the law the Court left alone. Where questions had existed, the decision provided clarification of the campaign financing ground rules, and the players quickly learned to maneuver in relative safety within *Buckley's* framework.

The sharp growth in PACs that followed can be attributed not only to the encouraging, legitimizing atmosphere created by the FECA and its '74 and '76 amendments plus the SunPAC A.O. and the *Buckley* decision, but to other factors as well. One important factor was a by-product of public funding of presidential elections—the system of public financing of presidential candidates diverted interest group contributions into congressional campaigns, since publicly funded presidential candidates could accept no contributions to their general election campaigns. (Presidential candidates who accept public funds *can* accept PAC money for their primary/caucus campaigns, but, unlike individual contributions, PAC contributions are not eligible to be matched by public funds.) Thus, "interested" money began to flow to congressional

races through PACs as legally recognized entities for campaign contributions.

Concurrently, it became more and more common for candidates to organize their own campaigns independently of their political party and to establish campaign committees to seek funds. With an electorate less given to following party exhortations than in earlier times, candidate campaigns conducted independently of parties contributed to a diminished place for political parties. The FECA itself exacerbated the weakening role of parties by restricting party contributions to candidates.

PACs moved to fill the vacuum, becoming a ready source of cash for candidate efforts—cash not channeled through the political party as in earlier times. Also, scholars have noted the increase in issue-oriented voting in the past 15 or 20 years, a factor leading to some citizens' support of issue-oriented PACs in lieu of support for the political parties.

Some correlate the growth of PACs with the increase in federal regulation of industry. Industrial interests have seen political contributions by PACs to be a means of ensuring access to the lawmakers who write the legislation that governs their businesses. According to Bernadette Budde, political education director of BIPAC (Business and Industry PAC), the rise of PACs can be traced to the growth of federal regulatory activity in the 1970s. Budde maintains that "the more regulated an industry and the more obvious an industry is as a congressional target, the more likely it is to have a political action committee within the associations or within the companies that make up that industry."

THE CURRENT PICTURE

In sum, in the mid-1980s, the United States has a system of campaign financing that operates in ways that were not foreseen ten years ago. The campaign finance reform effort is replete with the ironies of unintended effects. Reformers in the early 1970s intended to regulate campaign giving, control campaign costs and restrict the influence of special interests. Yet because of the unanticipated consequences of the intricately detailed statute, the role of special interests in campaign financing has been enhanced rather than diminished.

Political action committees, the newest major influence in electoral politics, are thus in many ways the unplanned children of the Federal Election Campaign Act. Indeed, the FECA has been called "the law of unanticipated consequences," and the rise of PACs as major campaign forces illustrates the point. Political scholar Frank Sorauf has concluded, "Virtually every change in the statutes promoted the growth of PACs, both by directly legitimizing and strengthening them and by limiting the freedom of competing organizations and individuals."

The Supreme Court's decision in the *Buckley* case also has been the target of criticism—particularly the Court's linking of political spend-

ing to freedom of speech. In a *Columbia Law Review* article in 1982, U.S. Court of Appeals Judge J. Skelly Wright was particularly scathing in his comments about *Buckley*. He wrote, "To invoke the first amendment, not to protect diversity, but to prevent society from defending itself against the stifling influence of money in politics is to betray the historical development and philosophical underpinnings of the first amendment." Wright argued that courts should give due weight to the goal of guaranteeing political equality. Many campaign finance authorities agree that *Buckley* severely circumscribes what future campaign financing reforms can do. But the Supreme Court's interpretation of the Constitution in *Buckley* is the definitive standard by which campaign finance proposals must be judged.

Group influence on the body politic has been with us since the beginning of the republic, and few believe that interest-group activity can or should be legislated away. Also, it is fair to say that the FECA's disclosure provisions have given Americans a more accurate view of interest-group activitiy in elections than ever before.

STATS ON PACS: A LOOK AT SOME CAMPAIGN FINANCE STATISTICS

In order to assess current proposals to amend the campaign finance law still further, a grasp of the basic statistics is essential.

HOW MANY PACS?

Table 1 shows the increase in the numbers of PACs since 1974, by type of PAC and by percentage. In that ten-year period, the average yearly increase in the number of PACs, according to the FEC, has been 22.3 percent. The number of PACs has climbed from 608 in 1974 to 3,525 registered with the FEC at the beginning of the 1984 election year. However, the rate of increase in the numbers of PACs has slowed considerably in the most recent period. An increase of only 4.5 percent occurred between 1982 and the beginning of 1984, for example. Although predictions about campaign finance phenomena are always risky, some experts have concluded that the period of peak growth for PACs may have already passed.

Table 1 shows that some categories of PACs have not grown in numbers or proportion as much as others. After a slow start, corporate PACs have proliferated more than other types, increasing 1,625 percent from 1974 to 1984. Many experts add to the corporate total the number of trade association PACs plus some membership and health PACs in order to give a truer picture of total business-related PAC

activity. As Table 1 shows, the growth in labor union PACs has been more modest (and in some years there has actually been a decrease). Overall, the number of labor PACs has increased 88 percent from 1974 to 1984. Likewise, trade/membership/health PACs have not proliferated at the rapid rate that some others have. Nonconnected PACs have grown greatly in number and proportion—up 398 percent since 1978.

TABLE 1. NUMBER OF PACS REGISTERED WITH THE FEDERAL ELECTION COMMISSION AND PERCENTAGE INCREASE OR DECREASE FROM PRIOR PERIOD

Type of PAC	1974	1976	1978	1980	1982	1984	Percentage increase since beginning yr.
Corporate	89	433	784	1204	1467	1536	1625%
% change		386.5%	81.1%	53.5%	21.8%	4.7%	
Labor	201	224	217	297	380	378	88%
% change		11.4%	−3.1%	36.8%	27.9%	− .5%	
Trade/membership/ health	318	489	451	574	628	617	94%
% change		53.7%	−7.7%	27.2%	9.4%	−1.8%	
Cooperatives	*	*	12	42	47	51	325%
% change				250%	11.9%	8.5%	
Corporations without capital stock	*	*	24	56	103	122	408%
% change				133%	83.9%	18.4%	
Nonconnected	*	*	165	378	746	821	398%
% change				129%	97.4%	10.1%	
TOTAL	608	1146	1653	2551	3371	3525	480%
Percentage Increase or Decrease		88.4%	44.2%	54.3%	32.1%	4.5%	

*Not applicable.

Sources of Data: Federal Election Commission; Joseph E. Cantor, *Political Action Committees*, 1982; Michael J. Malbin, ed., *Money and Politics in the United States*, 1984.

HOW MUCH MONEY?

Table 2 shows the extent of PAC contributions to congressional campaigns over time. In 1982, PAC contributions accounted for slightly over 25 percent of congressional (House and Senate combined) candidate receipts, almost double the percent recorded for 1974.

TABLE 2. PAC CONTRIBUTIONS TO CONGRESSIONAL CANDIDATES, GENERAL ELECTIONS, HOUSE AND SENATE (EXCLUDES PRIMARY LOSERS)

Year	Amount in millions of $	Percent of total candidate receipts given by PACs
1974	$11.6	15.7%
1976	20.5	19.6
1978	31.8	20.1
1980	51.9	25.7
1982	79.7	26.6

Source: Joseph E. Cantor, *Political Action Committees*, 1984 edition.

The greatest single source of congressional candidate money still is individual contributions. In 1982 House races, for example, about two-thirds of campaign funds came from individuals; in Senate races, individual contributions accounted for about three-quarters of candidate receipts. However, the proportion of campaign money coming from PACs is growing. In 1982, PAC contributions constituted about 31 percent of House candidates' receipts and about 18 percent of Senate candidates' receipts. By contrast, only about 6 percent of House candidate receipts came from political parties in 1982; for Senate campaigns, party contributions amounted to 1 percent. (Separate political party "coordinated" expenditures are allowed by the FECA for federal candidates. These expenditures are limited by the law, but the limit is adjusted upward yearly based on increases in the cost of living. Coordinated expenditures are used for such things as conducting polls or producing campaign advertising. These expenditures are totally separate from political party contributions to total congressional candidate receipts. See Table 6.)

According to the FEC, total congressional candidate spending (primary and general elections, winners and losers) increased from $239 million in 1979–80 to $342 million in 1981–82, an increase of 43.3 percent. House campaign spending increased 50 percent; Senate campaign spending increased 34.5 percent.

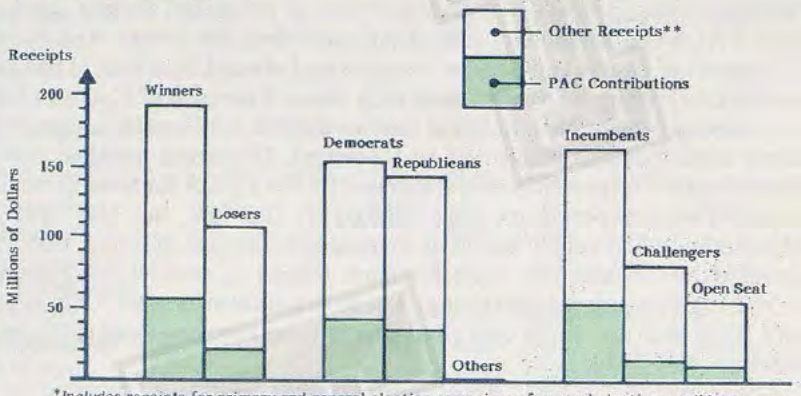
WHERE DOES THE MONEY COME FROM AND WHERE DOES IT GO?

Chart 2 shows the distribution of 1982 campaign receipts among congressional winners and losers by party and by incumbent, challenger and open-seat contests. The PAC role is depicted in the shaded areas. Overall, winners were supported by PACs more than losers, incumbents more than challengers and the parties just about evenly.

Studies indicate that in 1982 the average PAC contribution to Senate candidates was $1,243; for House candidates the average was $702. In looking at the pattern of PAC giving to incumbents, challengers and open-seat contestants for Congress, analysts have noted that incumbents in 1982 received a higher proportion of PAC contributions than previously. Incumbents had a 3-to-1 edge over challengers in obtaining PAC funds for that election, receiving 65.8 percent of total PAC contributions, compared with 60.7 percent in the 1980 congressional elections. Challengers in 1982 received 19.4 percent of PAC contributions, while 1980 challengers received 26.3 percent. In 1982, open-seat contests drew 14.8 percent of PAC congressional contributions compared to 13 percent in 1980.

CHART 2

CAMPAIGN RECEIPTS* OF 1982 CONGRESSIONAL CANDIDATES RUNNING IN GENERAL ELECTIONS 1/1/81 – 12/31/82



*Includes receipts for primary and general election campaigns of general election candidates.
**Other campaign receipts include, for example, contributions from individuals, contributions from candidates to their own campaigns, contributions from other campaigns, loans, refunds, and interest income earned on investments.

Source: Federal Election Commission

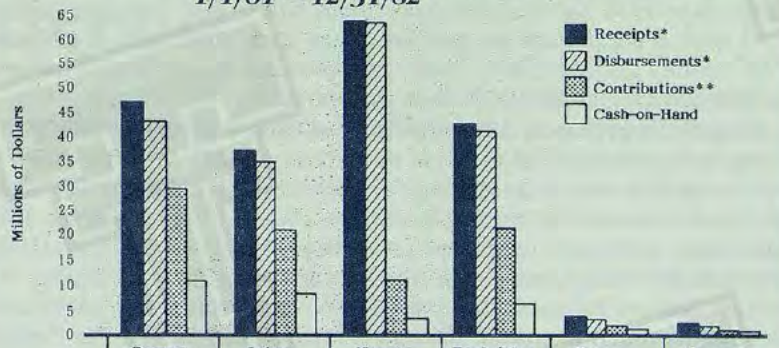
According to FEC reports, of the $83.1 million total 1982 PAC contributions to congressional candidates:

- $27.5 million came from corporate PACs;
- $21.9 million came from association PACs;
- $20.3 million came from labor PACs; and
- $10.7 million came from nonconnected PACs.

(These proportions are consistent with the 1980 presidential-year pattern.) Chart 3 indicates the pattern of receipts, disbursements and contributions among the various categories of PACs.

CHART 3

FINANCIAL ACTIVITY OF PACS 1/1/81 – 12/31/82



	Corporations	Labor Organizations	Nonconnected Organizations	Trade/Membership/Health Organizations	Cooperatives	Corporations w/o Stock
Total Number of Committees***	1,557	420	915	669	51	110
Number of Committees Making Contributions	1,317	293	407	524	46	78

*Receipts and disbursements do not include funds transferred between affiliated committees.

**Includes contributions to committees of 1982 House and Senate candidates as well as all federal candidates (for House, Senate and Presidency) campaigning in future elections or retiring debts of former campaigns.

***Includes total number of PACs active in federal elections some time between January 1, 1981, and December 31, 1982. Since some committees terminated during the 1981-82 cycle, this figure does not represent total committees active as of December 31, 1982.

Source: Federal Election Commission

Analysts also looked at the partisan distribution of PAC contributions (shown in Table 3). Labor PACs gave 95 percent of their 1982 contributions ($19.2 million) to Democratic candidates—not surprising when one considers the historical allegiance of many labor unions to the Democratic party. In contrast, and also not unexpectedly, the majority (66 percent) of contributions from corporate PACs ($18.1 million) went to Republicans. Unaffiliated PACs split their $10.7 million about evenly between Republican and Democratic congressional candidates. Association PAC giving was slightly skewed to Republican candidates. Altogether, Democratic and Republican congressional candidates were nearly equal in division of PAC contributions in 1982, with Democrats receiving slightly over 50 percent.

Perhaps more significant is the sharp increase in 1982 in corporate PAC giving to congressional candidates. Political scientist Gary C. Jacobson points out that in 1982 corporate PACs constituted the "single largest source" of PAC funds. The growth from $2.5 million in corporate PAC contributions in 1974 to $27.5 million in 1982 represents a 996-percent increase (unadjusted for inflation). The growth in trade/membership/health PAC contributions since 1974 is also noteworthy.

The 250-percent increase in labor PAC giving to congressional candidates appears small in comparison ($5.8 million in 1974 to $20.3 million in 1982). Jacobson has pointed out that labor's share of PAC contributions since 1974 has dropped from about half to less than one-quarter. And with a significant proportion (more than one third) of corporate PAC money going to Democrats, Jacobson noted that labor's influence in Democratic councils may be on the wane.

Corporate giving in 1981–82 favored House incumbents (in-office Democrats received 32 percent of corporate PAC contributions, Republicans 45 percent), according to a 1984 analysis by Michael J. Malbin of the American Enterprise Institute. In contrast, corporate PACs gave only 1 percent and 9 percent respectively to Democratic and Republican challengers, with candidates for open-seats faring little better. Labor PAC contributions also favored incumbents, particularly Democratic incumbents (53 percent compared to 4 percent for Republican incumbents), but were more likely to go to Democratic challengers (28 percent) with only .1 percent of labor PAC contributions going to Republican challengers. Trade/health/membership PACs figures were very similar to the breakdown of corporate contributions between challenger and incumbent, by party.

TABLE 3. PAC CONTRIBUTIONS TO CONGRESSIONAL CANDIDATES IN GENERAL ELECTIONS BY TYPE OF PAC AND BY PARTY[1] (in millions of dollars)

	1974		1976		1978		1980		1982	
	D	R	D	R	D	R	D	R	D	R
Labor	$5.4 95%	$ .4 5%	$7.2 97%	$ .2 3%	$8.3 93%	$ .5 6%	$11.5 93%	$ .8 7%	$19.1 95%	$1.1 5%
Corporate	$ .9 38%	$1.4 58%	$2.9 43%	$3.8 57%	$3.1 34%	$6.0 66%	$6.3 35%	$11.8 65%	$9.4 34%	$18.1 66%
Trade/ Membership/ Health	$ .5 28%	$1.3 72%	$1.0 38%	$1.6 62%	$4.4 42%	$6.2 59%	$6.5 43%	$8.5 57%	$9.3 43%	$12.5 57%
Non-Connected	$ .3 48%[2]	$ .3 52%	$ .6 45%	$ .7 55%	$ .5 23%	$1.7 77%	$1.3 29%	$3.2 71%	$5.5 51%	$5.2 49%

1 Excludes cooperatives and corporations without capital stock; their contributions are proportionately not significant.

2 Differences due to rounding multiplace figures.

Sources: Joseph E. Cantor, *Political Action Committees*, 1982; Federal Election Committee reports.

WHAT IS THE PATTERN OF PAC SPENDING FOR PRESIDENTIAL ELECTIONS?

To help complete the PAC picture, the role of PAC contributions in presidential elections should be considered. Because of public financing provisions, PACs play a much smaller role in presidential than in congressional campaigns. Presidential candidates who choose public funding are allowed to use a mix of privately raised funds and matching public funds during the primary/caucus period, but may not accept PAC (or any) contributions during the general election campaign period. In the 1980 preconvention period, presidential candidates received $1.56 million in direct PAC contributions, a fraction of the total $106.3 million spent by presidential candidates during that primary period. Overall, PACs have played a much smaller role in presidential than in congressional elections.

WHAT ARE THE TOP TEN PACS?

The top ten PAC contributors to federal candidates during the two-year period ending in December 1982 were:

Political Action Committee**	Amount Contributed* 1/81 – 12/82
Realtors Political Action Committee (National Association of Realtors)	$2,115,135
American Medical Associaton PAC (AMA)	1,737,090
UAW Voluntary Community Action Program (United Auto Workers)	1,628,347
Machinists Non-Partisan Political League (International Association of Machinists and Aerospace Workers)	1,445,459
National Education Association PAC (NEA)	1,183,215
Build Poltical Action Committee (National Association of Home Builders)	1,006,628
Committee for Thorough Agricultural Political Education (Associated Milk Producers, Inc.)	962,450
BANKPAC (American Bankers Association)	947,460
Automobile and Truck Dealers Election Action Committee (Automobile Dealers Association)	917,295
AFL-CIO COPE Political Contributions Committee (AFL-CIO)	906,425

*Contribution figures do not include totals for independent expenditures made for or against candidates.

**The connected organization (i.e., sponsor) of a separate, segregated fund is indicated in parentheses.

Source: Federal Election Commission reports.

UNDERSTANDING INDEPENDENT EXPENDITURES

A critical part of an analysis of PACs is an understanding of "independent expenditures," which can be made without limit during campaigns under the Supreme Court's interpretation of the First Amendment in *Buckley* v. *Valeo*. Many experts are concerned about this aspect of the campaign finance pattern because it involves fundamental issues of fairness and accountability.

In *Buckley*, the Supreme Court overturned the FECA's expenditure limits for individuals and groups. The justices did approve contribution limits, recognizing the interest of Congress and the public in preventing political corruption. But the Court ruled that independent expenditures (or candidates' expenditures, if they do not opt for public financing) are protected under the constitutional right of freedom of expression and that individuals and groups may spend *without limit* in independently advocating the election or defeat of a candidate or party. No consultation, cooperation or coordination with a campaign is permitted in such cases, and all independent expenditures must be disclosed to the FEC.

TABLE 4. INDEPENDENT EXPENDITURES BY PACS

	1978	1980	1982
Congressional Contests	$0.3 million	$ 2.2 million	$5.3 million
Presidential Contests	—	$12.0 million	—

Source: Frank Sorauf, "Political Action Committees in American Politics," in Twentieth Century Fund report, *What Price PACS?*, 1984.

The level of independent expenditures by PACs in congressional elections increased more than seven times between 1978 and 1980, and it more than doubled between 1980 and 1982. It is not surprising then, that election observers have expressed growing concern about the size and thrust of PAC expenditures. In the 1980 presidential campaign, for example, independent expenditures of $12.2 million on behalf of Ronald Reagan—most of it by PACs—dwarfed the $46,000 spend independently on behalf of Jimmy Carter. Furthermore, negative campaign spending through independent expenditures seems to draw the most dollars. Of the $5.3 million spent independently by PACs in 1981–82

($3 million of which was spent by National Conservative Political Action Committee (NCPAC) alone), $4.5 million was spent to campaign *against* candidates—$3.9 million of it against Democrats, the rest against Republicans. The most popular targets of negative independent expenditures by PACs in 1982 were Senate Democrats, with $3.1 million in PAC funds spent to try to defeat them.

Most independent expenditures are made by nonconnected PACs, and the dollars they spend are raised largely through direct-mail appeals to individuals. Nonconnected PACs do not have to account to any parent body or to contributors (most of whom give small amounts) for how they spend their funds, although they must report receipts and expenditures to the FEC. As noted above, however, nonconnected PACs must pay for their administrative and fund-raising costs out of the funds they raise.

Officially, a candidate has no control over independent expenditures by groups such as NCPAC. For example, candidate James Abdnor, who defeated Sen. George McGovern in 1982, complained to the FEC that NCPAC ads against McGovern were using Abdnor's name without his permission. NCPAC chair Terry Dolan's famous statement that "a group like ours could lie through its teeth and the candidate it helps

TABLE 5. INDEPENDENT EXPENDITURES 1981–1982

Committees Reporting Largest Independent Expenditures

Political Committee	Spending For Candidates	Spending Against Candidates
National Conservative Political Action Committee	$137,724	$3,039,490
Citizens Organized to Replace Kennedy	0	416,678
Fund for a Conservative Majority	0	388,399
Life Amendment Political Action Committee	36,455	219,055
NRA Political Victory Fund	232,350	477
American Medical Association PAC	211,624	0
Realtors PAC	188,060	0
Progressive PAC	8,090	134,795
Independent Action, Inc.	0	132,920
League of Conservation Voters	129,163	0

Table continued on p. 18.

stays clean" has done nothing to allay the fears about the role of independent expenditures. However, voter reaction has shown that negative campaigning can backfire. NCPAC ads against Sen. Paul Sarbanes of Maryland in 1981 enabled Sarbanes to organize early and mount an effective counterforce to the NCPAC ads, thereby winning reelection. In fact, Herbert Alexander reports that 16 of the 17 candidates that NCPAC targeted for defeat won reelection in 1982, a reversal of NCPAC's 1980 experience.

In 1982, about 40 nonconnected PACs were responsible for 90 percent of *total* independent expenditures and for about 95 percent of the $4.6 million spent in negative expenditures, according to scholar Margaret Ann Latus in a recent analysis. Table 5 lists the ten PACs reporting the largest independent expenditures in 1981–82, and also lists the candidates for and against whom the largest sums were spent.

Serious questions have been raised about the fact that independent expenditures by nonconnected PACs are made with no accountability. Since the nonconnected PACs spent the great bulk of independent expenditure dollars, this means that large sums are spent in campaign-

Candidates For or Against Whom Most Independent Expenditures Were Made

Candidate	Spending For	Spending Against
Senate		
Edward Kennedy (D MA)	$ 500	$1,146,135
Paul Sarbanes (D MD)	29,501	697,763
Robert Byrd (D WV)	9,184	270,749
John Melcher (D MT)	40,118	228,011
Lloyd Bentsen (D TX)	0	226,662
Lowell Weicker (R CT)	21,248	200,508
Howard Cannon (D NV)	0	192,081
Edmund Brown (D CA)	7,632	146,346
Orrin Hatch (R UT)	22,081	82,772
Harrison Schmitt (R NM)	5,682	76,575
House		
Thomas P. O'Neill (D MA)	0	$ 318,114
Jim Wright (D TX)	0	217,115
Jim Jones (D OK)	13,266	127,029
Dan Rostenkowski (D IL)	0	57,507
Bob Edgar (D PA)	24,762	8,943
Bill Chappell (D FL)	30,332	0
Jim Dunn (R MI)	24,013	5,500
John Kasich (R OH)	27,294	0
Jim Coyne (R PA)	25,019	1,681
Edward Weber (R OH)	17,442	5,500

Source: Federal Election Commission

ing by a small group of persons without their having to gain approval for their decisions from a larger body.

A related issue is whether independent expenditures are truly independent. The opportunity for collusion between a campaign staff and PAC officials making independent expenditures is very real.

Independent expenditures also are influential in presidential contests, despite the fact that a major reason to provide public financing for presidential elections was to limit and make equitable the expenditure of campaign money by providing equal sums to major party presidential nominees. The large amount of money spent independently on behalf of Ronald Reagan's candidacy in 1980 (compared to the small sum spent independently on behalf of Jimmy Carter) distorted the spirit of the reform embodied in public financing of presidential elections. It constituted an expenditure that was more than 40 percent of the $29.4 million in public funds allocated to each major party presidential candidate in the general election campaign. Such circumstances effectively circumvent the concept of limiting presidential campaign costs.

FURTHER REFORM?

The preceding discussion highlights a few of the important facts about PACs and their role in the campaign finance system. What emerges is a very complicated picture of law and regulation interacting with strong political forces. The increasing level of PAC activity and the proliferation in PAC numbers have prompted much comment and study. Further, the significant role of independent expenditures in the campaign process is adding to the concern about money and politics. Scholars and political activists alike debate the wisdom both of attempting further reform and of leaving the system as it is.

The campaign finance system is indeed complex, but certain possible targets for reform stand out. One issue is whether a variation of the system of public funding now in place for presidential candidates should be extended to cover congressional candidates. Another area of concern is that PAC contribution dollars are increasing and the proportion of congressional campaign receipts from PACs is slowly but steadily growing. In an increasing "nationalization" of congressional campaign funding, candidates for Congress raise money from nationally based PACs and out-of-state PACs. To further complicate the picture, the role of political party contributions and expenditures as a counterbalance to those of PACs is circumscribed by the law. And the ability of individuals to contribute to campaigns also is limited by law; individuals may not contribute as much as PACs to federal candidates. In the case of nonconnected PACs, accountability is extremely difficult.

Reformers can pick and choose among a plethora of proposals designed to mitigate PAC influence. Some proposals would try to put the genie back in the bottle by limiting PAC giving. Others would try to lessen candidate dependence on PACs by strengthening other institu-

tions in the campaign finance scheme. Still others would provide non-PAC resources for congressional candidates—public money or increased party dollars. A look at several reform proposals and their possible effects will complete this picture of the role of PACs in campaign finance in the 1980s.

PUBLIC FINANCING

Proponents of public financing for congressional elections believe that this reform would lessen the reliance of congressional candidates on private sources of funding, including PAC money. Yet in the past ten years, public financing for congressional races has so far not gathered sufficient support in Congress due to cost implications, possible administrative difficulties and partisan differences.

Reform advocates have proposed a system of partial public funding for congressional candidates that would incorporate the public matching of privately raised sums (usually in small contributions) after a specified fund-raising threshold is reached. Most public-finance-for-congressional-campaign bills have called for candidates to accept an overall limit on expenditures in order to qualify for the public money, a reasonable condition according to *Buckley* v. *Valeo*.

The most serious effort to enact public funding for congressional elections occurred in 1979, with the introduction of a bill dealing with general (not primary) elections to the House of Representatives. Under this bill, candidates who accepted public funding would have had to accept a spending total; however, they would have been provided additional sums for a district-wide campaign mailing. The proposal prohibited candidates from contributing more than $25,000 of their own or their family's money to their campaigns. It called for matching grants for individual contributions to the candidates of $100 or less after the candidates reached the threshold of fund raising. Matching fund payments were limited to 40 percent of the spending limit. The bill failed to make it out of committee, and a similar bill in the Senate also died. Since then, other public financing bills have come and gone; all have foundered on the shoals of congressional opposition.

For example, critics charged that the 1979 bill would work to the advantage of incumbents over challengers. According to this argument, challengers need more funds to compete, but would be limited by the same expenditure limits as incumbents. Opponents also believe that not including the primary election in the bill worked to the advantage of incumbents since they are more likely to be nominated. Nevertheless, congressional incumbents have not rushed to enact public financing for their elections.

Some scholars have expressed concern that congressional public funding would deal the political parties yet another weakening blow. Still another argument made is that public financing would benefit Democratic congressional candidates more since Republicans are thought to have a greater ability to tap financial resources in the private sphere.

A variation on the public funding theme is the plan to provide public funds as a floor or minimum for qualifying candidates, with candidates free to raise additional funds on their own. A floor, or base amount, would enable qualified congressional candidates to plan a campaign, buy air time and other publicity, and raise contributions from other sources. Some authorities advocate channeling such public funds through the political parties as a means of strengthening the party role. Herbert Alexander notes that other Western democracies use the "floor" system, with parties receiving and disbursing the funds to their candidates, since most are parliamentary systems.

Sociologist Amitai Etzioni argues in *Capital Corruption* that public financing is the best way "to reduce substantially the power of private money...." Etzioni proposes providing at least some of the cost of public financing of campaigns by removing the current tax credit for contributions to PACs and thus recovering the federal tax lost as a result of that tax credit.

Advocates of congressional public financing point out that the public funding system has worked well in presidential elections. With one exception, all major party candidates in 1976, 1980 and 1984 opted for the system of public financing under the FECA. Yet, as Alexander points out, the FECA's expenditure limits have led presidential candidates to rely on mass media advertising over grass-roots campaigning in order to make the most impact with the available federal dollars.

LIMITING ALLOWABLE PAC RECEIPTS

Another type of reform proposal calls for placing a cap on the amount of PAC contributions that a congressional candidate can accept in an election cycle (two years). The PAC-contribution limitation bills often include some means of voluntary public funding of congressional elections; acceptance by candidates of expenditure limitations is included as a condition of receiving the public funding benefits. Imposing expenditure limits outright is unconstitutional according to *Buckley*, but proponents hope the linking of expenditure limits to a candidate's voluntary decision to accept some form of public financing would pass constitutional muster. The public financing method usually involves the matching system described above or a tax credit system, described below.

Rep. David Obey (D WI) has been a major advocate of measures to limit PAC receipts by congressional candidates. In 1979, an Obey bill, cosponsored by Rep. Thomas Railsback (R IL), spelled out limitations on the amount of PAC contributions a House candidate could accept. The bill passed the House of Representatives as an amendment to the FEC reauthorization bill, but no Senate action occurred. No other similar bill has gone so far, and "Obey-Railsback" remains the high-water mark for efforts to limit PAC activity by this type of legislation.

In 1983, Rep. Obey introduced a similar bill, setting a ceiling on the

amount of PAC contributions to be accepted by House candidates who opt for partial public financing of congressional campaigns. This provision doomed the bill, and late in 1983 Obey revised the proposal to drop public financing through matching grants in favor of a tax credit plan. Under the latter, individuals would qualify for tax credits for general election contributions to House candidates who agree to expenditure limits of $240,000, expenditures of personal wealth limited to $20,000, and who raise a threshold amount of $10,000 in fund raising from contributions of $100 or less—80 percent of which is from the candidate's state. The bill includes a PAC receipt limit of $90,000 pegged to the cost of living. Tax credits would be allowed for 100 percent of contributions to qualified candidates (those accepting spending limits) up to $100 for an individual. Candidates would be required to disclose all expenditures, receipts and contributions. The bill would also provide qualified candidates with free broadcast time or mailings to respond to independent expenditures of more than $5,000 made against a candidate or in favor of his/her opponent. The revised Obey bill had 131 cosponsors by the spring of 1984.

Proponents of PAC-receipt-limitation bills cite the increasing proportion of congressional campaign funds that come from PACs as well as the increasing costs of campaigns as justification for their proposals. They believe the proposals would limit the influence of PACs on the legislative process. Sponsors of the Obey proposal argue that the bill is constitutional because the limits on expenditures are voluntary and tied to public financing or tax-credited contributions.

Early in 1984, a prestigious panel released the Report of the Twentieth Century Fund Task Force on Political Action Committees, *What Price PACs?* Acknowledging that PACs have a "legitimate place" in American politics, the report nevertheless pointed out some disturbing elements, including the appearance of undue influence by PACs on legislators. The Task Force reported that the problem of PAC influence was only one part of a bigger problem—how we finance our political campaigns. Citing the *Buckley* decision as triggering "unrestrained growth in campaign costs," the task force further commented that the decision "severely limited" the ability of Congress to deal with that growth. The task force called for legislation "limiting the total amount of money that candidates can receive from PACs in a campaign period." The report suggested limits of "below $100,000" for House campaigns, higher for Senate campaigns. The task force also endorsed partial public funding for congressional campaigns.

Several authorities have cautioned that limiting the total amount of PAC contributions that a member of Congress can receive might work to drive more PAC money into independent expenditures, where neither candidates nor parties would have any say about how the money is spent.

Not all experts are alarmed by the growth in PAC numbers, however. For example, Professor Larry Sabato of the University of Virginia has argued that PACs are "not a monolithic threat either in campaigns or in the process of legislating." Yet Sabato does acknowl-

edge excesses, particularly in independent expenditures. He recommends strengthening other campaign entities to weaken the relative influence of PACs.

MODIFYING CONTRIBUTION LIMITS

Two different approaches have been suggested for controlling PAC influence by changing contribution limits. Some political observers have advocated reducing the current $5,000 per election limit on multicandidate PAC contributions to $1,000 per candidate to make it equal to the individual contribution limit. (Current law limits individuals to $1,000 and multicandidate PACs to $5,000 in contributions per candidate per election, or $2,000 and $10,000 respectively, for both primary and general elections.) Herbert Alexander believes that reducing the contribution limit would work most adversely against union PACs and membership/health PACs since they give the largest contributions, but would not affect corporate PACs very much since they do not often make single contributions approaching the $5,000 limit. In any case, PACs could be expected to oppose a reduction in their current limits.

TABLE 6. PARTIES AND CAMPAIGN FINANCING LIMITS

Party Contribution Limits for Congressional Elections
(Fixed; No Cost of Living Increase)

	National Party Committees (national committees and national congressional campaign committees)	**State Party Committees**
House Candidates	$5,000 per election, or $10,000 for both primary and general	$5,000 per election, or $10,000 for both primary and general
Senate Candidates	$17,500	$10,000

1982 Party Coordinated Expenditure Limits*
(increases each year for cost of living)

	National Party Committees	**State Party Committees**
House Candidates	$18,440	$18,440
Senate Candidates	Varies by population of state (2¢ × voting age population, plus inflation adjustment yearly)	Same as national party

Source: Gary Jacobson, "Money in the 1980 and 1982 Congressional Elections," in *Money and Politics in the United States*, Michael J. Malbin, ed., 1984.

*For presidential general elections, the party spending limit is 2¢ times the voting-age population—approximately $3 million in 1984.

Another proposed option would increase the individual contribution limit from its current $1,000 to make the individual limit more equal to the PAC limit. Some have suggested a $2,500 limit, others a $5,000 limit. Such a move, according to advocates, would enhance the relative influence of individuals, lessen candidate dependence on PACs and make it easier to raise funds from other sources. However, since not very many people can afford to give such large sums to candidates, the real effect of this change might be slight.

REMOVING AGGREGATE INDIVIDUAL CONTRIBUTION LIMITS

One reform proposal would remove the aggregate individual contribution limit of $25,000 per calendar year, and would treat individual contributions the same as PAC giving for which there is no limit. However, others counter that this might serve only to reintroduce the era of large contributions from wealthy donors. The potential for undue influence with such a return to the past would be serious indeed.

STRENGTHENING THE POLITICAL PARTIES

Several reform proposals are aimed at increasing the role of political parties in campaign finance as a way of countering the power of PACs. National party spending for congressional candidates is now limited, whereas aggregate PAC spending is not.

Several authorities recommend liberalizing or removing the limits on direct party contributions to candidates (see Table 6), raising the current $20,000 limit on an individual's contribution to a national party, and creating a separate tax credit for gifts to political parties. The tax credit would induce taxpayers to contribute to party coffers.

Political scientist Gary Jacobson notes that under current law, parties are treated no differently from PACs regarding contributions to House candidates. Yet parties are different; they are larger and broader-based, and the present system may limit unduly the party involvement with candidates. Even though parties *can* make coordinated expenditures in addition to their contribution limits (see Table 6), such expenditures are also limited by the FECA. In any case, state parties do not always have the resources that would enable them to do coordinated spending to their limits. Recently, some state Republican parties have been designating the Republican National Committee (RNC) as their agent, thereby enabling the RNC, with its greater financial resources, to assume the state party's share of coordinated expenditures.

In 1983, Rep. Bill Frenzel (R MN) and Sen. Paul Laxalt (R NV) introduced a bill to strengthen the party role by removing the limit on

coordinated expenditures by national party committees. The Republican party seems to have greater overall financial capacity than the Democratic party, at least at the present. Jacobson reports that in 1982 Republicans spent an average contribution/spending total for House candidates of $23,848 while the figure for the Democrats was $3,994. The respective Senate figures are $282,303 (Republicans) and $80,065 (Democrats).

Some experts suggest that national party committees should be extended the authority that state and local parties now have to spend unlimited amounts on volunteer activities on behalf of candidates. Parties may be undergoing a possible resurgence now, believes Professor Larry Sabato, so that moves to strengthen their campaign finance role would go along with this new trend.

Still another suggestion in this area is Michael Malbin's proposal to require broadcasters to make 60 minutes of free air time available to parties, to be used on behalf of candidates in the manner that the parties decide. This proposal is designed to increase the parties' importance to both candidates and voters and thus offset PAC influence.

Sociologist Amitai Etzioni argues that political parties may be "the most effective tools" in curbing special-interest influence. According to Etzioni, several studies have found that, in states where parties are strong, interest-group influence on government is weakened. Political scientists have traditionally described the major parties as large, moderating influences in their ability to knit together diverse constituencies, and as an important link in the accountability of candidates to voters. Etzioni believes that nothing would do more to strengthen the parties than "to involve them more deeply in the financing of congressional elections." Etzioni further notes that many such proposed changes might work in favor of the Republican party with its currently greater financial resources. But he notes that proposals for public financing of congressional elections could favor Democrats. He believes bipartisan support for reform could be fostered if the reform contained elements favorable to both major parties.

COUNTERING INDEPENDENT EXPENDITURES

Part of the Obey bill would counter independent expenditures by providing that publicly funded congressional candidates who are the targets of negative independent expenditures be entitled to certain compensation. Such candidates would, for example, have the right to mail responses at reduced postal rates in an amount equal to the independent expenditure, the right to free air time equivalent in length and time of day to the period purchased by independent expenditure, and the lifting of expenditure limitations. These countermeasures would not necessarily prevent independent expenditures but would make them less attractive to PACs as a means of campaigning.

However, the suggestion that broadcasters should provide free air

time for these candidates might make broadcasters reluctant to carry any political broadcasting at all, and the public might suffer as a result. (As it is now, broadcasters are not compelled to carry an independent committee's advertising.)

Other suggestions on how to deal with independent expenditures have advocated increasing the burden of proof on PACs (and individuals) to prove that independent expenditures were truly independent of the candidate's campaign.

LOOKING AHEAD

Experts, the media, officials and citizens alike ponder whether the crazy quilt of campaign finance law and administration left after the *Buckley* decision is in need of patching; yet legislators have not moved to embrace a new round of reform. As Herbert Alexander reminded Congress in January 1983, "Ironically, the reform laws of the 1970s led to an institutionalization of the special-interest influence political reformers sought to eliminate." It is thus not surprising that even the experts pause when they consider further amendments to the "law of unanticipated consequences."

As noted, most proposed modifications look to increasing the power of other campaign forces to offset the influence of political action committees in campaign finance. Some proposals seek to limit the role of PACs themselves.

Despite the obstacles, the continued interest in reform stems from a deep-seated discomfort with the potentially corrupting effect of money in politics. Although interest groups have a legitimate place in American politics, where to draw the line on their influence is an important question. And some business leaders are now concerned over the public perception of corporate PAC influence. Americans are not happy in thinking that special interests have a privileged place in elections. All segments of our population are not equally capable of giving money for campaigns, and those interests that *can* mobilize funds and the lawyers and accountants to help them comply with the complex law in making contributions and expenditures have an advantage over those who cannot. As Sen. Robert Dole (R KN) has noted, "there aren't any Poor PACs or Food Stamp PACs."

The current system presents difficulties to challengers, particularly to those without personal wealth to commit to their campaigns. It is usually easier for incumbents than challengers to attract both individual and PAC contributions. Further, the network of law and regulation is difficult for citizens to understand, and few persevere in mastering it.

It is a truism that election costs are escalating and candidates require money to compete for office. Given this reality, any future reform will surely have to ensure adequate funds for candidates—incumbents and challengers alike. Any further modifications in the law will no doubt be made carefully and cautiously by legislators sensitive to the effects that previous changes have had on the body politic.

RESOURCES

Alexander, Herbert E., *Financing Politics*, Third Edition, CQ Press, Washington, DC, 1984.

Cantor, Joseph E., *The Evolution of and Issues Surrounding Independent Expenditures in Election Campaigns*, Congressional Research Service, Washington, DC, 1982.

Cantor, Joseph E., *Political Action Committees: Their Evolution and Growth and Their Implications for the Political System*, Congressional Research Service, Washington, DC, 1982 and 1984 editions.

Drew, Elizabeth, *Politics and Money: The New Road to Corruption*, McMillan Publishing Co., New York, 1983.

Etzioni, Amitai, *Capital Corruption*, Harcourt Brace Jovanovich Publishers, New York, 1984.

Jacobson, Gary C., "Money in the 1980 and 1982 Congressional Elections," in *Money and Politics in the United States*, Michael J. Malbin, ed., 1984.

Latus, Margaret Ann, "Assessing Ideological PACs: From Outrage to Understanding," in *Money and Politics in the United States*, Michael J. Malbin, ed., 1984.

Malbin, Michael J., ed., *Money and Politics in the United States*, Chatham House Publishers, Inc., Chatham, NJ, 1984.

Malbin, Michael J., ed., *Parties, Interest Groups, and Campaign Finance Laws*, American Enterprise Institute, Washington, DC, 1980.

Mann, Thomas E. and Ornstein, Norman J., eds., *The American Elections of 1982*, American Enterprise Institute, Washington, DC, 1983.

Sabato, Larry, "Parties, PACs, and Independent Groups," *The American Elections of 1982*, Thomas E. Mann and Norman J. Ornstein, eds., American Enterprise Institute, Washington, DC, 1983.

Sorauf, Frank J., "Political Action Committees in American Politics: An Overview," in *What Price PACs?*, Twentieth Century Fund, 1984.

Twentieth Century Fund Task Force on Political Action Committees, *What Price PACs?*, The Twentieth Century Fund, New York, 1984.

U.S. Senate Committee on Rules and Administration, *Hearings: Campaign Finance Reform Proposals of 1983*, Government Printing Office, Washington, DC 1983.

Pub. no. 297, $2.00 ($1.50 for members)

Order from:
League of Women Voters of the United States
1730 M Street, NW
Washington, DC 20036
(202) 429-1965

ISBN 0-89959-355-0