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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Frank Donatelli to Baker and Richard Darman re flat tax considerations for 1984 3 p.	5/18/84	~~P5~~
2. note	JC to JAB re Donatelli memo 1 p.	5/2/84	~~P5~~ GR 10/15/00
3. memo	Donatelli to Baker re Central America 3 p.	4/27/84	~~P5~~

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

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- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
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SUPREME COURT OF THE UNITED STATES

No. 82-354, 82-355 AND 82-398

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., ET AL., PETITIONERS
82-354
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

CONSUMER ALERT, ET AL., PETITIONERS
82-355
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS
82-398
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 24, 1983]

JUSTICE WHITE delivered the opinion of the Court.

The development of the automobile gave Americans unprecedented freedom to travel, but exacted a high price for enhanced mobility. Since 1929, motor vehicles have been the leading cause of accidental deaths and injuries in the United States. In 1982, 46,300 Americans died in motor vehicle accidents and hundreds of thousands more were maimed

and injured.[1] While a consensus exists that the current loss of life on our highways is unacceptably high, improving safety does not admit to easy solution. In 1966, Congress decided that at least part of the answer lies in improving the design and safety features of the vehicle itself.[2] But much of the technology for building safer cars was undeveloped or untested. Before changes in automobile design could be mandated, the effectiveness of these changes had to be studied, their costs examined, and public acceptance considered. This task called for considerable expertise and Congress responded by enacting the National Traffic and Motor Vehicle Safety Act of 1966, (Act), 15 U. S. C. §§ 1381 *et seq.* (1976 and Supp. IV 1980). The Act, created for the purpose of "reduc[ing] traffic accidents and deaths and injuries to persons resulting from traffic accidents," 15 U. S. C. § 1381, directs the Secretary of Transportation or his delegate to issue motor vehicle safety standards that "shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms." 15 U. S. C. § 1392(a). In issuing these standards, the Secretary is directed to consider "relevant available motor vehicle safety data," whether the proposed standard "is reasonable, practicable and appropriate" for the particular type of motor vehicle, and the "extent to which such standards will contribute to carrying out the purposes" of the Act. 15 U. S. C. § 1392(f) (1), (3), (4).[3]

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[1] National Safety Council, 1982 Motor Vehicle Deaths By States, (May 16, 1983).

[2] The Senate Committee on Commerce Reported:

"The promotion of motor vehicle safety through voluntary standards has largely failed. The unconditional imposition of mandatory standards at the earliest practicable date is the only course commensurate with the highway death and injury toll." S. Rep. No. 1301, 89th Cong., 2d Sess., p. 4 (1966).

[3] The Secretary's general authority to promulgate safety standards under the Act has been delegated to the Administrator of the National Highway Traffic Safety Administration (NHTSA). 49 CFR § 1.50(a)

The Act also authorizes judicial review under the provisions of the Administrative Procedure Act (APA), 5 U. S. C. § 706 (1976), of all "orders establishing, amending, or revoking a Federal motor vehicle safety standard," 15 U. S. C. § 1392(b). Under this authority, we review today whether NHTSA acted arbitrarily and capriciously in revoking the requirement in Motor Vehicle Safety Standard 208 that new motor vehicles produced after September 1982 be equipped with passive restraints to protect the safety of the occupants of the vehicle in the event of a collision. Briefly summarized, we hold that the agency failed to present an adequate basis and explanation for rescinding the passive restraint requirement and that the agency must either consider the matter further or adhere to or amend Standard 208 along lines which its analysis supports.

I

The regulation whose rescission is at issue bears a complex and convoluted history. Over the course of approximately 60 rulemaking notices, the requirement has been imposed, amended, rescinded, reimposed, and now rescinded again.

As originally issued by the Department of Transportation in 1967, Standard 208 simply required the installation of seatbelts in all automobiles. 32 Fed. Reg. 2408, 2415 (Feb. 3, 1967). It soon became apparent that the level of seatbelt use was too low to reduce traffic injuries to an acceptable level. The Department therefore began consideration of "passive occupant restraint systems"—devices that do not depend for their effectiveness upon any action taken by the occupant except that necessary to operate the vehicle. Two types of automatic crash protection emerged: automatic seat-

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(1979). This opinion will use the terms NHTSA and agency interchangeably when referring to the National Highway Traffic Safety Administration, the Department of Transportation, and the Secretary of Transportation.

belts and airbags. The automatic seatbelt is a traditional safety belt, which when fastened to the interior of the door remains attached without impeding entry or exit from the vehicle, and deploys automatically without any action on the part of the passenger. The airbag is an inflatable device concealed in the dashboard and steering column. It automatically inflates when a sensor indicates that deceleration forces from an accident have exceeded a preset minimum, then rapidly deflates to dissipate those forces. The life-saving potential of these devices was immediately recognized, and in 1977, after substantial on-the-road experience with both devices, it was estimated by NHTSA that passive restraints could prevent approximately 12,000 deaths and over 100,000 serious injuries annually. 42 Fed. Reg. 34,298.

In 1969, the Department formally proposed a standard requiring the installation of passive restraints, 34 Fed. Reg. 11,148 (July 2, 1969), thereby commencing a lengthy series of proceedings. In 1970, the agency revised Standard 208 to include passive protection requirements, 35 Fed. Reg. 16,927 (Nov. 3, 1970), and in 1972, the agency amended the standard to require full passive protection for all front seat occupants of vehicles manufactured after August 15, 1975. 37 Fed. Reg. 3911 (Feb. 24, 1972). In the interim, vehicles built between August 1973 and August 1975 were to carry either passive restraints or lap and shoulder belts coupled with an "ignition interlock" that would prevent starting the vehicle if the belts were not connected.[4] On review, the agency's decision to require passive restraints was found to be supported by "substantial evidence" and upheld. *Chrysler Corp.* v. *Dep't of*

[4] Early in the process, it was assumed that passive occupant protection meant the installation of inflatable airbag restraint systems. See 34 Fed. Reg. 11,148. In 1971, however, the agency observed that "some belt-based concepts have been advanced that appear to be capable of meeting the complete passive protection options," leading it to add a new section to the proposed standard "to deal expressly with passive belts." 36 Fed. Reg. 12,858, 12,859 (July 8, 1971).

Transportation, 472 F. 2d 659 (CA6 1972).[4]

In preparing for the upcoming model year, most car makers chose the "ignition interlock" option, a decision which was highly unpopular, and led Congress to amend the Act to prohibit a motor vehicle safety standard from requiring or permitting compliance by means of an ignition interlock or a continuous buzzer designed to indicate that safety belts were not in use. Motor Vehicle and Schoolbus Safety Amendments of 1974, Pub. L. 93-492, § 109, 88 Stat. 1482, 15 U. S. C. § 1410b(b). The 1974 Amendments also provided that any safety standard that could be satisfied by a system other than seatbelts would have to be submitted to Congress where it could be vetoed by concurrent resolution of both houses. 15 U. S. C. § 1410b(b)(2).[5]

The effective date for mandatory passive restraint systems was extended for a year until August 31, 1976. 40 Fed. Reg. 16,217 (April 10, 1975); *id.*, at 33,977 (Aug. 13, 1975). But in June 1976, Secretary of Transportation William Coleman initiated a new rulemaking on the issue, 41 Fed. Reg. 24,070 (June 9, 1976). After hearing testimony and reviewing written comments, Coleman extended the optional alternatives indefinitely and suspended the passive restraint requirement. Although he found passive restraints technologically and economically feasible, the Secretary based his decision on

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[4] The court did hold that the testing procedures required of passive belts did not satisfy the Safety Act's requirement that standards be "objective." 472 F. 2d, at 675.

[5] Because such a passive restraint standard was not technically in effect at this time due to the Sixth Circuit's invalidation of the testing requirements, see n. 5 *supra*, the issue was not submitted to Congress until a passive restraint requirement was reimposed by Secretary Adams in 1977. To comply with the Amendments, NHTSA proposed new warning systems to replace the prohibited continuous buzzers. 39 Fed. Reg. 42,692 (Dec. 6, 1974). More significantly, NHTSA was forced to rethink an earlier decision which contemplated use of the interlocks in tandem with detachable belts. See n. 13, *infra*.

the expectation that there would be widespread public resistance to the new systems. He instead proposed a demonstration project involving up to 500,000 cars installed with passive restraints, in order to smooth the way for public acceptance of mandatory passive restraints at a later date. Department of Transportation, The Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection (December 6, 1976).

Coleman's successor as Secretary of Transportation disagreed. Within months of assuming office, Secretary Brock Adams decided that the demonstration project was unnecessary. He issued a new mandatory passive restraint regulation, known as Modified Standard 208. 42 Fed. Reg. 34,289 (July 5, 1977); 42 CFR § 571.208 (1977). The Modified Standard mandated the phasing in of passive restraints beginning with large cars in model year 1982 and extending to all cars by model year 1984. The two principal systems that would satisfy the Standard were airbags and passive belts; the choice of which system to install was left to the manufacturers. In *Pacific Legal Foundation* v. *Dep't of Transportation*, 593 F. 2d 1338 (CADC), cert. denied, 444 U. S. 830 (1979), the Court of Appeals upheld Modified Standard 208 as a rational, nonarbitrary regulation consistent with the agency's mandate under the Act. The standard also survived scrutiny by Congress, which did not exercise its authority under the legislative veto provision of the 1974 Amendments.[7]

Over the next several years, the automobile industry geared up to comply with Modified Standard 208. As late as July, 1980, NHTSA reported:

"On the road experience in thousands of vehicles

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[7] No action was taken by the full House of Representatives. The Senate committee with jurisdiction over NHTSA affirmatively endorsed the standard, S. Rep. No. 481, 95th cong., 1st Sess. (1977), and a resolution of disapproval was tabled by the Senate. 123 Cong. Rec. 33,332 (1977).

> equipped with airbags and automatic safety belts has confirmed agency estimates of the life-saving and injury-preventing benefits of such systems. When all cars are equipped with automatic crash protection systems, each year an estimated 9,000 more lives will be saved and tens of thousands of serious injuries will be prevented." NHTSA, Automobile Occupant Crash Protection, Progress Report No. 3, p. 4 (App. 1627).

In February 1981, however, Secretary of Transportation Andrew Lewis reopened the rulemaking due to changed economic circumstances and, in particular, the difficulties of the automobile industry. 46 Fed. Reg. 12,033 (Feb. 12, 1981). Two months later, the agency ordered a one-year delay in the application of the standard to large cars, extending the deadline to September 1982, 46 Fed. Reg. 21,172 (April 9, 1981) and at the same time, proposed the possible rescission of the entire standard. 46 Fed. Reg. 21,205 (April 9, 1981). After receiving written comments and holding public hearings, NHTSA issued a final rule (Notice 25) that rescinded the passive restraint requirement contained in Modified Standard 208.

II

In a statement explaining the rescission, NHTSA maintained that it was no longer able to find, as it had in 1977, that the automatic restraint requirement would produce significant safety benefits. Notice 25, 46 Fed. Reg. 53,419 (Oct. 29, 1981). This judgment reflected not a change of opinion on the effectiveness of the technology, but a change in plans by the automobile industry. In 1977, the agency had assumed that airbags would be installed in 60% of all new cars and automatic seatbelts in 40%. By 1981 it became apparent that automobile manufacturers planned to install the automatic seatbelts in approximately 99% of the new cars. For this reason, the life-saving potential of airbags would not be realized. Moreover, it now appeared that the overwhelming

majority of passive belts planned to be installed by manufacturers could be detached easily and left that way permanently. Passive belts, once detached, then required "the same type of affirmative action that is the stumbling block to obtaining high usage levels of manual belts." 46 Fed. Reg., at 53421. For this reason, the agency concluded that there was no longer a basis for reliably predicting that the standard would lead to any significant increased usage of restraints at all.

In view of the possibly minimal safety benefits, the automatic restraint requirement no longer was reasonable or practicable in the agency's view. The requirement would require approximately $1 billion to implement and the agency did not believe it would be reasonable to impose such substantial costs on manufacturers and consumers without more adequate assurance that sufficient safety benefits would accrue. In addition, NHTSA concluded that automatic restraints might have an adverse effect on the public's attitude toward safety. Given the high expense and limited benefits of detachable belts, NHTSA feared that many consumers would regard the standard as an instance of ineffective regulation, adversely affecting the public's view of safety regulation and, in particular, "poisoning popular sentiment toward efforts to improve occupant restraint systems in the future." 46 Fed. Reg., at 53424.

State Farm Mutual Automobile Insurance Co. and the National Association of Independent Insurers filed petitions for review of NHTSA's rescission of the passive restraint standard. The United States Court of Appeals for the District of Columbia Circuit held that the agency's rescission of the passive restraint requirement was arbitrary and capricious. 680 F. 2d 206 (1982). While observing that rescission is not unrelated to an agency's refusal to take action in the first instance, the court concluded that, in this case, NHTSA's discretion to rescind the passive restraint requirement had been restricted by various forms of congressional "reaction" to the

passive restraint issue. It then proceeded to find that the rescission of Standard 208 was arbitrary and capricious for three reasons. First, the court found insufficient as a basis for rescission NHTSA's conclusion that it could not reliably predict an increase in belt usage under the Standard. The court held that there was insufficient evidence in the record to sustain NHTSA's position on this issue, and that, "only a well-justified refusal to seek more evidence could render rescission non-arbitrary." 680 F. 2d, at 232. Second, a majority of the panel[*] concluded that NHTSA inadequately considered the possibility of requiring manufacturers to install nondetachable rather than detachable passive belts. Third, the majority found that the agency acted arbitrarily and capriciously by failing to give any consideration whatever to requiring compliance with Modified Standard 208 by the installation of airbags.

The court allowed NHTSA 30 days in which to submit a schedule for "resolving the questions raised in the opinion." 680 F. 2d, at 242. Subsequently, the agency filed a Notice of Proposed Supplemental Rulemaking setting forth a schedule for complying with the court's mandate. On August 4, 1982, the Court of Appeals issued an order staying the compliance date for the passive restraint requirement until September 1, 1983, and requested NHTSA to inform the court whether that compliance date was achievable. NHTSA informed the court on October 1, 1982, that based on representations by manufacturers, it did not appear that practicable compliance could be achieved before September 1985. On November 8, 1982, we granted certiorari, —— U. S. —— (1982), and on November 18, the Court of Appeals entered an order recalling its mandate.

III

Unlike the Court of Appeals, we do not find the appropri-

[*]Judge Edwards did not join the majority's reasoning on these points.

ate scope of judicial review to be the "most troublesome question" in the case. Both the Motor Vehicle Safety Act and the 1974 Amendments concerning occupant crash protection standards indicate that motor vehicle safety standards are to be promulgated under the informal rulemaking procedures of § 553 of the Administrative Procedure Act. 5 U. S. C. § 553 (1976). The agency's action in promulgating such standards therefore may be set aside if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U. S. C. § 706(2)(A). *Citizens to Preserve Overton Park* v. *Volpe*, 401 U. S. 402, 414 (1971); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U. S. 281 (1974). We believe that the rescission or modification of an occupant protection standard is subject to the same test. Section 103(b) of the Motor Vehicle Safety Act, 15 U. S. C. § 1392(b), states that the procedural and judicial review provisions of the Administrative Procedure Act "shall apply to all orders establishing, amending, or revoking a Federal motor vehicle safety standard," and suggests no difference in the scope of judicial review depending upon the nature of the agency's action.

Petitioner Motor Vehicle Manufacturers Association (MVMA) disagrees, contending that the rescission of an agency rule should be judged by the same standard a court would use to judge an agency's refusal to promulgate a rule in the first place—a standard Petitioner believes considerably narrower than the traditional arbitrary and capricious test and "close to the borderline of nonreviewability." Brief of Petitioner MVMA, at 35. We reject this view. The Motor Vehicle Safety Act expressly equates orders "revoking" and "establishing" safety standards; neither that Act nor the APA suggests that revocations are to be treated as refusals to promulgate standards. Petitioner's view would render meaningless Congress' authorization for judicial review of orders revoking safety rules. Moreover, the revocation of an extant regulation is substantially different than a failure to

act. Revocation constitutes a reversal of the agency's former views as to the proper course. A "settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to." *Atchison, T. & S. F. R. Co.* v. *Wichita Bd. of Trade*, 412 U. S. 800, 807–808 (1973). Accordingly, an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.

In so holding, we fully recognize that "regulatory agencies do not establish rules of conduct to last forever," *American Trucking Assoc., Inc.* v. *Atchison, T. & S. F. R. Co.*, 387 U. S. 397, 416 (1967), and that an agency must be given ample latitude to "adapt their rules and policies to the demands of changing circumstances." *Permian Basin Area Rate Cases*, 390 U. S. 747, 784 (1968). But the forces of change do not always or necessarily point in the direction of deregulation. In the abstract, there is no more reason to presume that changing circumstances require the rescission of prior action, instead of a revision in or even the extension of current regulation. If Congress established a presumption from which judicial review should start, that presumption—contrary to petitioners' views—is not *against* safety regulation, but *against* changes in current policy that are not justified by the rulemaking record. While the removal of a regulation may not entail the monetary expenditures and other costs of enacting a new standard, and accordingly, it may be easier for an agency to justify a deregulatory action, the direction in which an agency chooses to move does not alter the standard of judicial review established by law.

The Department of Transportation accepts the applicability of the "arbitrary and capricious" standard. It argues that under this standard, a reviewing court may not set aside

an agency rule that is rational, based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute. We do not disagree with this formulation.[9] The scope of review under the "arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." *Burlington Truck Lines* v. *United States*, 371 U. S. 156, 168 (1962). In reviewing that explanation, we must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Bowman Transp. Inc.* v. *Arkansas-Best Freight System*, *supra*, at 285; *Citizens to Preserve Overton Park* v. *Volpe*, *supra*, at 416. Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies: "We may not supply a reasoned basis for the agency's action that the agency itself has not given." *SEC* v. *Chenery Corp.*, 332 U. S. 194, 196 (1947). We will, however, uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Bowman Transp. Inc.* v. *Arkansas-Best Freight*

[9]The Department of Transportation suggests that the arbitrary and capricious standard requires no more than the minimum rationality a statute must bear in order to withstand analysis under the Due Process Clause. We do not view as equivalent the presumption of constitutionality afforded legislation drafted by Congress and the presumption of regularity afforded an agency in fulfilling its statutory mandate.

Systems, *supra*, at 286. See also *Camp* v. *Pitts*, 411 U. S. 138, 142–143 (1973) (per curiam). For purposes of this case, it is also relevant that Congress required a record of the rulemaking proceedings to be compiled and submitted to a reviewing court, 15 U. S. C. § 1394, and intended that agency findings under the Motor Vehicle Safety Act would be supported by "substantial evidence on the record considered as a whole." S. Rep. No. 1301, 89th Cong., 2d Sess. p. 8 (1966); H. R. Rep. No. 1776, 89th Cong., 2d Sess. p. 21 (1966).

IV

The Court of Appeals correctly found that the arbitrary and capricious test applied to rescissions of prior agency regulations, but then erred in intensifying the scope of its review based upon its reading of legislative events. It held that congressional reaction to various versions of Standard 208 "raise[d] doubts" that NHTSA's rescission "necessarily demonstrates an effort to fulfill its statutory mandate," and therefore the agency was obligated to provide "increasingly clear and convincing reasons" for its action. 680 F. 2d, at 222, 229. Specifically, the Court of Appeals found significance in three legislative occurences:

> "In 1974, Congress banned the ignition interlock but did not foreclose NHTSA's pursuit of a passive restraint standard. In 1977, Congress allowed the standard to take effect when neither of the concurrent resolutions needed for disapproval was passed. In 1980, a majority of each house indicated support for the concept of mandatory passive restraints and a majority of each house supported the unprecedented attempt to require some installation of airbags." 680 F. 2d, at 228.

From these legislative acts and non-acts the Court of Appeals derived a "congressional commitment to the concept of automatic crash protection devices for vehicle occupants." *Ibid.*

This path of analysis was misguided and the inferences it

produced are questionable. It is noteworthy that in this Court Respondent State Farm expressly agrees that the post-enactment legislative history of the Motor Vehicle Safety Act does not heighten the standard of review of NHTSA's actions. Brief for Respondent State Farm Mutual Automobile Insurance Co. 13. State Farm's concession is well-taken for this Court has never suggested that the *standard* of review is enlarged or diminished by subsequent congressional action. While an agency's interpretation of a statute may be confirmed or ratified by subsequent congressional failure to change that intepretation, *Bob Jones University* v. *United States*, —— U. S. ——, —— (1983); *Haig* v. *Agee*, 453 U. S. 280, 291–300 (1981), in the case before us, even an unequivocal ratification—short of statutory incorporation—of the passive restraint standard would not connote approval or disapproval of an agency's later decision to rescind the regulation. That decision remains subject to the arbitrary and capricious standard.

That we should not be so quick to infer a congressional mandate for passive restraints is confirmed by examining the post-enactment legislative events cited by the Court of Appeals. Even were we inclined to rely on inchoate legislative action, the inferences to be drawn fail to suggest that NHTSA acted improperly in rescinding Standard 208. First, in 1974 a mandatory passive restraint standard was technically not in effect, see n. 6, *supra;* Congress had no reason to foreclose that course. Moreover, one can hardly infer support for a mandatory standard from Congress' decision to provide that such a regulation would be subject to disapproval by resolutions of disapproval in both houses. Similarly, no mandate can be divined from the tabling of resolutions of disapproval which were introduced in 1977. The failure of Congress to exercise its veto might reflect legislative deference to the agency's expertise and does not indicate that Congress would disapprove of the agency's action in

1981. And even if Congress favored the standard in 1977, it—like NHTSA—may well reach a different judgment given changed circumstances four years later. Finally, the Court of Appeals read too much into floor action on the 1980 authorization bill, a bill which was not enacted into law. Other contemporaneous events could be read as showing equal congressional hostility to passive restraints.[*]

V

The ultimate question before us is whether NHTSA's rescission of the passive restraint requirement of Standard 208 was arbitrary and capricious. We conclude, as did the Court of Appeals, that it was. We also conclude, but for somewhat different reasons, that further consideration of the issue by the agency is therefore required. We deal separately with the rescission as it applies to airbags and as it applies to seatbelts.

A

The first and most obvious reason for finding the rescission arbitrary and capricious is that NHTSA apparently gave no consideration whatever to modifying the Standard to require that airbag technology be utilized. Standard 208 sought to achieve automatic crash protection by requiring automobile manufacturers to install either of two passive restraint devices: airbags or automatic seatbelts. There was no suggestion in the long rulemaking process that led to Standard 208 that if only one of these options were feasible, no passive restraint standard should be promulgated. Indeed, the agency's original proposed standard contemplated the installation

[*] For example, an overwhelming majority of the members of the House of Representatives voted in favor of a proposal to bar NHTSA from spending funds to administer an occupant restraint standard unless the standard permitted the purchaser of the vehicle to select manual rather than passive restraints. 125 Cong. Rec. H12285, H12287 (daily ed. Dec. 19, 1979).

of inflatable restraints in all cars.[11] Automatic belts were added as a means of complying with the standard because they were believed to be as effective as airbags in achieving the goal of occupant crash protection. 36 Fed. Reg. 12,858, 12,859 (July 8, 1971). At that time, the passive belt approved by the agency could not be detached.[12] Only later, at a manufacturer's behest, did the agency approve of the detachability feature—and only after assurances that the feature would not compromise the safety benefits of the restraint.[13] Although it was then foreseen that 60% of the new cars would contain airbags and 40% would have automatic seatbelts, the ratio between the two was not significant as long as the passive belt would also assure greater passenger safety.

The agency has now determined that the detachable automatic belts will not attain anticipated safety benefits because so many individuals will detach the mechanism. Even if this

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[11] While NHTSA's 1970 passive restraint requirement permitted compliance by means other than the airbag, 35 Fed. Reg. 16,927 (1970), "[t]his rule was [a] de facto air bag mandate since no other technologies were available to comply with the standard." J. Graham & P. Gorham, NHTSA and Passive Restraints: A Case of Arbitrary and Capricious Deregulation, 35 Admin. L. Rev. 193, 197 (1983). See n. 4, *supra*.

[12] Although the agency suggested that passive restraint systems contain an emergency release mechanism to allow easy extrication of passengers in the event of an accident, the agency cautioned that "[i]n the case of passive safety belts, it would be required that the release not cause belt separation, and that the system be self-restoring after operation of the release." 36 Fed. Reg. 12,866 (July 8, 1971).

[13] In April 1974, NHTSA adopted the suggestion of an automobile manufacturer that emergency release of passive belts be accomplished by a conventional latch—provided the restraint system was guarded by an ignition interlock and warning buzzer to encourage reattachment of the passive belt. 39 Fed. Reg. 14,593 (April 25, 1974). When the 1974 Amendments prohibited these devices, the agency simply eliminated the interlock and buzzer requirements, but continued to allow compliance by a detachable passive belt.

conclusion were acceptable in its entirety, see *infra*, at 20–23, standing alone it would not justify any more than an amendment of Standard 208 to disallow compliance by means of the one technology which will not provide effective passenger protection. It does not cast doubt on the need for a passive restraint standard or upon the efficacy of airbag technology. In its most recent rule-making, the agency again acknowledged the life-saving potential of the airbag:

> "The agency has no basis at this time for changing its earlier conclusions in 1976 and 1977 that basic airbag technology is sound and has been sufficiently demonstrated to be effective in those vehicles in current use . . . ." NHTSA Final Regulatory Impact Analysis (RIA) at XI–4 (App. 264).

Given the effectiveness ascribed to airbag technology by the agency, the mandate of the Safety Act to achieve traffic safety would suggest that the logical response to the faults of detachable seatbelts would be to require the installation of airbags. At the very least this alternative way of achieving the objectives of the Act should have been addressed and adequate reasons given for its abandonment. But the agency not only did not require compliance through airbags, it did not even consider the possibility in its 1981 rulemaking. Not one sentence of its rulemaking statement discusses the airbags-only option. Because, as the Court of Appeals stated, "NHTSA's . . . analysis of airbags was nonexistent," 680 F. 2d, at 236, what we said in *Burlington Truck Lines* v. *United States*, 371 U. S., at 167, is apropos here:

> "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the [agency] exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such . . . practice. . . . Expert

> discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' *New York* v. *United States*, 342 U. S. 882, 884 (dissenting opinion)." (footnote omitted).

We have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner, *Atchison, T & S. F. R. Co.* v. *Wichita Bd. of Trade*, 412 U.S 800, 806 (1973); *FTC* v. *Sperry & Hutchinson Co.*, 405 U. S. 233, 249 (1972); *NLRB* v. *Metropolitan Ins. Co.*, 380 U. S. 438, 443 (1965); and we reaffirm this principle again today.

The automobile industry has opted for the passive belt over the airbag, but surely it is not enough that the regulated industry has eschewed a given safety device. For nearly a decade, the automobile industry waged the regulatory equivalent of war against the airbag[14] and lost—the inflatable restraint was proven sufficiently effective. Now the automobile industry has decided to employ a seatbelt system which will not meet the safety objectives of Standard 208. This hardly constitutes cause to revoke the standard itself. Indeed, the Motor Vehicle Safety Act was necessary because the industry was not sufficiently responsive to safety concerns. The Act intended that safety standards not depend on current technology and could be "technology-forcing" in the sense of inducing the development of superior safety design. See *Chrysler Corp.* v. *Dept. of Transp.*, 472 F. 2d, at 672–673. If, under the statute, the agency should not defer to the industry's failure to develop safer cars, which it surely

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[14] See, *e. g.*, Comments of Chrysler Corp., Docket No. 69–07, Notice 11 (August 5, 1971) (App. 2491); Chrysler Corp. Memorandum on Proposed Alternative Changes to FMVSS 208, Docket No. 44, Notice 76–8 (1976) (App. 2241); General Motors Corp. Response to the Dept. of Transportation Proposal on Occupant Crash Protection, Docket No. 74–14, Notice 08 (May 27, 1977). See also *Chrysler Corp.* v. *Dept. of Transp.*, *supra*.

should not do, *a fortiori* it may not revoke a safety standard which can be satisfied by current technology simply because the industry has opted for an ineffective seatbelt design.

Although the agency did not address the mandatory airbags option and the Court of Appeals noted that "airbags seem to have none of the problems that NHTSA identified in passive seatbelts," petitioners recite a number of difficulties that they believe would be posed by a mandatory airbag standard. These range from questions concerning the installation of airbags in small cars to that of adverse public reaction. But these are not the agency's reasons for rejecting a mandatory airbag standard. Not having discussed the possibility, the agency submitted no reasons at all. The short—and sufficient—answer to petitioners' submission is that the courts may not accept appellate counsel's *post hoc* rationalizations for agency action. *Burlington Truck Lines* v. *United States*, *supra*, at 168. It is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself. *Ibid.*; *Chenery* v. *SEC*, 332 U. S. 194, 196 (1945); *American Textile Manufacturers Inst.* v. *Donovan*, 452 U. S. 490, 539 (1981).[15]

Petitioners also invoke our decision in *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U. S. 519 (1977), as though it were a talisman under which any agency decision is by definition unimpeachable. Specifically, it is submitted

[15] The Department of Transportation expresses concern that adoption of an airbags-only requirement would have required a new notice of proposed rulemaking. Even if this were so, and we need not decide the question, it would not constitute sufficient cause to rescind the passive restraint requirement. The Department also asserts that it was reasonable to withdraw the requirement as written to avoid forcing manufacturers to spend resources to comply with an ineffective safety initiative. We think that it would have been permissible for the agency to temporarily suspend the passive restraint requirement or to delay its implementation date while an airbags mandate was studied. But, as we explain in text, that option had to be considered before the passive restraint requirement could be revoked.

that to require an agency to consider an airbags-only alternative is, in essence, to dictate to the agency the procedures it is to follow. Petitioners both misread VERMONT YANKEE and misconstrue the nature of the remand that is in order. In VERMONT YANKEE, we held that a court may not impose additional procedural requirements upon an agency. We do not require today any specific procedures which NHTSA must follow. Nor do we broadly require an agency to consider all policy alternatives in reaching decision. It is true that a rulemaking "cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man . . . regardless of how uncommon or unknown that alternative may have been. . . ." 435 U. S., at 551. But the airbag is more than a policy alternative to the passive restraint standard; it is a technological alternative within the ambit of the existing standard. We hold only that given the judgment made in 1977 that airbags are an effective and cost-beneficial life-saving technology, the mandatory passive-restraint rule may not be abandoned without any consideration whatsoever of an airbags-only requirement.

B

Although the issue is closer, we also find that the agency was too quick to dismiss the safety benefits of automatic seatbelts. NHTSA's critical finding was that, in light of the industry's plans to install readily detachable passive belts, it could not reliably predict "even a 5 percentage point increase as the minimum level of expected usage increase." 46 Fed. Reg., at 53,423. The Court of Appeals rejected this finding because there is "not one iota" of evidence that Modified Standard 208 will fail to increase nationwide seatbelt use by at least 13 percentage points, the level of increased usage necessary for the standard to justify its cost. Given the lack of probative evidence, the court held that "only a well-justified refusal to seek more evidence could render rescission

non-arbitrary." 680 F. 2d, at 232.

Petitioners object to this conclusion. In their view, "substantial uncertainty" that a regulation will accomplish its intended purpose is sufficient reason, without more, to rescind a regulation. We agree with petitioners that just as an agency reasonably may decline to issue a safety standard if it is uncertain about its efficacy, an agency may also revoke a standard on the basis of serious uncertainties if supported by the record and reasonably explained. Rescission of the passive restraint requirement would not be arbitrary and capricious simply because there was no evidence in direct support of the agency's conclusion. It is not infrequent that the available data does not settle a regulatory issue and the agency must then exercise its judgment in moving from the facts and probabilities on the record to a policy conclusion. Recognizing that policymaking in a complex society must account for uncertainty, however, does not imply that it is sufficient for an agency to merely recite the terms "substantial uncertainty" as a justification for its actions. The agency must explain the evidence which is available, and must offer a "rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc.* v. *United States*, *supra*,. at 168. Generally, one aspect of that explanation would be a justification for rescinding the regulation before engaging in a search for further evidence.

In this case, the agency's explanation for rescission of the passive restraint requirement is *not* sufficient to enable us to conclude that the rescission was the product of reasoned decisionmaking. To reach this conclusion, we do not upset the agency's view of the facts, but we do appreciate the limitations of this record in supporting the agency's decision. We start with the accepted ground that if used, seatbelts unquestionably would save many thousands of lives and would prevent tens of thousands of crippling injuries. Unlike recent regulatory decisions we have reviewed, *Industrial Union Department* v. *American Petroleum Institute*, 448 U. S. 607

(1980); *American Textile Manufacturers Inst., Inc.* v. *Donovan*, 452 U. S. 490 (1981), the safety benefits of wearing seatbelts are not in doubt and it is not challenged that were those benefits to accrue, the monetary costs of implementing the standard would be easily justified. We move next to the fact that there is no direct evidence in support of the agency's finding that detachable automatic belts cannot be predicted to yield a substantial increase in usage. The empirical evidence on the record, consisting of surveys of drivers of automobiles equipped with passive belts, reveals more than a doubling of the usage rate experienced with manual belts.[16] Much of the agency's rulemaking statement—and much of the controversy in this case—centers on the conclusions that should be drawn from these studies. The agency maintained that the doubling of seatbelt usage in these studies could not be extrapolated to an across-the-board mandatory standard because the passive seatbelts were guarded by ignition interlocks and purchasers of the tested cars are somewhat atypical.[17] Respondents insist these studies demonstrate that Modified Standard 208 will substantially increase seat belt usage. We believe that it is within the agency's discretion to pass upon the generalizability of these field studies. This is precisely the type of issue which rests within the expertise of NHTSA, and upon which a reviewing court must be most

[16] Between 1975 and 1980, Volkswagen sold approximately 350,000 Rabbits equipped with detachable passive seatbelts that were guarded by an ignition interlock. General Motors sold 8,000 1978 and 1979 Chevettes with a similar system, but eliminated the ignition interlock on the 13,000 Chevettes sold in 1980. NHTSA found that belt usage in the Rabbits averaged 34% for manual belts and 84% for passive belts. Regulatory Impact Analysis (RIA) at IV–52, App. 108. For the 1978–1979 Chevettes, NHTSA calculated 34% usage for manual belts and 71% for passive belts. On 1980 Chevettes, the agency found these figures to be 31% for manual belts and 70% for passive belts. *Ibid.*

[17] "NHTSA believes that the usage of automatic belts in Rabbits and Chevettes would have been substantially lower if the automatic belts in those cars were not equipped with a use-inducing device inhibiting detachment." Notice 25, 46 Fed. Reg., at 53,422.

hesitant to intrude.

But accepting the agency's view of the field tests on passive restraints indicates only that there is no reliable real-world experience that usage rates will substantially increase. To be sure, NHTSA opines that "it cannot reliably predict even a 5 percentage point increase as the minimum level of increased usage." Notice 25, 46 Fed. Reg., at 53,423. But this and other statements that passive belts will not yield substantial increases in seatbelt usage apparently take no account of the critical difference between detachable automatic belts and current manual belts. A detached passive belt does require an affirmative act to reconnect it, but—unlike a manual seat belt—the passive belt, once reattached, will continue to function automatically unless again disconnected. Thus, inertia—a factor which the agency's own studies have found significant in explaining the current low usage rates for seatbelts[18]—works in *favor* of, not *against*, use of the protective device. Since 20 to 50% of motorists currently wear seatbelts on some occasions,[19] there would seem to be grounds to believe that seatbelt use by occasional users will be substantially increased by the detachable passive belts. Whether this is in fact the case is a matter for the agency to decide, but it must bring its expertise to bear on the question.

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[18] NHTSA commissioned a number of surveys of public attitudes in an effort to better understand why people were not using manual belts and to determine how they would react to passive restraints. The surveys reveal that while 20% to 40% of the public is opposed to wearing manual belts, the larger proportion of the population does not wear belts because they forgot or found manual belts inconvenient or bothersome. RIA at IV–25; App. 81. In another survey, 38% of the surveyed group responded that they would welcome automatic belts, and 25% would "tolerate" them. See RIA at IV–37. App. 93. NHTSA did not comment upon these attitude surveys in its explanation accompanying the rescission of the passive restraint requirement.

[19] Four surveys of manual belt usage were conducted for NHTSA between 1978 and 1980, leading the agency to report that 40% to 50% of the people use their belts at least some of the time. RIA, at IV–25 (App. 81).

The agency is correct to look at the costs as well as the benefits of Standard 208. The agency's conclusion that the incremental costs of the requirements were no longer reasonable was predicated on its prediction that the safety benefits of the regulation might be minimal. Specifically, the agency's fears that the public may resent paying more for the automatic belt systems is expressly dependent on the assumption that detachable automatic belts will not produce more than "negligible safety benefits." 46 Fed. Reg., at 53,424. When the agency reexamines its findings as to the likely increase in seat belt usage, it must also reconsider its judgment of the reasonableness of the monetary and other costs associated with the Standard. In reaching its judgment, NHTSA should bear in mind that Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act:

> "The Commitee intends that safety shall be the overriding consideration in the issuance of standards under this bill. The Committee recognizes . . . that the Secretary will necessarily consider reasonableness of cost, feasibility and adequate leadtime." S. Rep. No. 1301, at 6.
>
> "In establishing standards the Secretary must conform to the requirement that the standard be practicable. This would require consideration of all relevant factors, including technological ability to achieve the goal of a particular standard as well as consideration of economic factors. Motor vehicle safety is the paramount purpose of this bill and each standard must be related thereto." H. Rep. No. 1776, at 16.

The agency also failed to articulate a basis for not requiring nondetachable belts under Standard 208. It is argued that the concern of the agency with the easy detachability of the currently favored design would be readily solved by a continuous passive belt, which allows the occupant to "spool out" the belt

and create the necessary slack for easy extrication from the vehicle. The agency did not separately consider the continuous belt option, but treated it together with the ignition interlock device in a category it titled "option of use-compelling features." 46 Fed. Reg., at 53,424. The agency was concerned that use-compelling devices would "complicate extrication of [a]n occupant from his or her car." *Ibid.* "To require that passive belts contain use-compelling features," the agency observed, "could be counterproductive [given] . . . widespread, latent and irrational fear in many members of the public that they could be trapped by the seat belt after a crash." *Ibid.* In addition, based on the experience with the ignition interlock, the agency feared that use-compelling features might trigger adverse public reaction.

By failing to analyze the continuous seatbelts in its own right, the agency has failed to offer the rational connection between facts and judgment required to pass muster under the arbitrary and capricious standard. We agree with the Court of Appeals that NHTSA did not suggest that the emergency release mechanisms used in nondetachable belts are any less effective for emergency egress than the buckle release system used in detachable belts. In 1978, when General Motors obtained the agency's approval to install a continuous passive belt, it assured the agency that nondetachable belts with spool releases were as safe as detachable belts with buckle releases. 43 Fed. Reg. 21,912, 21,913–14 (1978). NHTSA was satisfied that this belt design assured easy extricability: "the agency does not believe that the use of [such] release mechanisms will cause serious occupant egress problems . . ." 43 Fed. Reg. 52,493, 52,494 (1978). While the agency is entitled to change its view on the acceptability of continuous passive belts, it is obligated to explain its reasons for doing so.

The agency also failed to offer any explanation why a continuous passive belt would engender the same adverse public reaction as the ignition interlock, and, as the Court of Ap-

peals concluded, "every indication in the record points the other way." 680 F. 2d, at 234.[20] We see no basis for equating the two devices: the continous belt, unlike the ignition interlock, does not interfere with the operation of the vehicle. More importantly, it is the agency's responsibility, not this Court's, to explain its decision.

VI

"An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis . . ." *Greater Boston Television Corp.* v. *FCC*, 444 F. 2d 841, 852 (CADC), cert. denied, 403 U. S. 923 (1971). We do not accept all of the reasoning of the Court of Appeals but we do conclude that the agency has failed to supply the requisite "reasoned analysis" in this case. Accordingly, we vacate the judgment of the Court of Appeals and remand the case to that court with directions to remand the matter to the NHTSA for further consideration consistent with this opinion.[21]

So ordered.

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[20] The Court of Appeals noted previous agency statements distinguishing interlocks from passive restraints. 42 Fed. Reg., at 34,290; 36 Fed. Reg., at 8296 (1971); RIA, at II–4, App. 30.

[21] Petitioners construe the Court of Appeals' order of August 4, 1982, as setting an implementation date for Standard 208, in violation of *Vermont Yankee*'s injunction against imposing such time constraints. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U. S., at 544–545. Respondents maintain that the Court of Appeals simply stayed the effective date of Standard 208, which, not having been validly rescinded, would have required mandatory passive restraints for new cars after September 1, 1982. We need not choose between these views because the agency had sufficient justification to suspend, although not to rescind, Standard 208, pending the further consideration required by the Court of Appeals, and now, by us.

SUPREME COURT OF THE UNITED STATES

Nos. 82-354, 82-355 AND 82-398

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., ET AL., PETITIONERS
82-354 *v.*
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

CONSUMER ALERT, ET AL., PETITIONERS
82-355 *v.*
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS
82-398 *v.*
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 24, 1983]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE O'CONNOR join, concurring in part and dissenting in part.

I join parts I, II, III, IV, and V-A of the Court's opinion. In particular, I agree that, since the airbag and continuous spool automatic seatbelt were explicitly approved in the standard the agency was rescinding, the agency should ex-

plain why it declined to leave those requirements intact. In this case, the agency gave no explanation at all. Of course, if the agency can provide a rational explanation, it may adhere to its decision to rescind the entire standard.

I do not believe, however, that NHTSA's view of detachable automatic seatbelts was arbitrary and capricious. The agency adequately explained its decision to rescind the standard insofar as it was satisfied by detachable belts.

The statute that requires the Secretary of Transportation to issue motor vehicle safety standards also requires that "[e]ach such . . . standard shall be practicable [and] shall meet the need for motor vehicle safety." 15 U. S. C. § 1392(a). The Court rejects the agency's explanation for its conclusion that there is substantial uncertainty whether requiring installation of detachable automatic belts would substantially increase seatbelt usage. The agency chose not to rely on a study showing a substantial increase in seatbelt usage in cars equipped with automatic seatbelts *and* an ignition interlock to prevent the car from being operated when the belts were not in place *and* which were voluntarily purchased with this equipment by consumers. See *ante*, at 21, n. 15. It is reasonable for the agency to decide that this study does not support any conclusion concerning the effect of automatic seatbelts that are installed in all cars whether the consumer wants them or not and are not linked to an ignition interlock system.

The Court rejects this explanation because "there would seem to be grounds to believe that seatbelt use by occasional users will be substantially increased by the detachable passive belts," *ante*, at 23, and the agency did not adequately explain its rejection of these grounds. It seems to me that the agency's explanation, while by no means a model, is adequate. The agency acknowledged that there would probably be some increase in belt usage, but concluded that the increase would be small and not worth the cost of mandatory

detachable automatic belts. 46 F. R. 53421–54323 (1981). The agency's obligation is to articulate a "rational connection between the facts found and the choice made." *Ante*, at 12, 21, quoting *Burlington Truck Lines* v. *United States*, 371 U. S. 156, 168 (1962). I believe it has met this standard.

The agency explicitly stated that it will increase its educational efforts in an attempt to promote public understanding, acceptance, and use of passenger restraint systems. 46 F. R. 53425 (1981). It also stated that it will "initiate efforts with automobile manufacturers to ensure that the public will have [automatic crash protection] technology available. If this does not succeed, the agency will consider regulatory action to assure that the last decade's enormous advances in crash protection technology will not be lost." *Id.*, at 53426.

The agency's changed view of the standard seems to be related to the election of a new President of a different political party. It is readily apparent that the responsible members of one administration may consider public resistance and uncertainties to be more important than do their counterparts in a previous administration. A change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations. As long as the agency remains within the bounds established by Congress,* it is entitled to assess administrative records and evaluate priorities in light of the philosophy of the administration.

*Of course, a new administration may not choose not to enforce laws of which it does not approve, or to ignore statutory standards in carrying out its regulatory functions. But in this case, as the Court correctly concludes, *ante*, at 13–15, Congress has not required the agency to require passive restraints.

The National Highway Traffic and Motor Safety Act of 1966 requires the Department of Transportation to "reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." Last year over 45,000 Americans died in automobile accidents, and over 250,000 were seriously injured.

In an effort to reduce these deaths and injuries and to meet the Act's mandate, the National Highway Traffic Safety Administration [NHTSA] issued a rule (Standard 208) in 1977 requiring the installation beginning in 1982 of automatic restraint systems in automobiles. The requirements of this rule could have been met via the installation of inflatable airbags or automatic safety belts; but it was clear by 1981 that virtually all manufacturers intended to install detachable automatic belts, not airbags.

In 1981, NHTSA delayed implementation of the Standard 208 rule; it later rescinded it. The rescission was based primarily on the belief that the plans of the automobile industry to comply with Standard 208 via detachable automatic belts would result in little increased usage of safety belts.

In 1983, the United States Supreme Court reviewed the NHTSA rescission and declared that the agency had acted in a capricious and arbitrary fashion; and that NHTSA had failed to present an adequate basis for rescinding Standard 208. The Court ordered NHTSA and DOT to re-examine the issue and proceed promptly to reinstate, rescind or amend Standard 208. The Court held that if NHTSA could justify rescinding as to automatic belts, it then must consider requiring airbags.

In October, 1983, DOT published a notice of proposed rulemaking which outlined more than a dozen possible options. A supplemental notice was published in April, 1984 and included additional options for consideration.

The deadline for publication of a final rule, as announced last October with OMB concurrence and reaffirmed in May, is July 11, 1984.

Rescinding Standard 208 Again is not a Viable Option

The Supreme Court, in its decision in the State Farm opinion, voided NHTSA's 1981 rescission of Standard 208 because NHTSA failed to consider mandating nondetachable automatic safety belts and/or airbags as alternatives to rescission. The Court also held that NHTSA should have considered the "inertia" factor that distinguishes detachable automatic belts from manual belts. Throughout the opinion the Supreme Court reiterated that "in reaching its judgement, NHTSA should bear in mind that Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act . . . ."

After considering the State Farm decision and the record compiled in the current rulemaking, it has become clear and unavoidable that the Administration can not rescind Standard 208 again. While the 1981 rescission was based upon a claim that NHTSA could not reliably predict that detachable belts lead to increased usage, the Court cited user inertia as reasonable grounds to believe that such increased usage would result. After almost a year of review and public comment, there is no new evidence to counter the Court's finding, and comments filed by the auto industry recognize that automatic belts will result in increased usage. Further, using cost-benefit analysis, the "breakeven point" for automatic seatbelts (i.e., the point after which benefits begin to exceed costs) occurs when there is 25.5 percent usage of the belts. In comparison, manual belts presently are used at a 12.5 percent rate. The breakeven point is lower now than it was at the time of rescission in 1981, because the cost of installing automatic belts is lower (General Motors now estimates a cost of less than $50 per car versus $65-$150 in 1981). Thus, justifying a rescission on the basis of costs is even more difficult than was the case in 1981.

Given the present factual record, a repeat of the 1981-1982 rescission could ultimately result in a ruling by the D.C. Circuit Court of Appeals or the Supreme Court requiring airbags in all new cars.

The Safety Problem. Since 1929, motor vehicles have been the leading cause of accidental deaths and injuries in the United States. The magnitude of highway deaths as a transportation problem is overwhelming -- nearly 43,000 persons died on the highways last year, accounting for 93 percent of all transportation-related fatalities. The effects transcend those who are killed or injured in highway crashes. The Department estimates that auto accidents cost our economy $57 billion annually in direct costs (such as medical expenses) and indirect costs (such as lost employment tax revenue and welfare payments to accident victims' families).

The data in the record give an indication of what is involved in overall costs. For example, a cost-benefit analysis submitted by one prominent economist suggests that reinstatement of the passive restraint standard would have net economic benefits to the nation of between $2-2.5 billion annually, depending on the mix between airbags and automatic safety belts. Conversely, this economist contends that the rescission of Standard 208 would cost the nation at least $24 billion. This includes the huge cost to the taxpayers of Medicaid and Medicare payments for thousands of people injured each year, and welfare payments of all kinds to families in which the primary wage earner is killed or seriously injured.

Recent analyses of the societal costs of motor vehicle accidents show that every fatality in an auto accident costs society $168-322 thousand in lost productivity alone, principally because auto accidents are the leading cause of death of young adults whose productive years are still ahead of them. Another illustrative component of societal cost is the payment of worker's compensation claims to employees injured on-the-job in auto accidents. The estimated cost of worker's compensation payments for such injuries annually is over $337 million.

Recent Developments: Seat Belt Laws Abroad and in the United States

Mandatory seatbelt use laws for adults are in effect in 29 foreign nations, including Great Britain, Canada, West Germany, France and Spain. The British law was enacted recently by the Thatcher government. During 1983, its first year in effect, motor vehicle accident fatalities declined 25 percent over 1982, despite an overall increase in motor vehicle traffic. In 11 countries from which data are available, fatalities also declined an average of 25 percent within six years after seatbelt laws were enacted.

In the United States there is a precedent for action by the States to improve auto safety. Today there are 48 States plus the District of Columbia which have laws requiring that children be restrained in child safety seats while traveling in an automobile. All but two of those laws have been enacted since January, 1981. The public reaction to the laws has been strongly favorable, with the Department's latest figures showing a steadily increasing usage rate, currently over 40 percent nationwide.

Finally, the States have begun to consider seatbelt laws for adults, beginning with New York's passage earlier this week of the nation's first mandatory seatbelt use law for adults. This measure, which was passed with bipartisan support in both houses, requires drivers, all front-seat passengers, and children under 10 sitting anywhere in the vehicle, to wear a seatbelt, subject to a $50 fine. The auto manufacturers have waged a vigorous campaign in favor of such laws.

Reinstatement of Standard 208 Subject to Action by the States

In light of the Supreme Court opinion and the dimensions of the auto safety problem, the most appropriate solution is to phase-in Standard 208 over a five-year period, while giving the States ample opportunity to pass mandatory seatbelt use laws (such as the law passed in New York), with the prospect of removing Standard 208 entirely if enough such laws are passed.

The Supreme Court's decision does not set a deadline by which Standard 208 must be fully rescinded or reinstated, but there is evidence in the record from the automobile companies the companies could comply with Standard 208 in three years and accordingly there will be criticism of the longer five-year period.

Specifically, Standard 208 would be made applicable to all new cars sold in the United States as of September, 1989, unless States in which 75 percent of the population reside have enacted and are enforcing mandatory seatbelt use laws.

To reach this goal, a $40 million per year education campaign would begin immediately to encourage seat belt use and mandatory use laws. Half of the cost of this campaign would be donated by the automotive industry, with the remaining funds provided by the Department.

The rule would phase-in Standard 208. Beginning in model year 1987 the rule would require that 10 percent of the newly manufactured fleet must meet Standard 208. This would increase to 25 percent of the new fleet in model year 1988, and 40 percent of the new fleet in model year 1989. Of course, if the States failed to enact seatbelt laws, 100 percent of the 1990 model cars would have to meet Standard 208.

This phase-in has several advantages. It provides for an orderly implementation of the requirements; it helps lessen the economic impact on the manufacturers; it encourages the development of the most effective and appropriate devices; and it accommodates the public's need to become accustomed to the change. It also helps to meet the challenge that five years is too long a delay.

Incentives to Provide Better Protection. To give auto manufacturers added flexibility in meeting the standard and to encourage development of alternative technologies, auto companies would be able to meet the 1987-1989 percentage requirements by counting as 1.5 cars meeting the standard each car that complies with the standard by a means other than automatic belts, such as General Motors' "friendly interior".

THE WHITE HOUSE

WASHINGTON

May 18, 1984

MEMORANDUM FOR JAMES A. BAKER,III
RICHARD DARMAN

FROM: Frank J. Donatelli

SUBJECT: Flat Tax Considerations for 1984

It is often said the results of the next election can be predicted by the relative standing of key economic indicators such as unemployment, inflation, the prime rate, and average weekly household wage. As Ben Wattenberg noted in the late 1970's, "There's nothing wrong with the Republican Party that 12% inflation won't cure."

Such economic determinism, however useful, can only be a part of a much larger and successful electoral strategy. The economy is a powerful issue, since people will vote their pocketbooks absent other compelling reasons.

Until now, the President has rightly emphasized his economic achievements in reversing the record of the last Administration. This is good and proper and must be an integral part of the fall campaign.

Yet, critics argue that such a single dimension strategy puts too many of our electoral eggs in one basket. For one thing, the current situation could deteriorate. Interest rates have already been increasing. Inflation and/or unemployment might increase in the next few months. While we can be certain that the key economic indicators will still be much better than four years ago no matter what happens in the next few months, it is also true that, in political terms, the direction of the indicators is just as important as their level. As such, if we are on a flat plane or a slight downward arc this fall much of the political advantage we might expect to derive from the economy might not materialize.

Secondly, the public has a tendency to become complacent about good news quickly. We could have a situation where the public comes to accept the Democratic argument that whatever economic recovery that has taken place has been at the expense of future generations and furthermore, has been unfair to the lower economic classes. This could be an especially effective argument in conjunction with a receding set of economic indicators.

It has been suggested that a more diversified strategy is called for. In addition to discussing continuing economic recovery, a forward looking strategy which emphasizes our vision of the future must also be a clear part of our message. From Kennedy's "New Frontier" to Johnson"s "Great Society" to the President's "Opportunity Society," the momentum of American politics is clearly with those who focus on the future direction of the Republic.

Based on past experience, no one is more capable of focusing the debate on the future than the President. As we are all aware, he has an unparalleled ability to convey how his agenda reflects for America's future.

Economics are clearly our strong suit and it would be here that we might choose to speak to the future. The President made an excellent statement at the Senate/House dinner when he noted:

> --But we must give the people more than our record; we must give them our vision. We Republicans see America forever free from the evils of inflation. To make that dream a reality, we will enact structural reforms like the line-item veto and the balanced budget amendment. We see an America with a fair and simple tax code that allows the American people to keep a greater share of their earnings. To bring that about, we'll design a major tax reform, not tinkering here and there, but a sweeping and comprehensive reform of the entire tax code.

Several conservative groups have urged the President to endorse a specific modified flat tax proposal before this November. They suggest such a plan would go a long way toward defining our vision for the next four years. They note that the general proposition is very popular and could serve as a powerful response to growing concerns about complexity, unfairness, and lack of incentives in the tax code.

The most detailed plan currently available for endorsement would seem to be one recently introduced by Congressman Kemp and Senator Kasten.

It it is a cardinal rule of politics not to be so specific on taxing and spending decisions that you can identify winners and losers. The winners will never remember, but the losers will never forget. The Reagan 1976 spending reduction proposals, it is said, were a prime example of a few weaknesses sinking a plan that seemed to look good on paper.

Critics reply that this argument proves too much. It is true that a poorly designed plan could have major drawbacks, but it is not certain that any specific plan would contain such vulnerabilities. Kemp-Roth was specific and it stood the test of time through the mid-term elections of 1978 and the Presidential election of 1980.

Thus, a key requirement is for any specific flat tax plan to be thoroughly evaluated by Treasury and other experts for identification of unintended consequences or inequities, such as insuring that the middle and lower income classes would not pay more than under current law.

Supporters note that the specifics of other modified flat tax proposals have already been widely endorsed by the Democratic left. The Bradley-Gephardt plan already has over one hundred Democratic cosponsors. This is yet another indication of the potential coalition available to support a well-designed flat tax plan.

After a brief flirtation, the likely Democratic nominee has rejected basic tax reform and now favors the status quo with increases in marginal tax rates and elimination of indexing. This is a perfect contrast to a forward looking well-designed tax reform plan. Supporters argue that specificity is the key to defining this distinction.

I am suggesting that you gentlemen agree to meet with conservative proponents of Kemp-Kasten to explore these questions in further detail.

LEW LEHRMAN

May 9, 1984

The Honorable Ronald Reagan
The President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

As we discussed in our dinner conversation at C-PAC, I submit for your consideration two memorandums on the pressing subject of monetary reform. Attached you will find a practical plan for the speedy restoration of a convertible, gold-based currency. The indispensable means by which to reach your desired goals -- of low interest rates, free trade, full employment, rapid economic expansion without inflation, a balanced federal budget and a significant increase in the tax base without a tax rate rise -- is through the building of a free monetary order.

The second memo focuses on your most pressing question at dinner, namely, how wisely to fix the price for gold. To that end, I specify a scientific method to determine precisely the stable, long run price for gold in a non-inflationary monetary system. I look forward to a discussion of this plan with you.

Best regards,

Lew Lehrman

LL:sy

Jerr,
This is the analysis and
proposal we discussed
long ago —
with regard and hope,
Lew

641 Lexington Avenue, New York, New York 10022 • (212) 759-8534

TO: PRESIDENT RONALD REAGAN

From: Lewis E. Lehrman

MEMO I of Two Related Memos

Monetary Order and Economic Growth:

The Background for Monetary Reform in 1984-1985

Monetary Order and Economic Growth: The Background for Monetary Reform in 1984-1985

The modern history of the Western world and of our own country shows that only a monetary order based on a gold-backed currency leads to low long-term interest rates, balanced budgets and sustained non-inflationary economic growth.

For example, after the paper money hyperinflation and floating exchange rates of the American Revolutionary War (1775-1789), the new constitutional republic was founded upon the bedrock of a monetary reform, initiated by Alexander Hamilton, who refinanced the public debt and brought about the Mint Act of 1792. Through this act the American monetary standard -- a metallic dollar as required by the Constitution -- was fixed to a gold and silver basis by statutory law. The dollar, a gold or silver coin, was thereby, linked in a system of fixed exchange rates to Great Britain's convertible pound sterling, the preeminent gold standard currency of the world market during the Industrial Revolution. Economic historians and scholars of the period remark the extraordinary 10-year investment boom which followed upon Hamilton's monetary reform. Low interest rates of 4-6% for long-term capital, rapid growth in the work force, balanced budgets, and a stable price level were the hallmarks of this period of return to a stable monetary standard at the birth of the American nation.

By means of a very similar monetary reform -- restoration of the gold franc -- Napoleon ended a period of inflation and floating exchange rates in France, brought about by the government manipulated "assignats", the paper money issues of the French Revolution. Financial stability and prosperity followed the

return to currency convertibility in 1803, generating the tax revenues which filled the Imperial Treasury of France. As recently as 1959, after two decades of a floating franc and financial disorder, President DeGaulle and his "eminence grise", Professor Jacques Rueff, launched the French economy and the Fifth Republic on a decade of economic growth based largely on a domestic monetary reform. The Rueff reforms restored a convertible Franc, and linked it to the Bretton Woods system of fixed exchange rates. Thus President DeGaulle brought to an end the French inflation of the 1950s. The French economy took off on a decade of rapid economic growth toward full employment and outstripped its German competitor in annual productivity gains.

Across the channel in England the 1819-1821 restoration of the gold standard had ended an era of floating exchange rates and parliamentary paper money experiments, also begun during the Anglo-Napoleonic wars -- a 24-year financial nightmare (1795-1819) of alternating wartime inflation and peacetime austerity and deflation. The monetary reform of 1821 inaugurated a new international monetary order and one of England's greatest investment booms. Balanced budgets were another note-worthy by-product. The long-term capital markets of London, undergirded by sterling convertibility, offered interest rates of 3-6% for a century and a half.

Again, in 1879, the United States officially ended a 17 year epoch of financial disorder associated with the Civil War. The Civil War and Reconstruction period, with its paper money and floating exchange rates, was marked by inflation and deflation. The U.S. monetary reform of 1879 reestablished the gold dollar and also linked domestic U.S. currency convertibility to the international monetary order of the day, a general system of multilateral currency convertibility, upheld at the center by the convertible

gold-backed English pound. After 1879, long term interest rates stayed low -- under 6% — for 90 years. Indeed, from 1879-1883, immediately after the monetary reform, real growth of national income in America averaged 8.4 percent annually -- with no inflation. And the budget stayed approximately in balance for two generations.

These are but a few examples of fundamental monetary reform. They illustrate the fiscal and financial effects of currency convertibility -- drawn from the only reliable laboratory for economic experiments, the real history of nations and peoples.

Why do free convertible currencies and an international monetary order, based on the gold standard, produce such positive economic and fiscal effects? Because only a certain lawful value for any standard of measure can bestow reliability and trust. Trust in a lasting standard of value for economic measurement, namely money, is just as crucial for commerce as trust in a fixed value for the yardstick, always a standard value of 36", is necessary for math and science. Who would arbitrarily depreciate the value of the yardstick to 30" tomorrow, or gradually augment its value to 40" one year from now? But that is precisely the arbitrary power we give today to the Federal Reserve to depreciate and appreciate the value of the monetary yardstick -- the dollar. In a word, the restoration of a fixed monetary standard -- a gold-based currency — leads to confidence in a sure value for the currency, producing a new faith in the future value of money. Only confidence in the future value of money can encourage long-term lending for periods of 30-50-100 years at 3-5 percent. Thus can the long-term capital markets be restored. History shows this to be the case. Between 1879 and 1968, under one form or another of the gold standard, 4-6 percent long-term mortgage and business loans were commonplace. Moreover,

average prices were, for example, almost exactly the same in 1914 as in 1879. The purchasing power of the dollar was stable, almost to the decimal point, for 35 years under the gold standard -- during one of America's most rapid growth periods. In fact, the stable dollar was a principal means of rapid economic growth because the gold dollar led to growth in long term lending and therefore in long term investment.

It is strictly because of this new faith in the legally guaranteed value of all future money payments on borrowings (bonds, mortgages, stocks, and other long-term financial contracts) that a convertible dollar leads directly to a boom in the supply of savings offered for long periods at fixed, low rates. But only a real currency, legally convertible to gold at a fixed rate, can bring about these effects in the capital markets. Only a permanent institutional reform of the monetary system can now stabilize expectations, given today's world of discretionary monetary policy, paper money depreciation, and floating exchange rates. A sincere verbal pledge of the Chairman of the Federal Reserve cannot and will never have the same effect. That is because, even with a Fed pledge, the value and quantity of money is still left to the arbitrary manipulation of the Fed and to the good intentions of its Governors. On the other hand, a law which brings about a fundamental institutional reform, namely the convertibility of the currency, can and will assure the world, by the fixity of an enforceable rule, that the price level in the future is permanently pinned down.

A convertible currency rules out a permanent excess of money (inflation). Free people can turn in excess paper currency and bank deposits for the gold which backs it up, thus reducing the supply of undesired cash balances. Thus, also, is a permanent scarcity of money (deflation) ruled out. While free

workers, miners and other producers, at home and abroad, can supply gold at a fixed price for undesired currency -- individuals, bankers, and the government can also supply currency and checking deposits for excess monetary gold holdings. Thus it becomes clear that a gold dollar is a democratic currency, for, as the impartial fixed monetary standard, it acts, through the decentralized decisions of free people, as a lawful and actuarial guarantee to all workers. That is, the gold value of their money wages and savings must, by the law of convertibility, be the same in the future as they were on the first day of the monetary reform. No promise of a Fed bureaucrat or a politician, with arbitrary power to regulate the value and quantity of credit and money, can have a comparable effect.

Most important, Professor Roy Jastram in The Golden Constant has shown that the purchasing power of the gold monetary standard was constant for four centuries of the modern period, 1540-1940. Thus, under the rule of the gold pound and the gold dollar, undesired money, or currency inflation, led directly to a popular demand for gold which required the authorities, by market mechanisms, to reduce the amount of undesired currency and credit in circulation. Thus also, a convertible currency indirectly barred the door to high interest rates and the inflationary effects of the budget deficit -- because the law requiring the authorities to maintain currency convertibility rules out the principal cause of inflation, namely, the monetization of a government deficit and below-market interest rates subsidized by the Fed. A convertible currency effectively reduces the government's incentive to run a budget deficit.

But only the institutional reality of a stable gold dollar and stable money -- never the mere promise of stable monetary policy -- will open the monetary

sluice gates through which short-term savings will pour into new, long-term debt and equity investments. At first, the rush of this great new supply of long-term savings will exceed the existing demand. As a result, interest rates, or the price of credit will tend to fall. As real and nominal interest rates fall, demand rises for this new low-cost long-term financial capital at fixed rates. Thus does a gold dollar start an investment boom in long lead-time technologies, as well as in long-term plant and equipment. At the same time, the demand for labor rises rapidly to utilize all the new plant coming on stream. Unemployment falls. Then total tax revenues begin to rise rapidly as the tax base expands. Thus does the budget move toward balance with no increase in tax rates.

The monetary reform of our generation could begin a period of real national income growth approaching 8 percent per year for at least four years. Only this growth can insure a sound basis for a major tax reform -- a low, fair, flat income tax rate. Upon a foundation of stable money and a low, fair, flat tax, a full decade of economic growth averaging 6 percent annually will get under way. A growing American labor force -- responding to rising real wages and the incentives of a radical tax rate reduction and joined to immense new plant capacity -- will once again be able to compete across the board on the world market. Those on welfare and unemployment, those employed in the underground economy will be drawn into gainful and honest work by expanding job opportunities and fair taxes. For each 1 percent fall in the unemployment rate, the government deficit will fall about $30 billion. Long-term interest rates on high-quality debt would fall substantially within 12 months of the monetary reform. Such has been the case after every effective monetary reform based on a gold currency. For each 1 percent fall in the rate of interest, the Treasury

could save $10 billion in debt service costs. The bulk of the government debt could be refinanced within 5 years at about one-half current interest rates, thus saving the Treasury $60-70 billion annually. At 4-5 percent unemployment, the Treasury would also have saved at least $90 billion annually in transfer payments. Total budget savings arising from these interest and transfer payment reductions, will equal approximately $160 billion, a sum which, when combined with rising tax revenues from economic growth, will balance the budget. Indeed, one might reasonably expect a gradually developing budget surplus with which to reduce the national debt.

There is, today, a universal desire to balance the budget -- that is, to increase the tax base and to reduce government expenditure. But, in truth, an authentic demand for such a balanced budget can only mean a demand for rapid economic growth without inflation. To demand such a goal -- can only be to demand the effective means to reach that goal. But, a genuine demand for sustained economic growth must also be a demand for a long-term investment boom and the rebuilding of a competitive American economy. But the demand for a long-term investment boom must be a demand for restoration of the long-term credit markets, with fixed low interest rates. But a true demand to open up long-term financial markets, at low fixed rates, can only be a demand for insurance of the value of all future money payments to those who lend their savings at long term. But to demand such a goal -- faithful insurance of the future value of money -- means, by every test of practice and history, a demand for the mechanism to reach that goal -- namely, a true American gold standard. Only a gold-backed currency has been the honest money of history.

Moreover, in our Constitution, a lawful American monetary order was strictly defined as one based on a currency of intrinsic worth, a gold or silver

dollar (Article I, paragraphs 8, 9, 10). Thus did the substance and integrity of the dollar, until 1934, rest upon the constitutional right of every American to bring precious metal to the mint to have it freely converted into standard coin -- and also to bring their paper dollars and checks to the bank for conversion to standard money, or gold coin of specified weights and fineness. Free coinage of the dollar gave rise to the right to convert all paper currency and bank deposit claims, such as Federal Reserve notes and bank checking accounts, into the lawful monetary standard -- a fixed weight of gold coin. Thus was the paper dollar referred to as a convertible currency.

But in 1933, Franklin D. Roosevelt unilaterally made paper dollars, which were government guaranteed contractual claims to gold dollars, irredeemable. The Supreme Court then ignored the clear intent of the Constitution and upheld the President's arbitrary decision to confiscate the lawful value of monetary property (legal promissory paper claims to gold), without due process.

As the integrity of our domestic currency was compromised in the 1930s, its international substance was eviscerated in 1971, when Richard Nixon repudiated dollar convertibility for foreigners -- their unquestionable legal right, enshrined by the international Bretton Woods Agreement of 1944. The present era of high inflation, high unemployment, high interest rates and a permanent budget deficit originated in these monetary repudiations of 1933 and 1971.

Americans do not have to accept financial disorder and its consequences. There is a way out.

Indeed, Mr. President, now is the moment to end this age of inflation and to redeem the promise of non-inflationary economic growth signaled by your election and by the economic recovery to which your leadership has given rise.

To restore the essential condition for balanced budgets, rapid economic growth, and full employment, -- to rule out high interest rates and inflation -- it is necessary to launch a new American-led era of international monetary order -- a golden age of prosperity based on a system of convertible currencies. Only the U.S. has the power to create this system, which all the world desires, for only the U.S. has the natural authority to be the effective leader of the free-world and its integrated economy. Only a new international monetary order, based on a common currency and stable fixed exchange rates, can rule out today's growing protectionism which is inevitable in a world market of manipulated exchange rates, where nations competitively depreciate their currencies to gain short-term trading advantages. Indeed, floating exchange rates are mere monetary proxies for nations which desire to impose quotas, tariffs, and export subsidies by other means.

It is true that such an international gold standard will not be a perfect monetary institution. But history shows it to be the true money of the free market, the least imperfect of monetary institutions by which to establish sound and honest currency, an equitable and growing world trading system, a reasonably stable price level, low interest rates, a long-term investment boom, and a general tendency toward full employment.

TO: PRESIDENT RONALD REAGAN

From: Lewis E. Lehrman

MEMO II of Two Related Memos

[To be read after Memo I]

A Presidential Plan For a New Monetary Order:

A Modernized Gold Standard in 1985

A Presidential Plan for a New Monetary Order:
A Modernized Gold Standard in 1985

Of course, many economists now complain about the seeming difficulty of establishing dollar convertibility into gold, and, with it, the creation of a new international monetary system based on the gold dollar. Some professional experts say that it is too difficult to find the "right" price for gold. This is not only untrue. But it is also the wrong focus. Instead, we must also ask ourselves and our monetarist, Keynesian, and socialist friends -- at home and abroad -- one practical question. Are the stumbling blocks in the way of establishing the gold standard, and a new international monetary order, more or less dangerous than the practical problems of living with the effects of centrally managed paper money -- such as permanent budget deficits, high real interest rates, inflation, deflation, and unemployment -- all characteristic of our present experiment with inconvertible paper money, floating exchange rates and discretionary Federal Reserve policy?

A reasonable person might then answer skeptically that the path to the gold standard may be desirable but not an easy one.

In fact, the creation of currency convertibility is a simple financial problem, once the political will is mobilized -- as only you can do, Mr. President -- to solve it. Above all, what you rightly desire and need is a workable plan of action.

By virtue of this program:

1. At some point in the near future, say in the State of the Union message of January 1985, I recommend that you announce a practical plan to bring about currency convertibility. The minimum elements of this plan follow.

2. The announcement would pledge that in January of 1986, the U.S. would, by statute, define the value of the dollar as equal to a weight of gold.

3. During the period following the announcement of January 1985, call it the stabilization period, you, as President, would propose a reform of the Federal Reserve System. The Fed reform would require the Fed to uphold a stable value of the dollar. The primary elements of the Fed reform would have the effect of prohibiting the Federal Reserve from manipulating the value and the quantity of the monetary standard. First, discretionary Federal Reserve open-market purchases of additional U.S. government debt securities would be ruled out. The Fed, however, would be required to discount secured short term private debt originating in the money markets. Thus, the banking system as a whole would confidently lend new money and credit to the private sector for new employment and the production and consumption of new goods and services, because this private debt would be eligible collateral to secure future short term commercial bank borrowing at the Fed. Second, the Federal Reserve lending rate, or the discount rate, would be defined by Congressional resolution or executive order as a market-related interest rate. Gradually varying with the business cycle and the demand for productive credit, the discount rate would thenceforth be the sole banking technique by which the Federal Reserve could create credit in the banking system. Thus, the new target of Fed policy would necessarily be to supply (lend) the quantity of credit and money actually desired for profitable employment and production -- and only at a market related interest (discount) rate. Such a new Fed target rules out inflation (and deflation), because each new supply (or diminution) of credit by the Fed and the banks is necessarily associated with a proportional increase (or decrease) in the supply of goods. As the ratio between new issues (or reductions) of bank credit and

the production of new goods (or their diminution) remains in balance, neither sustained inflation nor deflation can get underway. Third, bank reserves, if required by the Federal Reserve, would pay a market interest rate consistent with interest rates paid on the highest quality secured commercial paper.

During the stabilization period, January 1985-January 1986 -- as a result of the proposed monetary reform -- market participants would gradually cease to hedge against inflation. But, instead, they would look toward the convertibility date of January 1986 and govern all their purchases and sales accordingly. As the days passed, gold would gradually tend to settle at a stable, paper-dollar price -- a daily closing level which would begin to discount the prospective permanent price -- soon to be fixed in January 1986. For example, this is exactly what happened during the stabilization period which preceded the resumption of convertibility in 1879.

4. Ninety days before the end of the stabilization period, October 1985 — after appropriate deliberations with legislative leaders, government executive officers, labor leaders and other advisors -- the President would propose legislation to stipulate the statutory gold weight of the dollar, that is, the permanent "price of gold." The gold coin weights, and the convertibility price of gold, would be defined in The Gold Standard Act of 1986, submitted to the Congress before the end of 1985.

The gold coin value of the new dollar (i.e., the dollar price of, say, an ounce of gold) would be determined by two objective reference points. First, the convertibility price would be set with some reference to the market price of gold at the end of 1985. Second, and more important, the permanent price of gold would be established at a level which would be certain not to cause a reduction in the average dollar level of nominal wages. The second reference

point is necessary because, if, at the end of the stabilization period (December 1985), the market price of gold were lower than the long run equilibrium price, a tendency toward falling prices might develop. A falling price level would then tend to put downward pressures on wages and salaries. Given the fact that wages, under present economic conditions, tend to be sticky on the downside, but the prices of goods are more flexible, one could expect downward pressure on the level of employment to develop if the convertibility price were set too low.

An example of this downward pressure on prices, wages, and employment occurred in 1925 in England, when the convertibility of the pound was re-established at the pre-World War I gold price. But the prewar price for gold in England proved too low, given the great wartime inflation which had raised all other wages and prices. As a result, during the 1920's unemployment in England, also underwritten by a high dole, stuck at high levels. In other words, after every long period of inflation, it is necessary to adjust the gold price, or the value of the monetary standard, to the price level reached by the economy in general -- not as they did in England, in 1925, when the price and wage level of the economy was adjusted downward to the prewar gold price.

Consider on the other hand how the French, (under President Poincare in 1926 and under President Degaulle in 1959) solved the same problem successfully -- by fixing the convertibility price of the franc into gold at a level which fully reflected the previous inflation of all other prices and wages.

The so-called convertibility riddle can be solved in a similar way today by fixing the convertibility price of gold at the long term equilibrium point of production price. The point of production is a price not less than the weighted average costs of the marginal productions of operating North American gold mines. This value is the stable long run equilibrium price of gold. At this

gold price, the value of the monetary standard will have been fully adjusted to all previous price, wage, and cost changes. At such a gold price steady profitable production of the monetary standard can be assured at an average annual rate of increase of approximately 2% over the long-term. Hundreds of years of gold mining statistics show that a 1.5-2% annual growth rate of gold production is the normalized rate.

The pricing technique I recommend here is a simple procedure which fortunately depends upon readily available market data. Under economic conditions and institutional arrangements as they exist today, and given present price and income trends, I estimate that the long-term equilibrium price of gold should be not less than $500-600 by January 1986.

5. During the final 90-day period before January 1986, the President would propose to Congress minor statutory reforms of the Fed, the precise gold value of the dollar, and the few new laws and regulations needed to carry out a thoroughgoing domestic monetary reform.

The Gold Standard Act of 1986 would be designed to bring about two fundamental financial reforms now missing from the organic law of the land. First, a lasting definition of the authenic American monetary standard, the gold dollar, would finally be reestablished by law — as the Constitution requires. Second, the means and ends of Federal Reserve policy would also be clearly defined. By means of a market-related lending rate, or discount rate, the Fed's primary purposes would be to supply productive credit and to uphold the value of the monetary standard of the U.S.

In January of 1986, after the Congress acted, we would be on the true gold standard. Thereafter, all who wanted gold dollars could bring their bullion, paper dollars, or checks to the bank for conversion into standard gold coins at

the established rate. Those who desired paper dollars and bank deposits could demand them at the bank in exchange for gold dollars. The new monetary order would be grounded on the bedrock of a real, unrestricted, free-market gold standard.

Just as happened in 1879 in the U.S, or 1959 in France, few would demand gold because of the greater convenience of legally guaranteed gold-backed paper money.

Moreover, in your original announcement of January 1985, Mr. President, I recommend that you call for an international monetary conference to begin in June 1985. Its purpose would be to create a new international monetary order -- not unlike the effort of the free world leaders who convened at Bretton Woods, New Hampshire in 1944. The rising tide of protectionism, which stems from floating exchange rates, must be contained by agreed institutional arrangements which create a new international gold standard and fixed exchange rates -- to be established at the conference. Stable exchange rates are the true basis of a lasting world of free trade.

The new monetary order would be significantly different from the unstable gold exchange, or reserve currency, systems of the 1920s and of Bretton Woods. Under the new international agreement gold, alone, would become the official reserve currency of the nations which were parties to the agreement. Thus no nation would be required to bear the burden, nor would it be allowed to exercise the exorbitant privilege, of a reserve currency country. In the interest of equity and stability, all balance-of-payments deficits, not otherwise settled, would be settled in the common currency of the free world -- the gold monetary standard.

The rebirth of such a free monetary order would herald an economic Renaissance in the West and lead to the longest non-inflationary economic boom since the beginning of the Industrial Revolution.

THE WHITE HOUSE
WASHINGTON

May 2, 1984

TO: JAB III

This memo from Frank Donatelli makes some very good arguments, and I hope you'll be able to go over it in detail.

An especially good point is the need to guard against an October offensive akin to Tet in El Salvador. As you know, we are receiving indications that this may be in the planning stages, with Castro envisioning an impact on our November election. One way to guard against it would be to take a tack similar to that used in 1980, that is, begin publicly anticipating an "October surprise" by Castro-- this could help defuse the shock in the event a bloody offensive indeed develops. We could also cite this possibility as an argument for military aid-- if Congress fails to supply the requisite amounts, blame for a successful rebel offensive would be less attributable to RR.

I'd appreciate your thoughts on whether or not you agree with this analysis.

Thanks.

JC

THE WHITE HOUSE

WASHINGTON

April 27, 1984

MEMORANDUM FOR JAMES A. BAKER, III
Chief of Staff and
Assistant to the President

FROM: Frank J. Donatelli
Deputy Assistant to the President
for Public Liaison

SUBJECT: Central America

The recent episode of the mining of the harbors in Nicaragua has again brought Central America to center stage. The lopsided majorities in both Houses that voted to condemn our action not only were a setback for our policy goals in Central America, but were also another indication that we have not succeeded in building broad public support for these goals.

It is true we have already expended considerable political capital on Central America. Significant resources have been spent in past funding battles with the Hill. The President has addressed the nation on this issue. The creation of the Kissinger Commission was yet another attempt to build bipartisan support for our policies.

Yet, there has also been sentiment in the White House that Central America should be downplayed. The rationale has been that the issue is a "loser" with the public. It has contributed, it is said, to the President's problems with those voters who feel he is too quick to resort to force to solve international disputes. We have also been loath to take the public eye off the recovery which is rapidly turning the issue of the economy from a minus into a large plus for the Administration. Finally, we have been skeptical as to how effective we can be in turning public opinion around to support us on Central America.

There are certainly valid concerns. Nevertheless, I believe that on balance this policy of "start and stop" is not viable through November and that a heightened and more consistent public education campaign must be pursued. I reach this conclusion for several reasons.

First, it is not necessarily true that the public is opposed to our policy goals. I think it is more accurate to say that the public is many places at the same time. On the one hand, a majority of Americans oppose our involvement in El Salvador and Nicaragua. This should not be surprising. From the beginning

of our history when George Washington warned of "foreign entanglements" we have had a strongly isolationist streak. Indeed, Americans were strongly opposed to involvement in World War II on the eve of Pearl Harbor.

However, it is equally true that since World War II Americans have consistently favored a firm stand against Communist aggression. As the Wall Street Journal recently noted, three post World War II presidential elections have been fought over foreign policy -1960, 1968, 1972- and strength won each time. Thus, while the public opposes American involvement in El Salvador, they also believe that the spread of Communism in Central America would damage our national security. More importantly, they are willing to act affirmatively to blunt the spread of Soviet and Cuban influence in the Caribbean.

Secondly, past Administration bids for public support have been effective. The President's national address last year did succeed in obtaining additional funding for our programs. Likewise, the Kissinger Commission report did quiet Congressional critics, at least for a time. Despite their overwhelming numerical advantage, House Democrats have never totally eliminated our funding requests for Nicaragua or El Salvador, though they have been reduced. Where push has come to shove, Congress has been the one to blink, especially when our resolve has been made clear.

Thirdly, our start and stop policy puts us at the mercy of Congressional leakers and the Democratic presidential candidates who will never miss the opportunity to seize on extraneous matters to embarrass the Administration. Worse, they are able to avoid discussing the central problem of combatting Communist expansion in our Hemisphere by instead focusing on secondary procedural issues such as what constitutes "adequate consultation."

The result is that we are constantly behind the news curve and are forced to react to the latest charge that has raised. We can no longer afford to be merely reactive. It is essential that we participate in framing the parameters of the debate. This is precluded by our defensive strategy.

There is a final reason for pursuing our more aggressive educational campaign, more important than the above three. Unless the public is adequately prepared for what the stakes are in Central America, we are very vulnerable to a "Tet Offensive" by the guerrillas in El Salvador in, say, late October. While the government could not be overthrown, indeed while the rebel operation may be a military failure, the specter of increased casulties (including American) and the loss of several rural provinces might very well have a major political impact on the Administration here at home. We must not allow the Sandinistas, Fidel Castro and the Soviets such an influence over American public opinion.

For these reasons, I believe it is essential a renewed, public education offensive be designed to build support for our policies in Central America. The President, other members of the Administration, and friends in Congress must be prepared to explain our policy as often as is necessary to keep the debate focused on first principles, namely how to blunt the expansion of Soviet and Cuban-style Communism in the Western Hemisphere.

It might also be wise at this point to review some of the policy tools that have been used to implement this strategic objective. For instance, can other vehicles, in addition to the C.I.A., be used for delivering assistance to our allies in the region be found? There is nothing "covert" about an activity that is on the front page of the newspapers day after day. Or, should not our spokesmen more precisely define the threat we would face with a Communist Central America, including the threat to Mexico, massive new waves of immigrants, increased military expenditures, the threat to oil supplies, and other raw materials, and hence American jobs.

Finally, we should consider the larger question of how long the people will support this essentially stalemated situation, even if properly explained. The Grenada liberation was popular precisely because it was quick, decisive, and successful. One commentator has noted that our present policies run the risk of leading us to another "protracted failure." Are additional tools available to reverse this mindset that is gradually gaining credence by our opinion makers?

We should commit ourselves to this new offensive after the elections in El Salvador on May 6. The short term goal would be to pressure the House to approve our funding requests for El Salvador and the Contras. The longer term goal would be to build a grass roots consensus that the Administration's policies are clearly designed to counteract the very legitimate threat to the security of the United States in the Caribbean.

The centerpiece of this new initiative should be a Presidential address to the Nation. All White House offices should be asked to make suggestions on how they can participate in this effort.

For our part, we could assist in building support with groups that should be active proponents of our strategic objective including conservatives, veterans, hardline Democrats, selected union officials, and favorable Hispanic and Ethnic leaders.

from the desk of . . .
the Great Puntificator

Jim Baker
I think the attached
proposal has merit —

L

2/11 To JC

① What do you think of his suggestions?

② See ⊗ on attached — I will need to be briefed on these issues before I do "Face the Nation" interview on School Prayer legislation. Thanks GHWB III

NST is scheduling →

LYN NOFZIGER
(202) 332-4030

Christian Voice

LEGISLATIVE OFFICE
214 Massachussetts Ave. NE
Suite 120
Washington, D.C. 20002
(202) 544-5202

ADMINISTRATIVE OFFICE
P.O. Box 415
Pacific Grove, California 93950
(408) 375-4772

January 25, 1984

Memorandum

TO: Lyn Nofziger, et. al.

FROM: Gary Jarmin

RE: Religious Liberties Task Force/Nebraska Seven

The President's support among evangelicals is suffering immensely due to his lack of action on the Nebraska Seven issue. While the President's legitimate options are limited, it is very important that he do something to demonstrate to evangelicals that he is trying to help, sensitive, etc.. Regardless of the "facts", emotions run very high on this issue, and to many this is becoming a major litmus test issue on whether to support Reagan or not.

In addition, it is important to understand that there are a myriad of other important church-state issues that are greatly upsetting evangelicals: social security tax on churches, IRS auditing and harrassment of churches, taxation of church auxilaries, equal access to school facilities by prayer and bible study groups, the Moon tax case, and many others.

It is my deep conviction that the President could neutralize all of these political negatives, plus receive religionists' enthusiastic praise in one fell swoop -- by establishing a National Task Force on Religious Liberty. Impanelled by prominent constitutional lawyers (including moderates and liberals) such a Task Force could establish federal guidelines in these areas (thus preventing a future reoccurance) and, more importantly, propose remedies to these above problems.

Ideally, this Task Force should be formed under the auspices of the White House. However, another option could be to have Ed Meese impanel such a group under the auspices of the Justice Department (accompanied with a Presidential statement). Perhaps Herb Ellingwood could move over to Justice (if he is interested) to head up the Task Force.

Political Benefits:

1. By establishing this Task Force, the President can "punt" on these issues, thus, buying him time between now and November.

2. All religionists would applaud this move, especially the evangelical - fundamentalist community.

3. Unlike abortion, school prayer and other major issues, there is no organized opposition.

4. Most of the remedies could probably be done by executive fiat, thereby avoiding lengthy and quarrelsome battles with Congress.

Especially in light of the President's Vatican recognition (another sore spot among evangelicals), it is very important that the President act and do it soon. Make no mistake! This issue is costing the President dearly.

ISSUE: SOCIAL SECURITY TAX ON MINISTERS

BACKGROUND

A number of evangelical Christian groups are hotly protesting provisions of the 1983 Social Security compromise amendments which mandate universal coverage of all non-profit groups -- including church organizations and schools -- beginning January 1, 1984.

Prior law permitted non-profit groups the option of coverage and about 80 per cent -- representing 6.5 million workers -- elected to be in the system. In effect, however, virtually all of the remaining 20 per cent ultimately get Social Security benefits either through work for some other employer and/or as spouses of covered workers.

This was one telling argument in favor of extending mandatory coverage. A second argument: the system should be truly universal. Finally, the system needs the new cash -- about $550 million a year will be produced by this provision.

It is important to note that even with the new provision, any ordained cleric is still treated as "self-employed" under the Act and can opt out on grounds of conscientious objection. Members of a religious order under vows of poverty such as nuns may also be exempt if the order declines coverage.

THE ISSUE

The protest -- which has led to introduction of several bills to delay mandatory coverage for two years pending a constitutionality study -- centers on a claimed violation of the separation clause of the First Amendment. However, Justice and the legal division of the Library of Congress both opine that there is no Constitutional question involved.

Treasury and Social Security submitted statements to a Senate Finance Committee hearing in December opposing a Jepsen bill (to delay two years) on grounds that: there is no constitutional issue; it would cost too much ($1.1 billion); would disadvantage employees of the organizations; and might lead to an unraveling of the delicate compromises that produced the 1983 rescue plan. (Dole suggested negotiations toward a compromise such as permitting church group employees to pay both the employer's and employee's share of the tax themselves, but the talks broke down. Dole is loath to have the bill taken up; the issue is still pending with no action planned.)

MORE

SOME TALKING POINTS

1. The Bipartisan National Commission and the Congress extended mandatory coverage for the good of the employees and the solvency of the system ($550 million per year).

2. Virtually all "uncovered" workers in the past benefited from the system anyway, either through other jobs or as spouses of covered workers.

3. The Congress was careful to maintain the old voluntary exemption for ordained clergy and religious orders under vows of poverty. (The Amish, too, can exempt themselves, but only if self-employed.)

4. Prior to the compromise, about 92 per cent of all workers were in the system. Congress decided the system was worth preserving and making it truly universal was a key means of making the system solvent.

5. Note that Congress also extended mandatory coverage to its own membership, state and local governments, and all future Federal employees.

6. Many other nations (e.g. Canada and England) mandate social security-type coverage for all clergy (including American missionaries on their soil, in some cases) with no exceptions.

Church Audit Procedures Act
H.R. 2977 and S. 1262

Issue

The Church Audit Procedures Act introduced in September 1983 by Senator Grassley and Representative Edwards would significantly limit the IRS's ability to audit churches. This proposal would (1) require the IRS to have evidence of tax liability before investigating any church records; (2) modify the timing and contents of audit notices; (3) impose a time limit on audit completions; and (4) set a 3-year limit on retroactive tax assessments. The bill, endorsed by such diverse groups as the National Conference of Christians and Jews, the National Association of Evangelicals, the Moral Majority and Christian Voice, has roughly 70 co-sponsors in the House and 10 in the Senate.

Treasury Position

In testimony on September 30, 1983 the Treasury indicated general support of the bill and expressed a willingness to work with church groups to develop a mutually satisfactory approach. Treasury stated a concern that the evidence restrictions would exacerbate tax compliance problems with mail order ministries and sham churches.

Discussion

- Existing safeguards on IRS audit procedures are designed to protect the constitutional freedoms of religious organizations.

- However, the IRS currently has acute compliance problems with tax protesters disguised as religious organizations.

- Any amendments to existing audit procedures must be drafted very carefully, in order to avoid insulating mail-order ministries and sham churches from legitimate IRS investigations.

- While the Church Audit Procedures bill is pending, any churches with specific complaints about the IRS's application of existing church audit procedures are encouraged to contact Treasury to develop solutions to such administrative problems.

Information Return Filing Requirements For Church "Integrated Auxiliaries"

Issue

The annual information return filing requirements applicable to tax exempt organizations do not apply to churches or to any "integrated auxiliary" of a church. (Code §6033) The regulations (which were proposed and made final in 1976) define "integrated auxiliary" as any organization incorporated separately from a church which has an "exclusively religious" principal activity, such as a religious order. Any other church-affiliated organization must file an annual Form 990 information return.

The Coalition on Internal Revenue Definition of Religious Bodies (a loose coalition which includes some mainstream religious organizations) has asked the Administration to revise the definition of "integrated church auxiliary" to cover church schools, hospitals, orphanages, or any other church-affiliated organizations which carry on charitable activities.

Treasury Position

Though correspondence with the "Coalition" Treasury has expressed support for the existing regulations, but agreed to examine the possibility of creating new administrative exceptions from the filing requirements, such as those that receive a majority of financial support from the church itself.

Discussion

- The annual information return filing requirements were imposed to ensure that tax-exempt entities operate in accordance with the rules providing a basis for their exemption.

- The filing of annual information returns also helps ensure compliance with the Code's unrelated business income tax provisions (which are applicable to all tax-exempt organization, including churches).

- Churches and other religious organizations are excepted from the information return filing requirements in deference to the Constitutional protections accorded religious organizations. Church-affiliated organizations, having non-religious principal activities traditionally have not been afforded the same exception.

- The Treasury is seeking an opportunity for compromise on the sometimes disparate requirements.

THE EQUAL ACCESS ACT, S. 425 & S. 1059

As introduced by Senator Denton these bills would prohibit a State or local educational agency which permits students to engage in voluntary extracurricular activities on premises of a public elementary or secondary school or institution of higher education to deny access to students "that seek to engage in voluntary extracurricular activities that involve prayer, religious discussion, or silent meditation during noninstructional periods." S. 425, referred to Senate Labor & Human Resources Committee, would cut-off Federal funds to schools which violated the prohibition. S. 1059, referred to Senate Judiciary, creates a civil action in Federal court for damages and equitable relief. On favorably reporting S. 1059, the Judiciary Committee struck institutions of higher education from the bill's coverage on the basis that the U.S. Supreme Court's decision in Widmar v. Vincent already accomplishes the bill's objective under those circumstances. The Committee also rejected an amendment offered by Senator Hatfield to strike elementary schools from the bill's provisions.

S. 1059 is a direct response to a 1982 lower Federal court decision in Lubbock Civil Liberties Union v. Lubbock Independence School District which declared unconstitutional a high school policy that allowed students to meet voluntarily for prayer before or after school. In 1983, the President criticized that decision specifically in his address to the National Religious Broadcasters and in a later address to the National Association of Evangelicals endorsed the Denton effort.

It should be noted that the President's proposed amendment to the Constitution regarding voluntary prayer would also accomplish the objective of equal access to school premises for students who engage in voluntary prayer.

Talking Points:

- The U.S. Supreme Court has held that secondary school students have First Amendment rights of free speech and assembly which the State must respect and when schools make available facilities for afterhours activities, they cannot prohibit student organizations which may advocate partisan or political views, Tinker v. Des Moines Community School District.

- Allowing students to use school facilities afterhours is fully consistent with our notions of voluntary conduct and freedom of conscience.

- Allowing students equal access to school facilities does not foster an excessive government entanglement with religion and where the school's practice is to make facilities generally available to other clubs, equal access reflects the essence of neutrality towards religion.

Sun Myung Moon v. United States

Reverend Sun Myung Moon, founder and leader of the Unification Church was convicted by a jury of filing false income tax returns in that he failed to report as income interest accrued on certain bank accounts held in his name and stock issued in his name in a company operated by members of his church. Reverend Moon contended that the accounts and stock although held in his name were held in trust for his church, that he had been given the assets as a religious leader, by his religious followers, for their religion, and indeed, this was proper since he "personified" the church.

This case involves complex legal doctrines regarding the establishment of charitable trusts, their application within the activities of churches and specifically to the rather singular circumstances of the founding and mission of the Unification Church and its relation with Reverend Moon. In addition, to these substantive questions, equally complex procedural issues exist concerning the justice of denying Reverend Moon's request for a bench, rather than a jury trial; sufficiency of the government's evidence; proprity of the court's jury instructions; burdens of proof; and the effect upon Reverend Moon's right to testify by the court's decision to require a court appointed interpreter rather than an interpreter selected by Reverend Moon.

In upholding the jury conviction, the Second Circuit found that there existed sufficient evidence from which the jury could reasonably conclude that church members falsified church financial documents to avoid adverse tax consequences, and fraudulently backdated documents and that Reverend Moon willingly signed false documents in order to escape tax liability. Also, evidence was presented to show that while the church maintained bank accounts in its own name, when those accounts were unable to make certain payments Reverend Moon transferred money from the account in his name which was later partially repaid and the remainder treated as a personal contribution to the church from Reverend Moon.

Nonetheless, a number of religious organizations have filed amicus briefs expressing the concern that to uphold Reverend Moon's conviction would allow judges and juries to override a church's internal organization and financial management and substitute a preferred organizational structure upon a religious organization. Such amici have included the National Council of Churches, Presbyterian and Baptist Churches, and the Christian Legal Society.

On January 26, Reverend Moon filed a petition for certiorari with the U.S. Supreme Court. The Department of Justice has 30 days to respond and as of this date have not yet done so. It is not at all certain that the Court will agree to hear Reverend Moon's appeal.

Talking Points:

- Because of the complex legal questions involved, which in large measure concern procedural questions and because the Department of Justice has not yet responded to Reverend Moon's petition for certiorari before the U.S. Supreme Court, it would be best

NEBRASKA 7

This situation has involved the jailing of a minister, the padlocking of a church and the continuing imprisonment of six (originally seven) fathers of students. At issue is the assertion by the State of power to comprehensively regulate church affiliated schools in terms of license, certification of teachers and approval of course material even though such schools have been held by the U.S. Supreme Court to be an integral part of the religious ministry of the churches with which they are affiliated. Thus, questions of excessive entanglement of the State in religion (Establishment Clause), curtailment of a religious ministry (Free Exercise Clause), and infringement of parental authority in the nurture and education of children (First, Ninth and Fourteenth Amendments) are involved. A more narrow issue affecting the fathers' incarceration relates to their silence based on the Fifth Amendment in judicial proceedings to enjoin them from sending their children to school in contravention of court order.

Last month, a panel appointed by Nebraska's Governor concluded the State's regulations violate the religious liberties of church schools. On January 30, the President called upon the Nebraska legislature or judiciary to reconsider the issue and obtain release of the fathers. At that time the Nebraska Supreme Court had before it the appeal of a church-school in a related case and that of the Nebraska 7 fathers. Subsequently, the Court denied the request of Park West Christian School for oral argument in its case which appears to indicate it will refuse to reconsider the First Amendment issues involved in this situation and affirm the trial judge's order to close that school. It then refused to release the Nebraska 7 fathers from jail. Their appeal from that decision to Justice Blackmun was denied without prejudice on February 13 with Justice Blackmun noting that the fathers' Fifth Amendment claims do not appear insubstantial. The fathers intend to go back to the trial court this week for a writ of habeas corpus.

Thus, it appears the Nebraska Supreme Court is unwilling to grant reconsideration as requested by the President and both cases will be headed to the U.S. Supreme Court later in the year.

Talking Points:

- Administration officials have closely monitored the situation including on-site investigations by officials of the Departments of Education and Justice and by the Chairman of the Civil Rights Commission.

- The Secretary of Education, the Assistant Attorney General for Civil Rights, Mr. Meese and Mr. Baker have on separate occasions met with persons involved with Nebraska church schools.

- While the Attorney General has advised there are no independent grounds for Federal government intervention against the State of Nebraska, the Justice Department retains the opportunity to file an amicus brief on the side of the schools when the case reaches the U.S. Supreme Court.

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR JAMES A. BAKER, III

FROM: James W. Cicconi

SUBJECT: Information Conveyed by Lyn Nofziger

Attached are some one-page summaries prepared by OPD on the additional religious liberty issues raised in the Jarmin memo (which was forwarded by Lyn Nofziger). They provide good background, along with suggested guidance on each of the side issues that might be raised in the "700 Club" interview.

I think the "Task Force on Religious Liberty" is an idea worth considering. There are a number of concerns which fall into this category, and it would be good to have a distinguished group take a concerted look at them. However, this should not be a Presidential group; instead, I would suggest that it be an Attorney General's Task Force akin to those formed on various subjects by William French Smith. Perhaps the idea could be forwarded to Ed Meese for his consideration once he has been confirmed.

THE WHITE HOUSE
WASHINGTON

14 Feb 1984

TO: JAB III

Attached is the script for your taped phone call with Dr Dobson today. The Q&A involving you begins on page 4. This reflects some changes by B. Oglesby. I've also gone over the script with Susan.

JC