more efficient and effective. While the interest level in aging is high and the concern for improving life after 55 immediate, the time is ripe for new initiatives to be started in preparing for our own life satisfaction in the later stages of life.

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RICHARD VOLPERT

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 4, 1978

● Mr. WAXMAN. Mr. Speaker, we offer our praise to many fine citizens by memorializing their achievements in the CONGRESSIONAL RECORD, but it is not very often that we can record so long and distinguished and varied a lifetime of contributions to his profession and his community as those accomplished by Richard S. Volpert of Los Angeles. Jewish Federation Council of Greater Los Angeles will honor Richard Volpert at a dinner on June 3, 1978, and it is a great pleasure to ask the Members to join me in sharing this occasion with Mr. Volpert's countless friends.

Receiving his B.A. at Amherst College, Richard Volpert went on to earn a law degree at Columbia Law School, and received honors as a Stone scholar. He served as editor and chairman of the California State Bar Journal 1972–73 and on the Journal committee from 1970 to 1975; on the board of trustees of the Los Angeles County bar association 1968–70 and its real property section chairman 1974–75, and on the executive committee since 1963. He was editor and chairman of the Los Angeles Bar Journal 1965–67, and served on the Committee on the Administration of Justice, California State Bar Association from 1973 to 1976. Mr. Volpert was director of the Western Center on Law and Poverty 1971–75, and director of the Los Angeles Neighborhood Legal Services Society 1969–71. He has been a member of the board of councilors at the University of Southern California Law Center since 1976. He has been a trustee of the Los Angeles County Natural History Museum Foundation since 1974, secretary 1976–77, and vice president since 1977; president of the Amherst Club of Southern California 1972–73, vice president 1970–72, and a board member since 1958.

Richard Volpert's community involvements are equally impressive; he has been on the board of directors of the University of Judaism since 1973 and is chairman, Center on Contemporary Jewish Life. He has been honored with the University of Judaism merit award.

He has served on the Community Relations Committee, Jewish Federation-Council of Los Angeles since 1955; as chairman since 1977; vice chairman 1975–77 and has been chairman of both the commission on law and legislation as well as the joint committee on club discrimination. Mr. Volpert has been a board member of Valley Beth Shalom in Encino, Calif., since 1964. He was youth committee chairman, adult education committee chairman, vice president, temple activities; chairman of the board; has been chairman of the building committee since 1975. He was chairman of the Council on Jewish Life, Jewish Federation Council 1976–77.

Mr. Volpert served on the executive board of the Los Angeles chapter of the American Jewish Committee, chaired its civil rights and civil liberties committee and its social club discrimination committee. He was a member of the executive committee of the Anti-Defamation League of B'nai B'rith and has been a member of the Pacific Southwest Regional Board since 1964; vice president of the Pacific Southwest Region of the United Synagogues of America. He has been chairman of the Land Use Task Force of the Los Angeles Area Chamber of Commerce since 1973 and was a member of the executive committee of the Los Angeles Region Goals Council. His memberships include American Bar Association, Real Property Law and Local Government Law Sections; Los Angeles County Bar Association; University Club of Los Angeles, American Society of Planning Officials; Urban Land Institute, Central City Association; and fellow, American Bar Foundation.

One wonders how a single individual could have managed to hold so many active community posts, but Richard Volpert has, in addition, found the time to write and lecture on various aspects of California land use and real estate law.

Richard and his wife Marcia have four children: Barry, Sandy, Linda, and Nancy. I know that his family will join all of us in honoring this man who has contributed so greatly to his profession and to his community.●

SENATE—*Wednesday, April 5, 1978*

(Legislative day of Monday, February 6, 1978)

The Senate met at 9 a.m., on the expiration of the recess, in executive session, and was called to order by Hon. ROBERT MORGAN, a Senator from the State of North Carolina.

PRAYER

The Reverend Robert Harold Schuller, D.D., founder and senior pastor, Garden Grove Community Church, Garden Grove, Calif., offered the following prayer:

This day, Lord, remind us that great people are ordinary persons who commit themselves to extraordinary goals. So, open our eyes with childlike astonishment to see the infinite possibilities all around us. Then, sharpen our focus on these God-inspired, energy-producing, mountain-moving, human-need-filling possibilities.

Now give us: The courage to make the right decision—before we can be sure of success; the faith to begin today to move ahead with our dream—not waiting to start until we have solved all the problems.

And we pledge, O Lord, that we shall welcome every problem as a challenge; we shall compromise as Your spirit leads us; but we shall never surrender to evil. We shall stand firm for the right—iron pillared persons—as solid as a steel peg hammered in frozen ground—immovable. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 5, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT MORGAN, a Senator from the State of North Carolina, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

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

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized, as in legislative session, for not to exceed 10 minutes.

HEW FUNDS MISSPENT

Mr. HARRY F. BYRD, JR. Mr. President, the Department of Health, Education, and Welfare has become so large, so unwieldy, so out of control, that billions of dollars of tax funds are being misspent each year.

Those figures are not the assertion of the Senator from Virginia. The Inspec-

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

tor General of HEW submitted a report this week, which report shows that between $6.5 billion and $7.5 billion was misspent through waste, mismanagement, and fraud during the past year.

Mr. President, in 1970, the total outlays for HEW, including social security payments, was $52 billion. For the current fiscal year the figure is $165 billion.

Leaving out social security and dealing with only the appropriate funds, or general revenue funds, of the Department of Health, Education, and Welfare, in 1970 those funds totaled $17 billion. For 1978 fiscal year, the current fiscal year, those funds totaled $55 billion.

In the upcoming budget which the Congress is now considering, HEW has requested $62 billion, an increase of 17 percent, or $7 billion.

Incidentally, that $7 billion increase being sought by HEW is almost the precise sum that HEW misspent last year.

Secretary Califano has admitted that the Department of Health, Education, and Welfare misspent, last year, through waste, mismanagement, and fraud, $7 billion. The Califano admission followed a report by the HEW Inspector General.

How much is $7 billion?

One example: The Federal income taxes paid by the 5 million residents of Virginia—the 12th most populous State in the Nation—total $3,500,000,000, exactly one-half of what HEW misspent last year.

Another example: The combined income taxes paid by the residents of 15 States equal the $7 billion HEW admits misspending through waste, mismanagement, and fraud last year. The 15 States are: Alaska, Delaware, Hawaii, Maine, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, West Virginia, and Wyoming.

Another example of how much is $7 billion: It is 50 percent greater than the total annual expenditures for the entire State of Virginia.

Another example: The amount misspent by HEW last year through waste, mismanagement, and fraud is equal to the total assessed value of all the real property—buildings, homes, land, et cetera—in the Virginia cities of Norfolk, Richmond, Roanoke, Lynchburg, and Charlottesville combined.

One final example of how much is $7 billion: It is equal to the total combined income taxes paid by 5 million households with an income of $15,000 each.

On a daily basis, the $7 billion misspent by HEW last year through waste, mismanagement, and fraud, equals $19 million. Yes, $19 million a day was what HEW misspent last year through waste, mismanagement, and fraud.

Mr. President, I ask unanimous consent to have printed at this point a table showing total outlays for fiscal years 1970–78, inclusive, of the Department of HEW.

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

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, APPROPRIATED FUNDS AND TOTAL OUTLAYS, FISCAL YEARS 1970–78, INCLUSIVE

(Billions of dollars)

	Appropriated funds	Total outlays
1970	17	52
1971	21	62
1972	27	72
1973	31	82
1974	31	94
1975	37	112
1976	44	128
1977	49	148
1978	55	165

Mr. HARRY F. BYRD, JR. Mr. President, I yield the remainder of my time to the Senator from Kansas.

SPECIAL ORDER

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

CARTER IN AFRICA: A SORRY SAFARI

Mr. DOLE. Mr. President, whatever else President Carter may say about his recent visit to Africa, he cannot claim to have met with any notable success in resolving the two African problems of most concern to Americans today: Soviet interference in African affairs, and peaceful transition to stable governments in Rhodesia and Southwest Africa (Namibia).

In fact, if anything, the President's trip served only to further disillusion our traditional allies in Africa, encourage political factionalism, and did nothing to discourage Soviet adventurism on the continent. Upon his arrival in Nigeria, President Carter spoke idealistically in favor of "African solutions for African problems." But in the context of the Carter administration's policy toward Africa, the practical interpretation of this slogan seems to be: "Impose our own standards, timetables, and settlement formulas on African allies, but stand aside and offer nothing more than feeble objections when Soviet and Cuban forces advance their aggressive aims."

Monday's Washington Post carried an article by columnists Roland Evans and Robert Novak suggesting that "the United States is near a dead end in Africa." The Senator from Kansas would also suggest that the misguided policies of the Carter administration have threatened to isolate our Government from any effective influence on the series of rapid developments throughout Africa today. For the inconsistency and uncertainty of American policy has managed to confuse both our friends and adversaries alike.

SOVIET CHALLENGE IN AFRICA

Regrettably, the Soviet Union appears to have selected the African continent as a staging ground for a strategic showdown, to test the will of the United States, and of our leadership. So far, I fear we have failed the test.

During the past 2 years, the Soviet Union has steadily increased its contribution of arms, military advisers, and mercenary surrogates to African trouble spots. At each stage, we have turned our heads and refused to believe that anything more than temporary intrusion was involved. Congress must certainly share the blame for this silence. We refrained from "overreaction" when Cuban forces poured into Angola and Mozambique. President Carter's Ambassador to the United Nations suggested that the Soviet-financed mercenaries were "a stabilizing force" in African politics.

Early this year, as Soviet military advisers, fighter aircraft, and thousands of Cuban troops poured into Ethiopia, we passively accepted the Kremlin's explanation that they were "assisting" against "Somali aggression." Now, for those who are not yet convinced that the Soviet Union is actively interfering in the internal affairs of African nations, the report last weekend of new advances against the independence movement in Eritrea should clarify the situation. Rather than withdrawing military advisers and Cuban troops now that the Ethiopian-Somali conflict has waned, resources have simply been redirected against Eritrean rebels who challenge the Ethiopian Government's jurisdiction over northeastern Ethiopia. This is clearly a local conflict—an internal disagreement. And the Soviet-Cuban involvement is nothing short of meddlesome.

Will Soviet and Cuban forces decide next to inject themselves directly in internal conflicts within Rhodesia and Namibia? For the sake of peace in southern Africa, we hope not. But the prospect is not out of the question. Soviet-armed Rhodesian guerrillas are being trained right now just across the border in Angola and Zambia. If overt interference follows, our own lethargy is at least partly to blame.

I hasten to remind my colleagues in the Senate that accumulated gains of this type by the Soviet Union in Africa are just as significant as a Soviet lead in strategic weapons—a prospect we are trying desperately to prevent at this very time. Coupled with administration concessions on the SALT treaty now under negotiation, our submissions in Africa spell real trouble for future strategic balance between the Soviet Union and the United States.

ADMINISTRATION'S STUBBORNNESS IN SOUTHERN AFRICA

At the same time it abides Soviet adventurism in the horn of Africa, the Carter administration refuses to endorse and support the peaceful internal settlement of racial differences in Rhodesia. Surmounting tremendous racial and political difficulties, the white Rhodesian Government has reached agreement with moderate black leaders for transition to black majority rule by the end of this year. It is a settlement that calls for free elections and the principle of "one man-one vote" within 8 months.

But, heeding the objections of radical black guerrilla leaders and so-called frontline governments in the area, the Carter administration clings stubbornly to a settlement formula devised nearly 1 year ago.

The Senator from Kansas was joined by a dozen of his colleagues on March 7 in proposing a resolution urging American support and endorsement for the Rhodesian internal settlement. Instead, the State Department, on March 27, declared the settlement "illegal." Last Sunday evening, President Carter signed a joint communique with the Nigerian Government declaring that the Rhodesian settlement "does not change the illegal character of the present regime and is unacceptable." So, the tremendous progress already made toward a stable majority government in Rhodesia has been rejected by President Carter on the premise that Marxist-oriented elements must be guaranteed an influential role.

In similar fashion, the Carter administration has refused to abide by an internal settlement for the independence of Southwest Africa, insisting instead upon an administration-backed formula that caters to the demands of Marxist guerrilla forces. The President's rhetoric with respect to the futures of both Rhodesia and Southwest Africa favors external forces intent upon destroying reasonable internal settlements reached by moderate leaders. This is all the more confusing because the internal settlements appear more democratic and multiracial than any government the guerrillas might construct.

At the same time, our administration maintains unrelenting pressure upon the Government of South Africa to drastically revise its own political and social structure virtually overnight. It is indeed a cause for concern when a ranking official within a friendly African nation such as South Africa must say that "our task is to survive the Carter era." For "the Carter era" does not simply represent support for peaceful settlement of political and racial differences at the tip of Africa. Progress in that regard has been underway since before President Carter took office. Instead, "the Carter era" represents, to our traditional allies in southern Africa, an erratic period of American insensitivity to real gains and accomplishments. It represents stubborn adherence to outmoded timetables and unreasonable settlement formulas.

For all these reasons, Mr. President, the situation throughout the continent of Africa continues to reflect uncertainty and instability, with American influence on the wane and Soviet influence on the rise. President Carter's brief journey to the continent did little to improve the situation. Unless drastic changes are made in administration policy, the United States may indeed have reached a "dead end" in its efforts to promote democratic principles, and peaceful change throughout Africa.

I do not always agree with what I read on the editorial page of the Washington Post, but yesterday's commentary on "The President in Africa" reflected many of this Senator's own feelings about weaknesses in our African policy. In particular, it seemed appropriate to note that President Carter "holds Salisbury to lofty moral and political standards, while often appearing to wink at failings of the popular front."

Mr. President, I ask unanimous consent that the Washington Post editorial of April 4 be printed in the RECORD.

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

THE PRESIDENT IN AFRICA

Frankly, we liked the administration's Rhodesia/Zimbabwe policy better before the president dropped in on Nigeria. A month ago, for instance, soon after Ian Smith agreed to turn over power to an elected majority-rule government later this year, the administration was still complaining that he had not opened the door to the guerrillas sworn to destroy him. But there was, too, recognition that the agreement between Mr. Smith and "internal" black nationalists reflected "some progress . . . a step in the right direction"—as, of course, it did.

In Lagos, however, Mr. Carter seems to have succumbed to Nigeria's uncomplicated fervor for a Popular Front guerrilla victory. The final communiqué omitted any mention of progress in Salisbury, though a multiracial interim government now actually exists there. Rather, the communiqué (signed for Nigeria by its unelected military leader) pronounced the internal procedure "unacceptable as it does not guarantee a genuine transfer of power to the majority"—as though the guerrillas, who have refused to settle for the share of power they might expect to win in elections, will consummate "a genuine transfer of power to the majority" if they win by force of arms.

We understand that the administration seeks to draw internal and external forces together, the better to bring peace to Zimbabwe, preempt Cuban-Soviet intervention, and show South Africa that peaceable change works passably well. Those are worthy purposes. But Mr. Carter's pursuit of them can be painful. Virtually all his rhetoric favors the external people. He holds Salisbury to lofty moral and political standards, while often appearing to wink at failings of the Popular Front. He refuses to say the one thing that might most clear the air: that if the guerrillas reject a fair opportunity to come home while Salisbury moves to honest majority rule, the United States will go with Salisbury. His performance is all the more baffling when you consider that the internal settlement looks to be more democratic, moderate and multiracial than any government the guerrillas might construct.

Does the United States gain respect for itself and a hearing for its policies—among internal or external Rhodesians, in Nigeria or elsewhere in Africa—by conveying an impression that it will do practically anything to win liberationist credentials? We doubt it, and we think the president doubts it, too. Indeed, in Lagos he conspicuously did not do the easy, popular-in-Africa thing with respect to South Africa, choosing instead to affirm the United States' own, less militant policy. His hosts did not like it, and said so. But on their part, they withheld any real support for the American effort to limit Soviet-Cuban intervention in Africa. Such candor—and continued discussion—is what good friends, especially those trying to become better friends, owe each other. It should be applied to Rhodesia, too.

THE PLIGHT OF THE FARMERS

Mr. DOLE. Mr. President, today, at 11:30, the House and Senate conferees will convene to complete action on a farm bill.

I note with some amusement—I suppose that would be the appropriate word—in this morning's "farm journal," the Washington Post, rather harsh criticism of the farm bill. Yesterday, another "farm journal," the Washington Star, had an editorial aimed at America's farmers.

I never understood that the Washington Post and the Washington Star and the Wall Street Journal were spokesmen for the American farmer. But I do understand that those newspapers are read by many Senators and many Representatives of both parties, and they are very influential; and for that, of course, we respect their policies.

However, I suggest that the editorial writers might have a visit with some of the farmers. Many farmers are in town, not because they want to be, not because they can afford it, but because they are literally on the ropes, because they are looking to this Congress and this President to assist them, not with a welfare check but with some way to make a living.

I suggest, Mr. President, that the compromise reached by the conferees yesterday is such an agreement. It is a market-oriented program. It says to the American farmer, "You are not going to get paid for doing nothing." It says to the American farmer, "You must set aside some of your productive capacity if you are to qualify for a higher target price."

That is not a Government payment. That is not really understood by many American consumers. The theory is that the more land you set aside, the less wheat, corn, cotton, and grains you might produce, because we have great surpluses now and the market prices are very low because there is great pressure on the market and by reducing production you reduce that supply, you increase the price in the marketplace.

The Senator from Kansas must say that I was somewhat shocked to hear in the conference one of the conferees very bluntly state that he would rather the farmer got a check from the Government.

There is a sort of welfare mentality in this city.

The farmers do not want a check from the Government. The farmers like to receive their profit, if any, in the marketplace.

But here we are debating in our conference, the Members of the House of Representatives and Members of the Senate, on how much it is going to cost the American consumer, as we should, but there is a little deception going on because we are told that it comes out of the Treasury, it will not cost the American consumer, so it is all right to spend $2 billion or $3 billion for the American farmers by sending them a check for not planting or for not farming.

But farmers do not want a check for not farming. Farmers want to make a profit. They want to make a profit when they take their goods to market. They do not want to be on welfare. They do not want a Government check. They do not

like the welfare mentality that pervades this city.

So, Mr. President, I hope that President Carter, before making any decision on the farm bill, will look at this himself. There are all sorts of rumors about a veto, and those rumors were rampant last year in 1977 before we finished the 1977 Farm Act. We were told that if we raise prices 1 penny it would be vetoed. I simply suggest that the American farmers are important to our economy, they are important to the consumers. So I hope that before President Carter panics, before he listens to all the advisers running around town hanging crepe on the farm bill, he will take a look at it himself because it is a market-oriented program. It is supported by Democrats and Republicans. It has broad bipartisan support. It is supported by farm organizations and farmers, and frankly not very roundly criticized by some consumer groups.

But I conclude by suggesting that if we have reached a point in the country where we are going to satisfy America's farmers and deceive America's consumers by sending the farmers a check for not planting or for not farming, then we have reached a dead end in agriculture and the farmers I have spoken to from across this country, from almost every State in this Nation, do not want that. They want to produce. They want to make a profit. They want to pay their bills. They are consumers, also. They want to buy more goods.

So I hope that when we read these "farm journals," the Washington Post, the Evening Star, and the Wall Street Journal, we will keep in mind that not many of their readers are farmers and a lot of their readers are consumers and they have great influence, but I simply ask them to address the facts. The facts are that the Carter administration would rather have you get the money out of the Treasury and not out of the marketplace.

Mr. President, I yield back the remainder of my time.

THE PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar No. 2, with the time to be equally divided and controlled by the Senator from Idaho (Mr. CHURCH) and the Senator from Utah (Mr. HATCH).

The clerk will report the treaty.

The assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, the Panama Canal Treaty.

The Senate resumed consideration of the treaty.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time may be charged fully against both sides on the absence of a quorum, which I now suggest.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, the moment of decision has finally arrived, and in a short while the Members of the Senate will come marching into the Chamber to vote on the question of whether the President shall have the power to give away the Panama Canal by a self-executing treaty. It will be one of the most important decisions this body will ever make.

My first inclination was to roll another wheelbarrow full of precedents into the Chamber in the hope that some Senators might be persuaded, at the 11th hour, to support our amendment. But what is the use of it? Two days ago the managers of this treaty were crowing about all of the fine legal precedents they had to support the theory that the President can snub his nose at Congress when he makes a treaty to transfer an entire American territory, lock, stock, and barrel, to a foreign government.

In response to the arguments of the Foreign Relations Committee, which seems to be little more than an arm of the State Department these days, I demonstrated that every paragraph, and practically every sentence of the committee's report on this issue was either false, misleading, or irrelevant. Yesterday we even showed that the concurrent power theory which the committee relies upon so heavily had been twisted and distorted beyond recognition. The author of that theory was Alexander Hamilton and his writings, which directly addressed the disposal-of-property power, showing beyond all doubt that Congress must authorize the disposal of American territory and property.

The distinguished manager of the treaty (Mr. CHURCH) answered me by saying, we shall respond to your criticisms. We shall prove that the constitutional text, the intent of the Framers, the judicial precedents, and prior treaty practice all support the claim that the President can give away the Panama Canal whether Congress agrees or not.

Three days passed. And what was the response offered by the committee to my analysis and summary of the committee report? Absolutely nothing. There basically was no response. The hundreds of so-called precedents which the committee had been recklessly throwing around this Chamber suddenly vanished into thin air.

When the dust settled, the committee came back with our old favorite, the spurious dictum from Holden against Joy, and three treaties—one with Japan where we returned captured territory that we did not even own, according to the House Committee on Armed Services, one with Honduras where we gave up two rock islands that we did not own because of disputed title, certainly distinguishable, and one with Nicaragua—a treaty not even cited in the original committee report—where we gave up rights to property that did not belong to the United States and which involved a lease. I even heard the distinguished Senator from Hawaii (Mr. MATSUNAGA) argue that the committee's position is supported by the fact we gave away some air strip to the Japanese.

As every Senator knows, these pathetic precedents do not, in any way, support the general proposition that the President may dispose of the entire American-owned Panama Canal Zone by a self-executing treaty. The truth of the matter is there are no precedents for this action, and everybody knows it.

But I am enough of a realist to know also that many Senators probably are not interested in some of the constitutional arguments, particularly when they run counter to the political decision they have made respecting this treaty. During the last 2 days, I would estimate that not more than a dozen Senators have even bothered to come over to the floor to hear the arguments. The Senate, it is said, is the world's greatest deliberative assembly, and I certainly agree with that, and yet it seems that it neither deliberates nor assembles with regard to one of the most monumental constitutional issues raised in our country's history.

Yesterday the senior Senator from Idaho (Mr. CHURCH), I think boasting of 22 years of seniority, criticized me for being too aggressive, too harsh with the Foreign Relations Committee, and suggested that because I was a freshman Senator that I should be more respectful. I certainly respect the Senator's seniority, but I shall insist that I as a U.S. Senator representing the great State of Utah and representing all of the people across this country have a right and a duty to oppose forcefully any breach of the Constitution—particularly when there is only a handful of Senators fighting to save it and particularly when after better than 6 months of looking into this question without hardly anyone in America knowing the importance of this question the Foreign Relations Committee with all of the constitutional expertise of the State Department, the Justice Department, the Foreign Relations Committee, et cetera, cannot come up with any precedents really that hold serious water.

Maybe my amendment will fail—not on its merits but because, I believe, some Senators are persuaded that if it passes, the House would oppose the transfer. I do not know that they would, and I think that consideration, which I consider to be a political consideration, is beside the point. We are here to defend the Constitution, not to defend it simply when it is politically convenient or expedient to do so.

No doubt some Senators believe that we can disregard the Constitution in this one instance, because a single breech will not hurt our Government. Perhaps they have persuaded themselves that the power to dispose of property is not such an important power anyway, and that we can afford to give it to the President. To those who may be thinking in these terms, I can only say they misunderstand what is at stake. We will be establishing a new precedent here, for the first time in American history, if we let the President get away with this. Who knows what

this will lead to 10 years from now, 50 years, a hundred years? You cannot bargain away a principle. It is either inviolate or it does not exist. As a lady cannot surrender only part of her chastity, the Congress cannot surrender only part of its sovereignty over the territory and property of the United States. It cannot surrender only a part of its power without a reduction in its coequal status under the separation of powers doctrine. We cannot remold our principles to suit the needs of the hour.

The present situation reminds me of the time when one of the greatest Senators ever to serve in this body, Robert A. Taft, opposed the Nuremburg trials, because they violated a basic principle of our Constitution. I remember too when he came out against President Truman's decision to send troops into Korea without a formal declaration of war by Congress. And a few years later, when a half million of our men were stumbling through the jungles of Vietnam, without a formal declaration of war, Robert Taft would surely have stood here at his desk and said "I told you so."

Mr. President, the great Senators of the past who have graced this Chamber were great, because they lived by their principles—men like Robert Taft, Daniel Webster, Henry Clay, John C. Calhoun, and Robert LaFollette. Their spirit will live forever, and they will always serve as an inspiration to us. But it is my sincere hope that today the Senate will rise to greatness and embrace our Constitution—not because it is politically expedient to do so, not because they think it will please the people back home, but because they love it and believe in it.

Yesterday one of the finest Senators in this body came over to the floor to speak against my amendment. I respect this Senator very much, because I believe that he is one of the most intelligent, hard-working Members of this body. I refer to my friend from New York, Mr. JAVITS. He is a dear friend, and he has been very kind to me, albeit I am a freshman Senator.

Frankly, Mr. President, I was a little surprised that he did this, that he came over yesterday. I say this because just a few years ago he wrote a book on the abuses of Presidential power, and I had thought that he would once again stand firm against Executive encroachment. In his book on "Who Makes War: The President Versus Congress," Senator JAVITS complained that Executive power has been increasingly abused in recent decades.

He wrote:

> Over the past ten years, we have been forced to confront the fact that constitutional process has eroded, that congressional responsibility has been abdicated, that unfettered Presidential power has been asserted and that it is time to call a halt.

The bitter experience of Vietnam, a war, as I mentioned yesterday, that was supported by artificial precedents supplied by the State Department, not unlike those offered in connection with the Panama Canal Treaty, led Senator JAVITS to introduce his war powers bill, cosponsored by Senators STENNIS, EAGLETON, BENTSEN, and more than 50 other Senators. Had I been a Member of the Senate at that time, I, too, would have cosponsored that bill because I share Senator JAVITS' conviction that Congress has a responsibility, as he himself has said:

> To make sure that the democratic process protects us from one-man decisionmaking" (p. 268).

Especially pertinent in this regard is Senator JAVITS' keen observation regarding the need of the full Congress to check the treaty power. As Senator JAVITS puts it:

> A national commitment does not automatically flow from the mutual security treaties to which the United States is signatory. These international agreements specify that they will be carried out in accordance with the "Constitutional processes" of the nations involved. The War Powers Act, for the first time, specifically defines Congressional concurrence as an element in the constitutional process. (Ibid).

So I commend the distinguished Senator from New York for his forthright statement pointing out the importance of defining these constitutional processes to include congressional concurrence. That is what we did in the War Powers Act, and that is what we are seeking to do in connection with this treaty. I deeply regret that he does not see that now, and it is a matter of great sadness and of some serious concern to me.

Then there are other Senators, I suppose, who believe that there is a higher value than our Constitution which must prevail. The end justifies the means. I know how the liberal mind works. The Panama Canal, they have suggested, is such a moral blight on the history of this great Nation that we must get rid of it at all costs—purge and cleanse ourselves so that once again we may be pure and kind and benevolent and the wonderful, generous liberals that we are. This, I believe, is the attitude of many Members of this body, and it is this attitude which is an obsequious attitude, which explains why every worthwhile amendment that has been offered to this treaty, including those which would clearly improve this treaty and protect our interests, has been beaten down, has been stonewalled, if you will, to borrow a term from the great Senator from Alabama.

But this is not thoughtful liberalism, this is mindless liberalism—the true liberal knows that if we really want to help the Panamanians, we will stay down there and work with them in a joint venture or make the canal the operation and pride of all the nations of this hemisphere. The true liberal knows that you do not promote liberalism by promoting the interests, and propping up the regime, of a tyrant like Omar Torrijos. A true liberal knows that if the United States falls, liberalism is dead in this world.

Above all, Mr. President, the true liberal knows that it is the Constitution which gives liberalism its greatest protection. All of the values that we share, as liberals and as conservatives—I consider both of those words basically meaningless, except for the fact that what used to be defined as a liberal is now defined as a conservative—owe their existence and their vitality to the Constitution. The Constitution provides the rules for politics, and we must not continue, as we have time and again in the past, to keep changing the rules in order to secure an immediate political victory.

Some Senators have been suggesting that they are now statesmen, because they are willing to stand up and support these treaties whether their constituents like it or not. The distinguished majority leader (Mr. ROBERT C. BYRD) has even been quoting Edmund Burke's speech to the electors of Bristol, asserting that he is going to vote for what he believes is in the best interests of his constituents rather than what they think is in their best interests. I say to the distinguished Senator, and those who may have similar thoughts, that neither Edmund Burke nor any of the founders of this Government ever believed that it is in the best interest of a nation to scuttle the constitution in order to achieve a political victory, or purge the nation's soul of guilt feelings.

The real statesman, Mr. President, is the man who places our Constitution above all other political considerations, whether those considerations have merit or not. Because the real statesman knows that without the Constitution—we are finished.

So I urge my colleagues to think this issue through carefully before they cast their vote today, and to keep in mind that it is the Constitution they are voting on, not the Panama Canal Treaty. When the canal is gone, the Constitution will still be here—and that is what this Nation will live with in the years ahead. Whether it is a strong and viable Constitution, or just an old piece of parchment, depends, in no small measure, on how we vote today.

Mr. President, I reserve the remainder of my time.

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

Mr. HATCH. I would be delighted to yield to my friend, the distinguished Senator from Alabama (Mr. ALLEN).

Mr. ALLEN. I thank the distinguished Senator from Utah.

Mr. President, this amendment offered by the distinguished Senator from Utah (Mr. HATCH) is unquestionably the most important amendment that will be offered to the Panama Canal Treaty because it seeks to preserve our constitutional processes; it seeks to assure that the Constitution will be followed in the matter of the disposition of property of the United States in the Panama Canal Zone.

Yesterday, in colloquy between the distinguished Senator from Massachusetts (Mr. KENNEDY) and the distinguished Senator from Maryland (Mr. SARBANES), they sought to make it appear that this amendment would make of the treaty and the treaty approval process something of a hybrid instrument, indicating that they thought that the amendment would cause the treaty to have to receive a two-thirds vote in the Senate and then a majority vote in the House of Representatives.

Of course, they know full well that that is not correct. The amendment

would not send the treaty to the House of Representatives for action, for approval or disapproval; it would merely require that before the treaty is put into force and effect, Congress, as required by the Constitution, must enact legislation giving congressional approval to the transfer of property of the United States. So the treaty would continue to be acted on only by the Senate, and the provisions in the treaty having to do with disposition of property of the United States would merely be inchoate, of no force and effect, until life is breathed into those provisions by the action required by the Constitution of the United States, which is congressional approval, congressional authorization for the disposition of property of the United States.

The argument has been made against many amendments—and I might say that no amendments have been accepted by the leadership and the managers of the treaties except the two so-called leadership amendments, which fell far short of their stated goal, that is, providing for the proper defense of the canal after the year 2000. All other amendments have been rejected by the leadership and rejected by the managers of the treaties, usually on the ground that amendments would kill the treaties; that amendments, by changing the terms of the treaty, would necessitate a new plebiscite in Panama.

Why they thought a new plebiscite would be required in that dictatorial regime is something that I do not fully understand, because we know that in that one-man government, Dictator Torrijos would have no difficulty approving whatever amendments we add to the treaty.

But the leadership, the managers of the treaties, and the administration have beaten down every effort that a group of at least 32 Senators and sometimes as many as 42 Senators have sought to make in an effort to strengthen these treaties, to provide for greater defense rights by the United States of the canal and the Canal Zone, and to protect the interests of the American taxpayers. All of those amendments have been stricken down because, they say, it might not please the Panamanians.

That is a mighty poor excuse for beating down amendments that would protect our national interests and our national security, and the interests of the American taxpayer.

This amendment, saying that the treaties shall not go into effect until the disposal of the property of the United States in the Canal Zone has been authorized by congressional action, merely carries out the provisions of article IV, section 3, clause 2 of the Constitution. Also, Mr. President, it would promote the necessary and desirable comity that should exist between the two bodies, because already at least 235 Members of the House of Representatives, and perhaps more by this time, have sonsored a resolution calling upon the administration to see to it that this matter of disposition of American property is presented to the House for consideration as legislation. At least 235 Members of the House of Representatives feel that the Constitution requires that, and they have called on the administration to initiate legislation authorizing the disposition of this property. Would it not be the better part of wisdom, Mr. President, for the Senate to agree to this amendment to see that the constitutional processes of the United States are followed in the matter of the approval of this treaty?

As to the other amendments which have been defeated at the behest of the leadership, at the behest of the administration, and at the behest of the managers of the treaty, they have been amendments that they say would be unacceptable to the Panamanians. Well, this is one amendment that has nothing to do with action by the Panamanians, so I assume they will not bother to make that argument. This is something that the United States would be required to do to follow the Constitution. So we would be promoting comity between the two Houses; we would be respecting the provisions of article IV, section 3, clause 2 of the Constitution, which gives Congress the power to dispose of the property of the United States; and then, too, Mr. President, we would avoid a delay in the implementation of this treaty, because, just as sure as the Sun is going to rise tomorrow, litigation will be started against this treaty unless this amendment is adopted, on the grounds that the Constitution has not been followed in the matter of the disposition of property of the United States.

Other suits have been filed in the past on this question, but the courts have ruled that the suits had been premature, it ought to appear that it ought yet to be presented to the Congress, it ought to appear that the congressional action might yet take place. The treaty has not yet been ratified. Therefore, any action saying that the provisions of the Constitution have not been complied with would be premature. Also, that it is a matter of controversy between the two Houses, which the courts would not enter into.

Once a treaty is ratified by exchange of notes of ratification between the heads of the two governments, then it would be a fait accompli. The treaty would be in force and effect, except for the failure to observe the constitutional provision of getting legislative authorization for the transfer of property of the United States. Unquestionably, an action would lie in this regard.

So we can avoid the treaty being held up by litigation; we can avoid having the hopes and dreams of the Panamanians dashed when the court says that we have not acted as the Constitution requires in the matter of disposition of the property of the United States.

The distinguished Senator from Idaho (Mr. CHURCH) just the other day conceded, of course, and we will take his concession as being correct since we like to remove all sources of contention and argument, that the United States does own the property in the Canal Zone. That being true, before it can be disposed of, this section of the Constitution must be triggered and must be acted upon.

If we go through the formality of agreeing to a treaty and the President ratifies it by exchange of notes with dictator Torrijos, and then the Supreme Court says that we have not followed the Constitution in the matter of disposal of the property, think of the dashed hopes which will result in Central and South America.

As I understand, one of the reasons for this treaty is to give billions of dollars of property away as a good neighbor policy. I believe that is carrying good neighborliness much too far. If we purport to agree to the treaty and then the Supreme Court says that the disposition of the property is illegal because the Constitution has not been followed, the treaty having been placed in Panamanian hands and they having relied upon our assurances that the provisions of the Constitution have been complied with, we would have to jerk the treaty back. That would be much worse than defeating the treaties at this time. Once they feel that the treaties are in place and in force, and then to be told by the Supreme Court of the United States that they are not because the Constitution has not been followed, Senators can imagine the reaction of the Panamanian people to that.

So this ounce of prevention is worth a pound of cure. We have the opportunity now, by agreeing to this amendment, to require that before the treaty goes into force and effect—with no action by the Panamanians—the Congress, by a separate instrument, by a separate and different means, must authorize the disposition of this property.

So, Mr. President, agreeing to this amendment would assure that the constitutional processes of the United States are followed; that due recognition is given to the powers, the rights, and the privileges of the House of Representatives. Should we figuratively thumb our noses at the House and say, "No, we have the right, here in the Senate along with the President, to put this treaty into force and effect, and even though the Constitution says that the Congress has the power to dispose of property of the United States, we are going to disregard that and dare you to do something about it"?

Is that the proper attitude for us to take with regard to our colleagues in the House of Representatives? I say no. I believe the Senate will rue the day when we say to the House, "Because we have the power to disregard your plea that this matter be considered by the entire Congress, we disregard your plea that the Constitution be observed." We will rue the day that we say that to the House.

Every Senator, I feel, has legislation which he feels is in the national interest. How are these 235 House Members going to feel about legislation coming from the Senate to the House by the very people who have denied the House the right to exercise its constitutional right to pass on this matter along with the U.S. Senate?

Again I say, Mr. President, that does not take away one iota from the right that the Senate has to advise and consent with respect to treaties, nor does

it give the House any right to participate in the treatymaking power, which is reserved to the President with the advice and consent of the Senate.

The treaty, if the amendment is agreed to, would merely be a tentative approval of the entire transaction, subject to action by the entire Congress.

I call attention, Mr. President, to the fact that in the 1955 treaty, the treaty between the United States and Panama where property is conveyed, in three different places in article V as they seek to transfer property of the United States they put in this phrase: "subject to the enactment of legislation by the Congress."

Mr. President, that is exactly what this amendment provides in just a few extra words. The basic thrust of the amendment now pending is to say that this disposition of the property of the United States is subject to the enactment of legislation by the Congress. That is all it does.

Why we are straining at accepting this provision of the Constitution and doing honor to the rights and powers of the House seems to me to be seeking to arrogate to the President and the Senate a power that belongs to the entire Congress, which belongs to the people of the United States whose property is being disposed of, by depriving the people's representatives in the House of Representatives from having any say in this matter.

Now, Mr. President, why is the leadership, why are the managers of the treaty, why is the administration afraid of the House of Representatives? Are they frightened by this number of 235 House Members who have joined in this resolution? I do not feel that every one of these 235 House Members would vote against conveying the property of the United States to Panama. But I do believe that all 235 of these House Members want the rights of the House of Representatives to be respected by the Senate, to be respected by the administration, to be respected by the leadership of the Senate.

How is our leadership going to be able to negotiate with the House of Representatives when we have completely disregarded their rights, their prerogatives, under the Constitution? I do not believe that is conducive to comity. It is not conducive to settling this issue, because the courts will be the final arbiters; public opinion will be the next arbiter.

Have shortcuts been taken by the administration with regard to the approval of this treaty? Has it been handled as the Constitution requires? What will be the verdict of public opinion? If we can get a two-thirds majority here, in the Senate, on the treaty, why is it supposed that there would be any difficulty passing legislation—separate legislation; the treaty does not go to the House—which would require not two-thirds in the Senate, but a majority vote; not two-thirds in the House, but a mere majority vote?

Why is the administration fighting, and fighting hard, to prevent agreeing to this amendment, which merely puts in the treaty the very same provisions that were in the 1955 treaty with Panama respecting disposition of the property of the United States? Why should they fear following the Constitution? How hollow would the victory of the administration be if they do not follow the constitutional processes in obtaining the power and right to dispose of property of the United States?

Mr. President, could we, by treaty with Mexico, convey the property of the United States to Mexico by treaty, agreed to by the President and approved by the Senate, without the House of Representatives being brought in? I heard one of the Senators say on the floor recently that 97 percent of the property in his State was owned by the U.S. Government. If that be true and if the contention of the leadership and the managers of this bill be true, inasmuch as we acquired this vast area there in the Far West from Mexico by conquest and then by minuscule payment, if the President wanted to right that wrong—and they speak of righting this wrong with Panama—if the President wanted to right that wrong with Mexico and, by treaty, agree to transfer 97 percent of the property in one of the Far Western States to Mexico, do we say that the House of Representatives would not have any voice in that, that the President and the U.S. Senate could decide that matter? How ridiculous can you get?

Mr. President, there are four primary areas from which evidence can be drawn for an understanding of the function of the Congress in disposing of public property in relation to the function of the President, with the advice and consent of the Senate, to conclude treaties. The first and most important is the text of the Constitution itself. Second and of less importance is the legislative history of the Constitutional Convention of 1787 from which the intent of the Framers can be ascertained. Third is past treaty practice in which the power to conclude treaties has been exercised by the President, with the advice and consent of the Senate, and in connection with which the power of the Congress has been exercised to authorize public property disposals. Finally, there are the decisions of the various courts which comment on the scope of the power granted to Congress over the territory or property of the United States. Yesterday, I discussed at length the proper construction of the text of the Constitution. Today, I will review the three remaining primary sources of evidence supporting the conclusion that the power of Congress over public property is indeed plenary and exclusive.

Records of the Constitutional Convention of 1787 are rare, Mr. President, but what records are available do indicate that the Framers clearly intended to preclude the President, with the advice and consent of the Senate, from disposing of Government property by treaty alone. Such records of the Constitutional Convention as are preserved indicate that the Framers were seized throughout their deliberations by a desire not to permit the unilateral disposition of public lands by the President with the Senate. Frequently during the debates various devices were therefore discussed to prevent the Senate and the President from, as the matter was put by George Mason, "selling the country by means of treaties."

Ultimately, Mr. President, the Framers resolved this issue by adopting article IV, section 3, clause 2, thus limiting the power of the President acting with the Senate to make agreements with foreign powers disposing of the territory or public lands of the United States. This limitation on the treaty power was achieved by express grant of power to the Congress over the method or mode of public property disposal. This check on the treaty power was, apparently, not intended to extend to the mere resolution of boundary disputes by means of treaties of recognition, but the records of the convention do show that this limitation was intended to insure that territory or property actually and clearly belonging to the United States would not be handed over to a foreign power by a treaty of cession except under authority of the entire Congress. In other words, the President and the Senate were left free to recognize the title of another government to disputed territory or property, but the President and the Senate were deprived of the power to transfer title to undisputed public lands or property inasmuch as that power was given expressly to the full Congress.

Thus, Mr. President, very early in the debates at the Constitutional Convention during discussion on whether the Senate could share in originating revenue-raising bills, George Mason, in arguing against the inclusion of the Senate in that process, asserted that, already, "The Senate, by means of a treaty, might alienate territory without legislative sanction." Soon after Mason raised this point, Mr. President, the Framers referred the article IV progenitor to the Committee on Detail. This is reported in the records of the Federal Convention in volume II at page 321 and page 324. This progenitor provision granted to the legislature the power to dispose of public lands and would thus answer the objection raised by Mason by guaranteeing that no treaty of cession could be adopted except under authority or legislative sanction of the whole Congress. This provision was revised in the Committee on Detail and reported in its present form as it appears now in article IV of the text of the Constitution. The provision was debated and promptly adopted. (See 2 Farrand 466.)

Much later in the debates, Mr. President, during discussion of the treaty power, Madison moved to "except treaties of peace" from the two-thirds requirement for advice and consent. The Madison motion, for a time, was agreed to by unanimous consent. (See 2 Farrand 540.) Thereafter ensued a debate of matters centering on the advice and consent function of the Senate in considering treaties of peace. I am impressed by the fact that this entire ensuing discussion dealt only with treaties of peace (or treaties of recognition) and did not deal with treaties of cession. No discussion whatsoever was held regarding the proportion of votes for treaties of cession

since the Framers had presumably already addressed that problem by granting to Congress in article IV the power to authorize the disposal of undisputed territory or public property. Yet even if treaties of cession had been under discussion, the remarks made by the Framers in the Madison exception debate would in no way be dispositive of the present issue since all that was under discussion was the advice and consent role of the Senate in respect to a particular subject matter appropriate for international negotiation but not under discussion was the extent of the power of the Congress over that subject matter. Thus, when the advice and consent function was under discussion, and after the temporary adoption of the Madison exception, Williamson and Spaight moved that "no treaty of peace affecting territorial rights should be made without concurrence of two-thirds of the members of the Senate present." In short, Williamson and Spaight sought to exclude from the Madison exception regarding treaties of peace those treaties of peace which would affect territorial rights. Williamson and Spaight were simply seeking to recoup a part of the loss in the temporary adoption of the Madison exception by restoring the requirement of a two-thirds vote in those cases of treaties of peace in which disputed territory was at issue. In like fashion, Gerry, also speaking for a greater proportion of votes on "treaties of peace," said that here "the dearest interests will be at stake * * *. In treaties of peace also there is more danger of the extremities of the continent being sacrificed than on other occasions."

Again, the important point to note here is that these proposals advanced during the discussion of the advice and consent function, and within the context of the temporarily adopted Madison exception, were designed only to affect the vote required in the Senate in matters involving treaties of peace. The involvement and powers of the whole Congress were not at issue.

In short, in matters involving the settlement of boundary disputes which might arise in the case of treaties of peace when the claim of the country has not yet been made good and where title was still disputed, the Framers debated the restoration of the two-thirds vote requirement for granting advice and consent to ratification. These discussions evidenced a fear that boundary treaties might include a provision adjusting disputed boundaries in a fashion unfavorable to the United States. But the discussion did not touch on the question of the power to dispose of territory already clearly the property of the United States, nor did it touch upon the power to dispose of other property in which good title was vested in the United States. Those issues had been resolved already by the adoption of article IV. Thus, on the following day, when Sherman and Morris spoke "against leaving the rights, established by the Treaty of Peace with Great Britain to the Senate, and moved to annex a 'proviso that no such rights should be ceded without the sanction of the legislature,'" a clear reference was being made to boundary disputes and again still within the framework of the Madison exception. The Sherman suggestion (it was not voted upon) referred to the rights conferred on the United States by the settlement with Great Britain. These rights were, inter alia, unresolved claims to territory relinquished by Great Britain in favor of the United States, which claims would for many years remain disputed by other nations and would eventually be resolved by purchase and by treaties of recognition in the nature of treaties of peace; for example, the treaty with Spain of 1819. Thus, the Sherman motion did not address treaties of cession or the power of the Congress to dispose of public property. The entire matter was, in any event, resolved by striking the Madison exception so that treaties of peace, like all treaties, require the advice and consent of two-thirds of the members of the Senate present.

Now, Mr. President, throughout this discussion of the Madison exception of treaties of peace from the two-thirds requirement, the only matter under consideration was the performance of the Senate's own advice and consent function without a trace of a desire to curtail the already established congressional disposal function under article IV. The Attorney General's reliance in his opinion on the legislative history developed during the debate which centered on the Madison exception is, therefore, wholly erroneous. The Attorney General and the opponents of the pending amendment have failed to realize that the quotes they have plucked from the records of the Constitutional Convention were taken from the context of a debate dealing only with the vote requirement for the performance of the advice and consent function in the Senate with respect only to treaties of peace or treaties of recognition, hardly a debate on point with the present issue.

Finally, Mr. President, in reviewing the records of the Constitutional Convention, it remains to note that the decision of the Framers to deal with the congressional disposal power in article IV was entirely logical because article IV would be the article of the Constitution concerned with the territorial integrity of the nation and with the territorial arrangements between the states and the Federal Government within the proposed new Union. Article IV would, therefore, have seemed to the Framers to have been a sensible place for granting to Congress exclusive power to dispose of territory or property clearly belonging to the United States.

For example, article IV, section 3, deals with the admission of new States by the Congress into the Union as well as the manner in which States can be realined within the Union. Furthermore, the section states that nothing in the Constitution "shall be so construed as to prejudice any claims of the United States or any particular State." Obviously, then, in drafting the progenitor article IV for referral to the Committee on Detail, the framers recognized that they were dealing with the principal article of the Constitution respecting the established territorial and proprietary integrity of the national commonwealth. Equally obviously, they reserved for inclusion in that article the language conferring on Congress the exclusive authority to give up title to public lands vested in the United States and thus not properly subject to divestiture as merely disputed territory which might be surrendered by the mechanism of a treaty of peace in the nature of a treaty of recognition. Thus, when the disposal power was referred to committee, it was submitted in the following form: The legislature shall have power "to dispose of the unappropriated lands of the United States." (See 2 Farrand 321.) This original language obviously refers to lands not held by the individual States, but in which good title would vest in the United States and over which the Congress would be given exclusive authority. Since article IV had been adopted in its present form by the time of the debate of the treaty power, the power to dispose of territory or other property clearly belonging to the United States was not at issue. The matter had already been resolved by the adoption of article IV.

In this connection, it is singular that, during the discussion of "the legislature shall have power to dispose of * * * the territory * * *," no mention at all was made of any exception to the legislative power to permit dispositions to be made under the treaty power. Also notable is the fact that, during the debate of the treaty power, discussion centered only on treaties of peace which would involve disputed claims. No mention was made of treaties of cession by which undisputed lands belonging to the United States might be promised to be conveyed to a foreign sovereign. Since territorial matters were hotly debated throughout the convention, manifestly there was no intention that an exception would be made to permit actual disposition of the public lands without congressional authority by means of a treaty of cession. In fact, a careful reading of the debates of the Constitutional Convention is persuasive that article IV, section 3, clause 2 was intended to satisfy objections that the treaty power might be used to dispose of public lands, while at the same time preserving to the executive and the Senate the power to resolve without full legislative sanction the many then-pending boundary conflicts by means of treaties of peace or recognition.

In short, where a territorial claim was vague, the President and the Senate were left free to make adjustments by means of treaties of peace or treaties of recognition, but where the claim of the United States had been perfected, and it could be clearly demonstrated that the land involved was territory or other property belonging to the United States, then congressional authorization would be required before alienation by any means would be permissible.

This evident intent of the framers in adopting article IV, section 3, clause 2, has, until now, been consistently carried out in practice, and at no time whatsoever has territory or other property

clearly belonging to the United States been alienated by treaty alone, whereas on many occasions disputed claims have been adjusted by treaties of recognition or by treaties of peace, without specific congressional authority.

So, Mr. President, to confirm our understanding of the Constitution as its plain words evidence and as the intent of the framers implies, we ought next to examine past treaty practice to see how the intent of the framers and the requirements of the Constitution have been carried into effect consistently until this moment. In looking at past treaty practice, perhaps the best point of departure is the report of the Committee on Foreign Relations on the Panama Canal treaties which rather ingenuously provides at its pages 68 and 69 a list of treaties alleged to transfer territory or property belonging to the United States to other nations without congressional authorization. So let us look at this list of treaties provided by the Committee on Foreign Relations.

First, the committee lists the treaty between the United States and Spain of February 22, 1819. This treaty was a treaty whereby Spain ceded its Florida territory to the United States, and the United States recognized the title of Spain to Texas. Hence, the treaty has virtually nothing to do with the present issue inasmuch as it was a treaty of recognition or a boundary treaty insofar is the then-vague U.S. claims to territory west of the Florida territory, and insofar is it affected Florida, it was a treaty of cession from Spain to the United States. Nevertheless, congressional debates of the Spanish Treaty of 1819 included House consideration of two resolutions submitted by Congressman Henry Clay. The first resolution would have affirmed the exclusive power of the Congress to dispose of territory and property. The second expressed the view that, because of the exclusivity of the disposal power, the disputed lands west of the Florida territory (Texas) should not be acknowledged to belong to Spain without congressional authorization. Since a cession of U.S. territory was not involved nor was any title to U.S. property actually transferred, the Clay resolution was inappropriate because no American territory or property was ceded by the 1819 treaty and, moreover, even if a cession had occurred, the provisions of the treaty terms were in any event specifically authorized by the act of March 3, 1819 (3 Stat. 523). In arguing against the Clay resolutions, Representative Anderson of Kentucky repeatedly emphasized that the lands involved were never in America possession and, therefore, article IV was not triggered by the 1819 treaty, stating:

> There is certainly nothing which falls more aptly within the power to form treaties than the settlement of the limits of disputed or undefined territory.

He also argued that the treaty had already been approved in the most solemn manner by which it could be approved:

> It must be borne in mind, too, that this House has approved the treaty in the most solemn manner in which it can act . . . by the passage of a law . . . the forms of our government do not admit any further ratification than this treaty has received.

Here Representative ANDERSON was referring to the act of March 3, 1819. Indeed, similar legislation was again enacted by the Congress in the act of March 3, 1821 (3 Stat. 637).

Certainly, Mr. President, two statutes of the Congress authorizing the transaction, which in itself was merely a recognition of a boundary, ought to have been sufficient to our Senate Committee on Foreign Relations to permit them to perceive that the treaty with Spain of 1819 does nothing whatsoever to support their position and, in fact, supports rather strongly the contrary position. But this latest excursion in innovative interpretation of history and law is not uncharacteristic of the work of that committee.

Mr. President, the next treaty cited in the report of the Committee on Foreign Relations is the treaty between the United States and Great Britain of August 9, 1842, which is generally referred to as the Webster-Ashburton Treaty. Similar to the Webster-Ashburton Treaty is another treaty cited by the committee, the treaty between the United States and Great Britain of June 15, 1846, the Oregon Boundaries Treaty. Both treaties are pure treaties of recognition wherein each party recognizes the claim of the other party to the territory on the other side of the boundary between the parties. In other words, there is no cession of property inasmuch as both parties to the agreement merely acknowledge the title of the other party and thereby establish a settled boundary in an area in which only claims of title are made by either country. A classic example of this process is found in this Oregon Boundaries Treaty, and certainly Senators will remember the phrase, "54° 40′ or Fight!", which was used extensively by those seeking to grab as much territory in the Northwest as possible. In fact, the disputed area was resolved along a 49° latitude boundary, Great Britain recognizing the title of the United States below the 49° parallel and the United States recognizing the title of Great Britain above the 49° parallel.

Again, no cession of American territory was involved nor was any transfer of U.S. property accomplished by either this treaty of recognition or the similar Webster-Ashburton Treaty.

Incidentally, Mr. President, the distinction between these two types of treaties, treaties of cession and treaties of recognition, is well-established in international law. Crandall, in his definitive study, "Treaties, Their Making and Enforcement," states unequivocally:

> A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition.

But this distinction does not appear to be understood by the august committee on Foreign Relations because it next cites in its report three more boundary treaties, this time treaties between the United States and Mexico, those being the treaty of 1933, the treaty of 1963, and the treaty of 1970. None of these treaties involved public property and they, too, were classic treaties of recognition wherein boundary disputes or potential boundary disputes were resolved by one party recognizing the claims of the other party, and vice versa. Additionally, in each case, statutory enactments did authorize the change in status of lands which occurred, in the first instance as a result of the meanderings of the Rio Grande in its channel between Texas and Mexico. These statutes are, in the case of the treaty of 1933, the Rio Grande Rectification Act of 1935 (P.L. 74–286) and, by implication, the State and Justice Appropriations Act of 1937; in the case of the treaty of 1963, the American-Mexican Boundary Convention Act of 1964 (P.L. 88–300); and in the case of the treaty of 1970, the American-Mexican Boundary Treaty Act of 1972 (P.L. 92–549). Significantly also, prior to the first Mexican boundary treaty of 1933, the Congress had established by legislative act the International Boundary Commission, Mexico and United States, for the purpose of rectifying the boundary between the two countries as a result of the changes in course of the Rio Grande. Therefore, all three treaties had prior underlying congressional authorization in that they were each based on decisions of the International Boundary Commission previously established by act of Congress.

Moreover, the American-Mexican Boundary Convention Act of 1964 provides specific, statutory authorization for the "acquisition of all private lands required for transfer to Mexico." And again, the American-Mexican Boundary Treaty Act of 1972 authorizes the acquisition of "all lands or interest in lands required for transfer to Mexico." Also of interest is the fact that article I of the 1970 treaty, the most recent in the series, provides specifically that, "Once this treaty has come into force and the necessary legislation has been enacted for carrying it out * * *", a provision which clearly implies that no transfer could occur except with congressional approval. Since these treaties do not in the first place dispose of Federal property except in the sense that Congress authorized Federal acquisition of property for subsequent transfer to Mexico, since the disposals involved came about only pursuant to specific, statutory authorization, and since in any case the treaties involved a resolution of a disputed or potentially disputed boundary, they do not in any way support the position of the Committee on Foreign Relations or the opponents of the pending amendment.

Mr. President, the Committee on Foreign Relations next cites the treaty between the United States and Honduras of November 22, 1971, the Swan Islands Treaty. This treaty also provides no support whatsoever for the Foreign Relations Committee's position, and it is astonishing that it would be cited as a precedent for transferring U.S. property without congressional approval. This treaty was again a treaty of recognition designed to resolve the conflicting claims of the United States and Honduras to the Swan Islands. The U.S. claim was tenuous at best and was based on the Guano Act of 1856 which authorized the extraction of guano from the islands. The Honduran claim to the islands was clearly

superior and antedated the American claim by several centuries. Although the Swan Islands were thus briefly of interest to the United States in the mid-19th century, in recent times the only conceivable value of the islands to the United States is their current use as a weather and observation station. In the words of the Committee on Foreign Relations in its report on the Swan Islands Treaty:

> The Islands have no intrinsic value to the United States . . . the only United States interest in these Islands is the operation and maintenance of a meteorological and telecommunications facility and an air navigation beacon.

In the treaty, the United States recognized the superior claim of Honduras to the islands and, in turn, the Honduran Government recognized the claim of title made by the United States to the particular property and improvements necessary to the operation of the meteorological and telecommunications facility. Again, the Swan Islands Treaty was a treaty of recognition and not a treaty of cession.

The Committee on Foreign Relations as authority for its novel theory of concurrent power to dispose cites additionally the treaty between the United States and Japan, the reversion of the Ryukyus and Daito Islands. This treaty equally cannot be used as a precedent for a transfer of territory by treaty alone since this treaty grew out of article III of the 1951 Treaty of Peace with Japan by which the United States received the right to exercise powers of administration in the Ryukyus but by which Japan did not renounce its right, title, and claim to the Ryukyus. No property rights as a territorial owner ever arose in the United States and hence no territory belonging to the United States was by the later treaty ceded back to Japan. By the same token, the nonterritorial property transfers arguably effected by the Ryukyus treaty were, as is noted in the report of the Committee on Foreign Relations, made pursuant to authority granted by Congress in the Foreign Excess Property Disposal Act and related subsequent statutes (see particularly 40 U.S.C. sections 511 and 512). Thus, again, if the Ryukyus treaty is precedent of any sort, it is precedent for the proposition that property disposal must be authorized by Congress.

The final treaty cited by the Committee on Foreign Relations is the treaty between the United States and Panama of 1955, the Treaty of Mutual Understanding and Cooperation found at 6 U.S.T. 2283. This ironically is the same treaty cited in the report of the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary as the best possible historical evidence for the proposition that the power of Congress to dispose of territory or other property of the United States is exclusive. Frankly, I find it startling and truly astonishing that the treaty of 1955 would be cited to support the opposite contention.

This treaty of 1955 in its article V, the article which makes a major public property transfer from the United States to Panama, repeatedly uses the phrase, "subject to the enactment of legislation by the Congress." I believe that our negotiators insisted upon the use of this language so that as a matter of international law the Panamanians would be on notice of the fact that authorizing legislation was required before the transfers contemplated by article V could be completed. This fact is astutely ignored in the report of the Committee on Foreign Relations, which instead calls attention only to articles VI and VII which purport to transfer property to Panama without authorizing legislation. In fact, both articles VI and VII are, oddly enough, "boundary adjustments," one boundary adjustment involving the Colon Corridor leading to the city of Colon and the other adjustment involving a single pier extending into the waters in the vicinity of the city of Colon. Neither article VI nor article VII deals, therefore, with anything greater than a slight adjustment in the terms of the Boundary Convention of 1914 between the United States and Panama, and certainly neither article stands as a precedent for a cession of territory or property by treaty alone. Again here, the principles of treaties of recognition are paramount, but even so, and even though only a very slight amendment in a boundary convention was at issue, the Department of State specifically acknowledged in testimony before the Senate Committee on Foreign Relations that, in addition to article V, also articles VI and VII of the treaty of 1955 required authorizing legislation. Assistant Secretary of State Holland provided a memorandum to the Senate Committee on Foreign Relations which reads in pertinent part as follows:

> Articles V, VI, and VII of the Treaty . . . transfer of certain lands and improvements to Panama—authorizing legislation is required.

This memorandum was supplied to the Committee on Foreign Relations in response to the request of Senator Morse that the Department of State submit a memorandum of all legislation required to carry the treaty of 1955 into effect. The remarks of Senator Morse and the Department of State response are found in "Hearings on the Panama Canal treaties before the Senate Committee on Foreign Relations, executive F, 84th Congress, 1st Session" at pages 60–61.

Since authorizing legislation was subsequently enacted and since the property aspect of the treaty was expressly made subject to such enactment, then it ought to be plain as day that the treaty of 1955, contrary to the misleading implication of the report of the Committee on Foreign Relations, is perhaps the strongest possible historical precedent for the proposition that Congress alone can dispose of U.S. territory or property in Panama.

Interestingly, consistent past practice with respect to public property disposals in the Panama Canal Zone gives further support to the conclusion that a property transfer can validly only occur pursuant to exercise by the Congress of its power to dispose. Thus, in 1942, when the President concluded an executive agreement for the transfer of property, a statutory enactment actually accomplish the transfer. Moreover, at that time, the chairman of the Senate Committee on Foreign Relations, Senator Tom Connally, asserted emphatically:

> Those who are opposing the measure object because the matter is brought before the Senate in the form of a joint resolution. They say it should be in the form of a treaty. Mr. President, I am and have been and in the future shall continue to be ardent in my maintenance of the integrity and the rights of the Senate of the United States in all its proper functions as a branch of the Government; but the matter covered by the joint resolution has to be passed by the Congress sooner or later in some form, for the simple reason that under the Constitution of the United States, Congress alone can vest title to property which belongs to the United States. The Constitution itself confers on Congress specific authority to transfer territory or lands belonging to the United States. So, if we had a formal treaty before us and if it should be ratified, it still would be necessary for the Congress to pass an act vesting in the Republic of Panama the title to the particular tracts of land; because "the Congress" means both bodies. The House of Representatives has a right to a voice as to whether any transfer of real estate or other property shall be made either under treaty or otherwise.

Additionally, in 1932, the United States sought to build a new legation building on land within the Canal Zone. Since a legation must be on territory of the country to which the legation is accredited, the State Department drafted a bill by which Congress would authorize the Secretary of State to modify the line between Panama and the zone so as to permit the proposed legation to be built on "Panamanian territory." In other words, the Department of State recognized that a statute was required to effect the transfer. And again, in 1937, the act of July 10 authorized the Panama Railroad Company, an agency of the United States, to sell certain lands and release reversionary interest in those lands (50 Stat. 511, Public Law 75–54). Earlier the President himself was given authority in the Panama Canal Act of 1912 to exchange land with Panama, presumably along boundaries, if the land were thought to be no longer needed for the maintenance, operation, sanitation, or protection of the Panama Canal and the Canal Zone. (See 2 Canal Zone Code p. 2 and the Act of Congress of Aug. 24, 1912, 37 Stat. 605.)

So, Mr. President, in sum, it is crystal clear that each treaty cited by the Committee on Foreign Relations lends no support to the position of the committee and, viewing the matter generously, shows only the apparent hurried manner in which the report of the committee must have been written.

Confirming this latter observation is the decision of the committee also to cite in its report two Indian treaties which for a variety of reasons have virtually nothing to do with this important constitutional issue. The two treaties cited by the Committee on Foreign Relations are: First, the treaty with the Cherokee Nation of December 29, 1835, and second, the treaty with the Chippewa Indians of October 2, 1863.

The treaty with the Cherokee Nation of 1835 presumably came to the attention of the Committee on Foreign Relations in connection with its equally mis-

taken citation of dicta from Holden against Joy, a case which involved the same treaty. The inappositeness of the dicta from Holden, as well as the citation of the Cherokee Treaty of 1835, is underscored by the facts. These were recited by Prof. Raoul Berger to the Subcommittee on Separation of Powers as follows:

In May, 1828, and February, 1833, "the United States agreed to possess the Cherokees of seven million acres of land west of the Mississippi." It "was the policy of the United States to induce Indians . . . to surrender their lands and possessions to the United States and emigrate and settle in the territory provided for them in the treaties," so an exchange of land was provided. But a third treaty, that of December, 1835, proved necessary, whereby the Indians ceded their lands to the United States in consideration of $5,000,000 to be invested in the manner stipulated. The Indians considered that the prior treaties, confirmed by the new, did not contain a sufficient quantity of land, so the United States agreed to convey an additional tract in consideration of $500,000 to be deducted from the $5,000,000. This may be viewed either as a purchase and sale or an exchange: "the Cherokees were competent to make the sale to the United States and to purchase the lands agreed to be conveyed to them. . . ." And the transaction was authorized by the Act of 1830, which empowered the President to set aside land west of the Mississippi for the reception of such tribes as chose to emigrate, and to "exchange" such lands with any tribe. The 1830 Act served to ratify the Act of 1828, and "ratification is equivalent to original authority." "It is well settled that Congress may . . . "ratify . . . acts which it might have authorized" . . . and give the force of law to official action unauthorized when taken." Although the subsequent 1833 and 1835 treaties differed in some particulars from the authorization, the purpose was the same—"to induce the Indians . . . to emigrate and settle in the country long before set apart for that purpose."

Thus, the Cherokee Treaty of 1835 cited in the report of the Committee on Foreign Relations is a treaty which, if it stands for anything, stands as good precedent for the fact that public property may not be conveyed except under authority of Congress.

It remains to dispose of the second Indian treaty cited in the report of the Committee on Foreign Relations. This treaty with the Chippewas of 1863 is again a treaty apparently called to the attention of the Committee on Foreign Relations by a casual reading of the judicial authorities, in this instance Jones against Meehan, 175 U.S. 1 (1899), another case which has virtually nothing to do with the power of Congress to dispose. The treaty of 1863 with the Chippewas, which is discussed in detail in Jones against Meehan, was a typical treaty of reservation involving a grant from the Chippewas to the United States. The treaty had "set apart from the tract hereby ceded by the tribe a reservation of 640 acres" for an individual Indian. Thus, while this treaty is, as asserted in the report of the Committee on Foreign Relations, "an example of a treaty with an Indian tribe," it is hardly an example of a conveyance of property belonging to the United States to an Indian without prior authorization by act of Congress. In fact, the only conveyance by treaty to an individual Indian made in the treaty of 1863 is a conveyance from the Indian tribe direct to the individual Indian and not a conveyance from the United States.

Citation of the Chippewa Treaty of 1863 as precedent for disposal of U.S. property by treaty alone is a good example of the pitfalls of attempting to resolve a major constitutional issues by a cursory examination of the tortured course of the treaty relations between the United States and the Indian tribes prior to 1872. Mercifully, Congress brought the practice of dealing with the Indians by treaty to a halt in that year by enactment of the Indian Appropriations Act of 1872, which forbade further dealings with Indian tribes by treaties.

Now, Mr. President, this fact leads me to believe that perhaps we ought not to pay too much attention to these Indian treaties one way or another if Congress could, with the stroke of a pen, so to speak, cut out entirely the President's ability to deal with the Indian tribes by treaty and require him to deal with them in some other manner. Certainly, no act of Congress could abolish outright the constitutional power of the President to conclude true international treaties with the advice and consent of the Senate, and the fact that the ability of the President to deal with the Indian tribes by treaty was in fact abolished by act of Congress certainly ought to indicate that these many Indian treaties were not in the first place true treaties made within the scope of the President's powers under article II of the Constitution.

Moreover, Mr. President, the various Indian treaties reserved to the Indians a bewildering variety of types of interest in the lands reserved. But most important to this discussion is that, typically, Indian treaties reserved only the right to the use and occupation of territory already possessed by the Indians (hence, the use of the term "reservation"). Thus, the typical Indian treaty was not in any way a treaty of cession of territory from the United States to the Indians but rather a treaty by which the use only of territory already belonging to the United States was ceded from the Indians to the United States with the Indians reserving out of the grant a collective usufruct analogous to fee title over a given reserved portion.

In any event, regardless of the nature of the grant from, or acknowledgment of the reserved rights of, the Indian tribes or individual Indians, Indian treaties must themselves always be considered in light of the knowledge that from the very earliest days of European settlement in North America, Indians were regarded not as sovereign independent nations but as "wards of this Nation" or "in a state of pupilage" or "dependent political communities." Thus, for example, in recognition of this dependent political status, the United States always had in Indian lands, at a minimum, the right to exercise the sovereign power of eminent domain.

Past treaty practice, then, Mr. President, in exact contradiction to the impression sought to be created by the Committee on Foreign Relations, strongly supports the construction of the Constitution embodied in the pending amendment. The judicial authorities, in the main, also strongly support this construction. However, I must in this respect state candidly that my review of all of the cases cited to me by the many commentators and scholars who have studied this issue has led me to the conclusion that each case cited is in some fashion distinguishable from the main issue and that no case cited by either proponents or opponents of the pending amendment answers directly in a holding of the court the question, "Can the President, with the advice and consent of the Senate, by treaty alone, cause a disposal of U.S. territory or other property?"

The United States has been, in the main, an acquisitive, growing Nation and, therefore, it is not surprising that no court, until now, has been presented with a case or controversy turning on the exclusivity of the power of Congress to dispose of territory or property in relation to the power of the Executive, with the advice and consent of the Senate, to conclude treaties. In candor, it must be admitted that it is now a case of first impression primarily because heretofore there has been perhaps greater respect for the Constitution and additionally the United States has not been, until now, overly inclined to alienate its own territory or property in favor of foreign sovereigns. Nevertheless, several cases do merit discussion either because they tend to illuminate the plenary nature of the power granted to Congress under article IV, section 3, clause 2, or because they have been incorrectly cited as authority for the new theory of concurrent treaty power to dispose of public property.

CASES DEMONSTRATING THE EXCLUSIVITY OF THE POWER OF CONGRESS TO DISPOSE OF THE PUBLIC'S PROPERTY

The primary case showing the extent and exclusivity of the power of Congress to dispose of territory or other property of the United States in *Sioux Tribe of Indians* v. *United States*, 315 U.S. 317 (1942.) After noting that fact, however, I hasten to stress that Sioux Tribe does not hold that the power of Congress is exclusive in the specific context of a case involving the treaty power versus the congressional power. The information drawn from the decision in Sioux Tribe is nevertheless not to be considered mere dicta since the case itself did turn on the question whether the power of the President alone acting through executive agreement was concurrent with the congressional power to dispose. Thus, the holding in the case does serve to illustrate forcefully the point that the disposal power is an exclusive power of Congress, and the Court did state, rather emphatically, as part of its holding that "the Constitution places the authority to dispose of public lands exclusively in Congress."

In Sioux Tribe, the Supreme Court addressed the issue of whether Executive orders in 1875 and 1876 reserved a compensable interest in land to the Sioux Indian Tribe. The Court found "* * * that there was no express constitutional or statutory authorization for the conveyance of a compensable interest * * *

and that no implied congressional delegation of the power to do so can be spelled out from the evidence of congressional and executive understanding."

The Executive orders involved were found, as might be expected, to have reserved only use of the lands to the Sioux Tribe. The Court ruled that the interest retained by the Indians under the Executive orders could be terminated by the executive or by the Congress without any obligation on the part of the United States.

In the reasoning leading to its decision in that case, the court noted that a treaty or a statute could create a compensable interest in lands in the Indians if those lands were subsequently taken from them by the government. However, while the court did note that a statute would obviously be an expression of congressional will, the court specifically did not on the other hand imply that a treaty could convey public land without an express or implied congressional delegation of authority or without enactment of authorizing legislation to give effect to any proposed treaty terms suggesting a disposition of U.S. property. In fact, the court, to the contrary, implied the exact opposite.

If the lands reserved for the use of the Indians are reserved pursuant to a statute, it is obvious that Congress has given its consent to the disposal. When lands belonging to the United States are transferred by treaty or Executive order, the court reasoned that delegation of congressional authority must be found. The court stated further that such delegation of authority may be explicit or may "* * * be spelled out from long-continued congressional acquiescence in the executive practice."

The importance of the Sioux Tribe case, as related to the disposal of property by treaty, lies in the fact that the court seems to have stated rather clearly that lawful disposal by treaty or Executive order could be effected only if the court could find express or implied congressional delegation of the exclusive authority of Congress to dispose of property or territory belonging to the United States. I have been unable to find any such express or implied delegation of power by the Congress insofar as it relates to the disposal of land in the Canal Zone to Panama. The Panama Canal Act of 1912 only grants to the executive branch the authority to acquire or exchange land, not the power to dispose of it.

Moreover, congressional acquiescence with respect to past practice in the Canal Zone has permitted the executive only to make minor boundary adjustments without first obtaining express congressional authority. In any event, the boundary adjustments made have themselves tended to be in the nature of an "exchange" as already authorized by the Panama Canal Act of 1912. The holding in Sioux Tribe, then, does stand as a strong support for the contention that since no express or implied authority to dispose of territory or other property in the Canal Zone can be inferred from the past enactments of the Congress or from the past practice of the executive branch in transferring property in the Canal Zone, then specific statutory authority must now be obtained before any major property disposition to Panama can be legally accomplished.

In *Wisconsin Central R.R. Co.* v. *Price County*, 133 U.S. 496, the Court stated as part of the holding in the case that article IV "implies an exclusion of all other authority over property," thereby like Sioux Tribe also demonstrating the plenary and exclusive nature of the power of Congress to dispose of public lands or property. While it is true that Wisconsin Central involved the disposal power in the context of congressional power versus state power, nevertheless the case provides again strong evidence that the theory of concurrent disposal power is erroneous. Wisconsin Central is a characteristic of a long line of decisions which reflect the Court's obvious agreement with the general principle enunciated by Justice Story:

> The power of Congress over the public territory is clearly exclusive and universal.

I recognize that the principle enunciated by Story has not yet been applied in a case directly on point, but the principle has nevertheless been applied repeatedly, not in dicta, but in the holdings of many cases where the exclusivity of the power of Congress was essential to the decision.

CASES FROM WHICH DICTA IS DRAWN TO SUPPORT THE THEORY OF CONCURRENT TREATY POWER TO DISPOSE OF THE PUBLIC'S PROPERTY

Proponents of the concurrent treaty power theory have been unable to locate a single case in which the decision in the case turned on the issue of the existence of concurrent power in the President, or in the President with the Senate, to dispose of public property. Instead, we have seen cited a plethora of dicta drawn from cases not involving the treaty power versus the Congressional power to dispose and not even involving the question of the exclusivity of the congressional disposal power in any context.

For ease of review of these sources of dicta, the following is a list of the principal cases upon which the concurrent power theorists have mistakenly relied:

Jones v. *Meehan*, 175 U.S. 1 (1899).
U.S. v. *43 Gallons of Whiskey*, 93 U.S. 188 (1876).
Holden v. *Joy*, 17 Wall. (84 U.S.) 212 (1872).
Francis v. *Francis*, 203 U.S. 233, 239 (1906).
U.S. v. *Percheman*, 32 U.S. (7 Pet.) 511, 88–89 (1833).
Foster v. *Nielson*, 27 U.S. (2 Pet.) 253 (1829).
Geofroy v. *Riggs*, 133 U.S. 258 (1890).
Missouri v. *Holland*, 252 U.S. 416 (1920).
Asakura v. *Seattle*, 265 U.S. 322 (1924).
Reid v. *Covert*, 354 U.S. 1 (1957).
Santovicenza v. *Egan*, 284 U.S. 30 (1931).
Worcester v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832).

The Indian treaty cases, such as Jones against Meehan, supra, and above, typify a line of cases involving Indian land titles wherein a grant of title was made by the tribe to an individual as part of the terms of a treaty with the United States. A careless reading of these cases coupled with a careful extraction of dicta from them can give the erroneous impression that title to lands belonging to the United States can be transferred to an individual by treaty alone. Thus, proponents of the concurrent power theory, such as, for example, Dean Pollak, have quoted the following dicta from Jones:

> A good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe without an act of Congress.

At first blush, this dicta would seem to indicate that title to the territory or other property belonging to the United States can be transferred by treaty alone. Not so. In fact, this misleading dicta has nothing whatsoever to do with the power conferred on Congress by the people through article IV of the Constitution.

In Jones against Meehan, the treaty in question has "set apart from the tract hereby ceded [by the tribe] a reservation of 640 acres" for an individual Indian, and the issue in the case was what kind of title the Indian took. The court itself, recognizing that article IV was not a question in the case, quoted from an opinion of Attorney General Roger Taney:

> These reservations are excepted out of the grant made by the tribe [to the United States] and *did not therefore pass with it;* consequently, the title remains as it was before the treaty, that is to say lands reserved are still under the original Indian title. (Emphasis added.)

The court in Jones thus continued to hold that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant [by the tribe to an individual] of complete title in fee simple." I do not deem it necessary to go into the court's detailed discussion of the nature of the title reserved, e.g., was it legal or equitable, and other fine points of Indian land law arising from the fact that Indian lands were initially held in common. It should instead be sufficient to set out the court's quotation in Jones from *Doe* v. *Wilson*, 25 How. 457, 463–464 (1859):

> The Pottawatomie nation was the owner of the possessory right of the country ceded, and all the subjects of the nation were joint owners of it. The reservees took by the treaty, directly from the nation, the Indian title.

The fact that title "reserved" to individual Indians does not pass to the United States and thereafter back to the Indians in the many Indian treaty real property cases may be best understood from a close reading of *Francis* v. *Francis*, 203 U.S. 233, 238 (1906), which cites Jones for the proposition that when a treaty makes "a reservation of a specified number of sections of [Indian land], the treaty itself converts the reserved land into individual property." With this understanding, then, of Indian land law, in no fashion can Jones against Meehan or any other treaty reservation case be properly cited as having anything whatsoever to do with the power of Congress to dispose of U.S. property. Not one of these cases involves conveyance of property belonging to the United States.

Holden against Joy is another Indian treaty case which constitutes one of the pillars of the argument of the adminis-

tration in favor of the elusive, postulated power to convey public property by treaty alone. In truth, Holden does provide perhaps the best dicta which can be cited by proponents of the concurrent power theory inasmuch as it does contain strong language to the effect that a conveyance of property can be made by the President by treaty without congressional authorization. However, even those who have relied on the case admit that the language quoted is purely dicta and that the statement made had no bearing in the court's decision. Moreover, the cases cited by the court in Holden as authority for its regrettable ex cathedra utterance do not in any way give it support. These cases were each abstracted for the Subcommittee on Separation of Powers by Professor Berger in an appendix to his testimony. Having examined them each in turn, I now share Professor Berger's conclusion that half the cases cited by the court were "altogether irrelevant" and that the rest concerned "reserves" under which no title had passed to the United States and, hence, under which no title could be passed from the United States.

In any event, there is little point in belaboring the dicta in Holden against Joy since even the Attorney General has recognized it to be simply dicta and has stated that:

> The court conceded that the question was immaterial in the case because Congress had actually implemented and ratified that particular treaty.

In fact, when the court in Holden, speaking to the contention that the President and the Senate "could lawfully covenant that a patent should issue to convey lands which belong to the United States without the consent of Congress," stated that "a treaty may convey to a grantee good title to such lands without an act of Congress conferring it," it was making a statement that was wholly unnecessary to the decision reached because Congress had already authorized the conveyance involved, a fact recognized by the court. Unnecessary statements are rarely supported by thorough legal research, and the dicta in Holden is a perfect example of that fact. I also find in the repeated misleading citation of Holden a continuation of the double standard used by proponents of the alleged power to dispose of public property by treaty alone in that these proponents rely entirely on dicta running in their favor to make a shaky case for concurrent power but consistently reject as dicta the many judicial statements that congressional power to dispose is exclusive.

U.S. against Percheman was a private land grant case cited by the Attorney General and other administration spokesmen to show "the court held self-executing certain clauses of the Florida treaty with Spain which relate to the regulation of property rights in newly acquired territory." However, the so-called self-executing clauses in the Florida treaty involved the confirmation of individual property rights based on Spanish land grants. These property rights would have been affirmed as a matter of international law even absent the treaty clauses, and inasmuch as the property rights in question were the property rights of individuals, not the property rights of the United States, the entire case is, therefore, irrelevant to any discussion of the article IV power of Congress. The Percheman case is, in fact, closely analogous to the Indian treaty cases in that it essentially involved a reserve of private individual grants predating the treaty. Title did not pass to the United States and thereafter to the individuals. The fact that the treaty with Spain of 1819 of its own force confirmed the titles of pretreaty individual private landowners of land in the Florida territory ceded to the United States by Spain does not argue for the legality of a so-called self-executing treaty which would grant title to land already vested in the United States to new posttreaty individual owners.

Similar to Percheman, and equally often cited, is Foster against Neilson, a case which also turned on the validity of pretreaty land grant titles. The court in Foster erroneously thought that the treaty of 1819 required ratification and confirmation of the private titles "by the act of the legislature"; however, the court in Percheman discovered that the Spanish counterpart version of the treaty expressly dispensed with the requirement that the private titles be ratified by act of the legislature, a fact not known at the time of the decision in Foster.

In any event, both of these land grant cases are so far afield and have so little to do with the article IV power of Congress to dispose of U.S. lands as to warrant much less attention than that which has already been shown to them, here and elsewhere.

The administration witnesses also dwelled on Geofroy against Riggs as "strong authority" for the power of the President and Senate to conclude treaties regarding the subject matter within the ambit of the power of Congress. I have studied the case and I am not impressed. While, in some vague sense, Geofroy might be said to represent the principle that the treaty power can extend to the peripheries of congressional power, in fact, the case has not the slightest bearing on the effect of article IV respecting public property because the case has nothing to do either with the disposition of public property or with the regulation of public property. To reiterate, the holding in Geofroy was simply that a citizen of France could take land by descent from a citizen of the United States within the District of Columbia. Therefore, the reason for the repeated citation of this case by the proponents of the concurrent power theory remains a matter essentially baffling to me.

Oddly enough, the case does not even stand for the proposition that a treaty can supersede the provision of article I, section 8, clause 17, of the Constitution which confers on Congress the power of "exclusive legislation in all cases whatsoever" relating to the District of Columbia. Geofroy involves the treaty with France of 1853 which gave to Frenchmen the right of inheritance only in States "whose existing laws permit it." Thus, the court held in Geofroy that the District of Columbia was a State for purposes of the treaty and that, although an act of Congress on March 7, 1888, forbade the ownership of land in the District by aliens, since the act excepted the disposition of land "secured by existing treaty" (an exception which the court held included realty "acquired by inheritance"), the Frenchmen's rights were protected under the act by the provisions of the treaty of 1853. Thus, the treaty at issue in Geofroy does not itself pretend to override contrary local law and, additionally, Congress had consented to the application of the treaty terms to permit inheritance by Frenchmen by means of the express exception set forth in the act of March 7, 1888.

To summarize, Geofroy against Riggs has nothing to do with the power of Congress to dispose of U.S. territory or public property, but in the event it did, it could stand, if for anything, only for the proposition that the treaty power does not invade the power of Congress over the laws of the District of Columbia.

Finally, the administration and others have advanced Missouri against Holland in support of the proposition that a treaty can "empower Congress to enact legislation going beyond its specifically enumerated grants of power." Without becoming unduly concerned at this gross distortion of basic constitutional principles, perhaps it is best simply to state that Missouri against Holland had nothing to do with the disposition or regulation of U.S. territory and that the case involved a treaty with Great Britain for the protection of migratory birds. The court held that "wild birds are not in the possession of anyone and possession is the beginning of ownership"; hence, neither a State nor the United States could assert any property interest in them. Missouri against Holland can, therefore, be of no interest in any serious analysis of the congressional power to dispose of public property.

Mr. President, there are among the cases in the list I previously outlined a number of obviously irrelevant cases; therefore, in order not to unduly lengthen these remarks, I will simply observe that a mass of cases have been cited irresponsibly by administration spokesmen and opponents of the pending amendment in the ongoing debate of the nature of the power of Congress to dispose of public property of the United States. However, for illustration, I will give five examples of noteworthy irrelevance.

First, there is Asakura against Seattle. This fascinating decision turns on an ordinance of the city of Seattle restricting licenses to operate pawnshops to citizens of the United States. Its holding that citizens of Japan could not be denied the equal opportunity also to operate pawnshops does not appear to have any relevance to anything except possibly to the operation of pawnshops.

Next, there is Reid against Covert which was cited by Herbert Hansell, legal adviser to the Secretary of State, as authority for the power to dispose of public property by treaty. The case involves a trial by court martial of the wife of an Army sergeant convicted in England by

U.S. Army authorities for the murder of the sergeant. The court held that the Bill of Rights requires a jury trial after indictment. I do not understand why this case was cited.

In his testimony before the Subcommittee on Separation of Powers, Herbert Hansell also cited Santovicenza against Egan in support of the power to dispose by treaty. In Santovicenza, an Italian died in New York, leaving no heirs or next of kin. Italy claimed the property of the deceased under a "most favored nation" treaty clause. The court held that the treaty covered the disposition of the property of aliens dying within the territory of either signatory. Again, I am at a loss to explain why this case was ever cited even in the first instance.

Also cited to support the novel concurrent disposal power theory is Worcester against Georgia. Worcester, a white missionary, was convicted of residing within the Indian territory without a State license. The Supreme Court reversed the conviction. Astoundingly, this case has also been cited as having something to do with the power to dispose of public property; obviously, it does not.

Perhaps because of its intriguing style, U.S. against 43 Gallons of Whisky is also a case frequently cited by concurrent power theorists, but again the application of this case to the issue is tangential at best. The case, as might be expected, involves 43 gallons of whiskey, and it is a case essentially irrelevant to the issue or to the pending amendment.

To summarize the arguments I have made both today and yesterday, I emphasize, Mr. President, that the text of the Constitution itself indicates that the power of Congress to dispose of public property is an exclusive power which cannot be exercised concurrently by the President, with the advice and consent of the Senate, through the treatymaking power. Basic canons of construction dictate that express mention implies exclusivity and that the specific governs and limits the general. Construing properly the plain words of the Constitution thus leads to the final conclusion that the power of Congress to dispose is an exclusive power. This conclusion is bolstered by the history of the Constitutional Convention which shows that the issue of the treaty power versus the power to dispose was very much in the minds of the Framers. Article IV, section 3, clause 2 was adopted to answer in part the argument advanced early in the Convention debates that the Senate with the President could alienate public lands without the consent of the Congress. Past treaty practice in dealing with Panama regarding U.S. property in the Panama Canal Zone also provides strong evidence that no promised disposition of public property can be made to Panama, or to any foreign sovereign, by a treaty except "subject to the enactment of legislation by the Congress." Other treaties which have been cited as disposing of territory without congressional authorization are not treaties of cession but are rather treaties of recognition by which disputed claims to territory are adjusted and through which boundaries have been stabilized.

The judicial authorities are, in the main, inconclusive. However, those cases in which the extent of the power of Congress to dispose is controlling, notably Sioux Tribe of Indians against United States and Wisconsin Central R.R. Co. against Price County do hold that the power of Congress is an exclusive power. These holdings are consistent with Story's remarks in his famous commentaries on the Constitution of the United States:

> The power of Congress over the public territory is clearly exclusive and universal.

Virtually all other cases which have been cited by both sides provide dicta only and ought to be ignored.

Inasmuch as the weight of the evidence does, therefore, indicate that Congress has exclusive power to dispose of U.S. property in the Isthmus of Panama, if such disposition is deemed to be desirable, then a statute authorizing it is required or else the disposition will be void. Treaties, like statutes, can be declared unconstitutional. This point is borne out by the following testimony of Prof. Raoul Berger given before the Subcommittee on Separation of Powers:

> Professor BERGER. In my view any attempt of disposition without getting the concurrence of the Congress, including the House, would be void.
>
> Senator HATCH. That is a strong statement.
>
> Professor BERGER. If I am right, if there is no "concurrent jurisdiction" to dispose of property in the executive branch, if that power is exclusively in Congress, then the President oversteps his bounds. That is unconstitutional, and if it is unconstitutional, it is void.

Now, Mr. President, there remains one final matter to clear up before I conclude my remarks. Dean Louis Pollak, of the University of Pennsylvania Law School, has provided an extremely misleading memorandum which purports to support the theory that a property disposal can legally occur by operation of a treaty. As I pointed out yesterday, Dean Pollak's work is based on an erroneous understanding of the question at issue. In essence, Dean Pollak sets up the "strawman" that proponents of the pending amendment are arguing that a treaty cannot deal with the subject matter of public property disposal. That has never been the contention of the proponents of this amendment, and I hasten to add that no great abilities in legal scholarship are required to demolish rapidly any proposition that asserted the President with the Senate could not conclude a treaty which dealt with a disposal of U.S. public property. No, Mr. President, the issue is not the power of the President, with the advice and consent of the Senate, to make a treaty which contains subject matter related to a disposal of property. The issue is whether the disposal can be effected by treaty without congressional authorization or action.

But let us look at some of the means by which Dean Pollak knocks down this strawman position he has outlined for the proponents of the pending amendment.

First, Dean Pollak states that during the discussion of the Jay Treaty in the early history of our country, John Marshall in the Virginia legislature almost 2 centuries ago supported this brandnew concurrent power-to-dispose theory advanced by the Dean and others by saying—this is John Marshall talking in the Virginia legislature—that the Jay treaty did not in any way violate the Constitution even though others asserted it did because it dealt with matters relating to commerce whereas the Constitution had given power to regulate commerce to Congress. Marshall's position, according to Pollak, was that:

> A treaty is a completely valid and obligatory contract when negotiated by the President and ratified by him with the assent and advice of the Senate, as if sanctioned by the House of Representatives also, under a Constitution requiring such sanction.

Obviously, I do not in any way disagree with this position. Obviously, this is exactly what we are talking about when we emphasize the need for the adoption of the pending amendment. A treaty clearly can obligate the disposal of public property as a matter of international law, yet the disposal cannot legally occur as a matter of domestic law unless Congress sees fit to exercise its power to dispose. Until that power is exercised, any action purporting to transfer title is illegal, unconstitutional, and void. Thus, it is critical in the context of this proposed Panama Canal Treaty that Panama understand on the international plane the provision of our own Constitution here in the United States which forbids any actual transfer, notwithstanding what the treaty may say, without full congressional authorization and action by statute. This fact will remain even if the pending amendment is not adopted. But I digress. My point is that the use of the quotations from the debate of the Jay Treaty typifies the complete failure of Dean Pollak to understand what is at issue.

Pollak also quotes Story as support for the concurrent power theory; in fact, the best indications are that Story would strongly support the construction of the Constitution I find controlling. But Dean Pollak uses Story as a means of demolishing his strawman by quoting Story's acknowledgement of the clear fact that the treaty power is not limited by the legislative power in terms of the subject matter which may be addressed in treaties; that is, any subject matter which is proper for negotiation between sovereign nations; however, Dean Pollak does not explain that Story also expressed the view that the treaty power was limited in terms of the exercise of specific means by other express powers granted in the Constitution and limited additionally in terms of subject matter by the basic structure of the government.

Thus, Story stated that:

> A treaty to change the organization of the government . . . to deprive it of its constitutional powers, would be void.

Hence, as indicated by Professor Berger, Story would be in agreement that a treaty depriving the Congress of a constitutional power would be, at least insofar as it caused such deprivation, entirely void and inoperative. Story's

position, Dean Pollak to the contrary, does not stand in opposition to the position of the proponents of this amendment. In fact, Story's statement that "the power of Congress over the public territory is clearly exclusive and universal," coupled with his view that a treaty depriving a constitutional power would be void, gives clear evidence of his proper understanding of the Constitution and of Dean Pollak's wholesale failure to appreciate the question actually involved in this debate.

Again, Dean Pollak—and I might add also my distinguished colleague from Idaho, Senator CHURCH—uses a respected authority from the past as an agent of destruction of the strawman position outlined by the opponents of the pending amendment as the position of the proponents. Dean Pollak in this instance states that Calhoun, speaking as a Congressman, observed that:

> The grant of power to make treaties is couched in the most general terms.

He also quotes, but makes no comment on, Calhoun's statement that:

> Whatever limits are imposed on those general terms granting the power to make treaties ought to be the results of the construction of the instrument [the Constitution].

Calhoun's statement then, accords exactly with the position I have asserted since the beginning of this debate, namely, that the text of the Constitution itself is the best way to determine the limitations on the employment of treaties to accomplish particular results. In line with this thought, Calhoun further stated, and ironically this is even quoted in Dean Pollak's paper, that:

> Most certainly all grants of power under the Constitution must be controlled by that instrument; for, having their existence from it, they must of necessity assume that form which the Constitution has imposed.

He thus says, and this is extremely important, Mr. President:

> No treaty can alter the fabric of our government, nor can it do that which the Constitution has expressly forbade to be done; nor can it do that differently which is directed to be done in a given mode, all other modes prohibited.

Calhoun goes ahead immediately in this argument to cite as an example of a function directed to be accomplished in a given mode and prohibited to be done in all other modes, the power to commence war with another state. Thus, Calhoun understood well that the express grant of power to Congress to declare war specifies a given mode and thereby excludes all other modes, both by the rule of express mention and the rule that the specific governs the general. Please note, Mr. President, that the power to commence a war with another State is vested in the Congress in exactly the same terms as power to dispose of public property:

> Congress shall have power to declare war—Congress shall have power to dispose of territory or other property belonging to the United States.

In other words, since the mode is specified in both cases, and I might add in many other cases, all other modes not specified are excluded and a treaty made under the general treaty power may not propose to take of itself action in a mode different from that expressly and specifically set forth in the Constitution. This point was understood by Calhoun; I hope Senators will understand it today, Dean Pollak and a host of professors notwithstanding.

Mr. THURMOND. Will the distinguished Senator yield?

Mr. ALLEN. I yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the Hatch amendment.

This amendment goes to the heart of a key issue concerning this treaty—the right of the House of Representatives to act under its powers to dispose of U.S. property.

Article IV, section 3, clause 2 of the Constitution of the United States of America provides:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The framers of the Constitution have once again shown their wisdom and great foresight in requiring the Congress, not just the Senate, not just the House, and not just the President to dispose of U.S. territory.

Mr. President, I support this amendment for the following reasons:

First. The Constitution clearly says that the Congress has power to dispose of U.S. territory.

Second. The House of Representatives will have no vote on whether or not the United States should dispose of an $8 to $10 billion asset unless this amendment is passed.

Third. Prior practice in disposal of territory in Panama supports the proposition that disposal of U.S. territory requires approval by both Houses of Congress.

Fourth. The 1903 treaty was entered into because of powers granted by the Congress—the Spooner Act of 1902.

Fifth. Numerous legal scholars have found that congressional approval is required as regards the Panama Canal Treaty.

Sixth. Precedent for the President to dispose of U.S. territory through treaties will be set if the House is excluded as the executive branch proposes.

Mr. President, I wish to draw the Senators attention to the fact that many of this country's greatest legal scholars have testified that the Constitution requires both Houses of Congress to act to dispose of U.S. territory.

Raoul Berger, former professor at the Harvard Law School and a leading authority on American constitutional law, testified on this subject before the Subcommittee on Separation of Powers of the Committee on the Judiciary. His position is that no property belonging to the United States in the Isthmus of Panama can be transferred to Panama by treaty alone, but that article IV, section 3(2) of the Constitution requires authorization by the Congress. He went on to say that any treaty purporting to transfer such property would be void, even if ratified.

Professor Berger stated:

> I want to make clear that I am for the Panama Canal Treaty as a matter of personal judgment. I am not here in any way to discredit President Carter.

Professor Berger explained the Attorney General's and the State Department's position on this matter by saying:

> Long experience has led me to be skeptical of arguments by representatives of the executive branch when they testify with respect to a dispute between Congress and the President, for they are then merely attorneys for a client, the President.

Professor Berger summed up the importance of this issue by testifying—

> The Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for concurrent jurisdiction of the President in the disposition of U.S. property. Acquiescence in such claims spells progressive attrition of congressional powers; it emboldens the executive to make ever more extravagant claims.

Mr. President, the Senate should insist on respect for constitutional boundaries to warn the Executive against assuming powers reserved for Congress. By doing this we will put foreign nations on notice that treaties for the disposal of U.S. territory must first have the approval of Congress.

Professor Berger went on to say:

> In my judgment, the Panama Treaty should contain a provision making it subject to approval of the Congress.

That is exactly what this amendment proposes.

He concluded his testimony by indicating—

> Finally, if the President may not by Treaty "bypass" the power of the House to originate revenue—raising bills, or the power of Congress to tax, no more may he "bypass" its "power to dispose" of the territory and property of the United States.

Another attorney, Mr. George S. Leonard, with considerable background and experience in constitutional matters, also testified before the Senate Subcommittee on Separation of Powers of the Judiciary Committee on this point. He said:

> Actually, what we did find was that there have been many rulings by the Courts that such an authority does not exist and that the President's treaty power is limited whenever primary authority has been granted to another branch of Government by the Constitution.

Charles E. Rice, professor of law at the University of Notre Dame Law School, offered still another opinion before the Senate Subcommittee on Separation of Powers. He stated:

> Congress power in this area ought to be regarded as exclusive. The American people ought to be deprived of their territory and property only by action of that governmental body most responsive to public opinion. That body is the entire Congress and most especially the House of Representatives.

Mr. President, 235 Members of the House have gone on record in support of a House vote on the disposition of property in the Panama Canal Zone, over 54 percent of that body. The resolution introduced in the House calls for the House, as well as the Senate, to vote yes or no on the transfer of canal property.

I would like to read to the Senate a part of a letter I received from Congressman GEORGE HANSEN of Idaho. He says:

Well over 100 members of each political party are co-signers and both pro-treaty and anti-treaty people are included, all of whom see an issue at stake separate from and of even greater concern than the proposed transfer of the Panama Canal. It is so critical that many members are co-sponsors who normally would not become involved, such as Committee Chairmen and other members of party leadership on both sides.

Of course, the House will have to vote on the implementing legislation for these treaties, but that will be after the disposition has already been made. If the administration prevails and this amendment is not adopted, the House will only have the opportunity to vote after the fact, as the United States will already be committed by these treaties.

Mr. President, this amendment is a good amendment. It merely tries to get into the treaty what our Constitution already requires.

Even the treaty proponents cannot call this a killer amendment. As my distinguished colleague from Alabama (Mr. ALLEN) ably pointed out yesterday, this amendment requires absolutely no action or concession on the part of Panama. The only effect of this amendment is to uphold article IV, section 3, clause 2 of the Constitution of the United States and allow the Congress to vote on whether or not an $8 to $10 billion asset of the United States is surrendered.

Mr. President, this is an extremely important constitutional question facing us in the Senate now. Under the separation of powers doctrine, we have three coequal branches of Government. Each branch has specified duties under the Constitution and neither branch is to intrude on the authority of the other two.

The Constitution explicitly states that the Congress shall have the power to dispose of U.S. territory. It does not say that the President, under his treaty power, shall be able to dispose of U.S. territory. The Supreme Court has said time and time again that express mention signifies implied exclusion. That rule of law appears to me to be applicable here.

I urge my colleagues to think about the precedent being set here. Do we want the President, through his treaty power, to have the authority to dispose of U.S. territory without the consent of Congress? A vote against this amendment is a vote to increase the power of the executive at the expense of the Congress. Let us uphold our Constitution and support this amendment.

Mr. President, I ask unanimous consent that a list of cases supporting my position on this matter be printed in the RECORD at this point.

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

1. Wisconsin Cent. R. R. Co. v. Price County, 133 U.S. 496 (1890).
2. Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952).
3. 22 Op. Atty. Gen., 544, 545 (1899).
4. Osborne v. United States, 145 F. 2d 892 (9th Cir. 1944).
5. Sioux Tribe of Indians v. United States, 316 U.S. 317 (1942).
6. U.S. v. Nicoll, 27 Fed. Case 15879 (pp. 149–50).
7. The Cherokee Tobacco, 11 Wall. (78 U.S. 616, 620 (1871).
8. Emblen v. Lincoln Land Co., 184 U.S. 660 (1902).
9. Sierra Club v. Hickel, 433 F. 2d 24 (9 Cir. 1970) Aff'd 405 U.S. 727 (1972).
10. United States v. Fitzgerald, 40 U.S. 785 (1841).
11. Sere v. Pitot, 6 Cir. (10 U.S.) 332 (1910).
12. American Inc. Co. v. Canter, 1 Pet. (26 U.S.) 511 (1828).

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

Mr. HATCH. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mr. HATCH. I yield the time to the Senator from Maryland.

Mr. SARBANES. Mr. President, before the debate on this amendment concludes, there are a couple of points I wish to make. These points are addressed to assertions made in the opening statement of the distinguished Senator from Utah; assertions which I do not wish simply to leave in the RECORD as made, because they really do require correction. The first deals with his handling of the testimony of the Attorney General before the Committee on Foreign Relations.

I am going to read the statement that the Senator from Utah made in that regard then I am going to seek to place it in its correct perspective, and have printed in the RECORD an insert which I think will make the point clear.

The Senator from Utah said:

Significantly, the committee report makes no mention of the argument based on the Framers' intent that was propounded by the Attorney General when he testified before the Foreign Relations Committee. In his prepared statement to the committee on September 29, 1977, Attorney General Bell made reference to four separate events that occurred during the course of debate on the framing and adoption of the Constitution. He thought it significant, for example, that George Mason of Virginia had observed "that the Senate by means of a treaty might alienate territory, etc, without legislative sanction." Mason's actual words, as reported in Farrand, were that:

He was extremely earnest to take this [appropriation] power from the Senate, who he said could already sell the whole Country by means of Treaties. (Farrand, II, 297).

From this, Bell deduced that Mason's remark indicated that the Framers were supportive of the idea that the President should have the power to dispose of property by a self-executing treaty.

Now, what the Senator from Utah has done is set out the Attorney General's quotation from George Mason of Virginia "that the Senate by means of a treaty might alienate territory, et cetera, without legislative sanction."

The Senator from Utah then went on to say:

Mason's actual words as reported in Farrand were that—

He then quotes Mason and goes on to say:

From this—

Meaning the words that he quoted from Mason—

Bell deduced.

The fact is that Mason's actual words were exactly what the Attorney General said Mason's actual words were.

On the same page which the Senator from Utah cites for his quote from Mason appears the following report by Farrand of the records of the Federal Convention:

Colonel Mason did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory, and so forth, without legislative sanction.

What the Attorney General said in his testimony before the Foreign Relations Committee on this very issue, in quoting Mason, followed exactly the reported quotation from Mason. Thus, the Attorney General in his testimony before the committee stated:

Thus Colonel Mason observed, "The Senate by means of a treaty might alienate territory, and so forth, without legislative sanction."

That is exactly the quotation that appears in Farrand at page 297—the same page from which the Senator from Utah quoted another statement by Mason and said, in commenting on the Attorney General's statement, those were the actual words of Mason.

In fairness to the Attorney General, I think it important that this point be made.

Mr. President, I ask unanimous consent that page 297 from the records of the Federal Convention of 1787, edited by Max Farrand, volume II, page 297, on which page the quotation from Colonel Mason cited by the Attorney General appears, as well as the quotation of the Senator from Utah, be printed at this point in the RECORD.

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

THE RECORDS OF THE FEDERAL CONVENTION OF 1787, EDITED BY MAX FARRAND, REVISED EDITION IN FOUR VOLUMES: VOLUME II—NEW HAVEN, YALE UNIVERSITY PRESS; LONDON, HUMPHREY WILFORD, OXFORD UNIVERSITY PRESS, 1937

Mr. Strong move(d) [7] to amend (the article so as to read—"Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same and for fixing the salaries of the officers of the Govt. which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases") [8]

Col. Mason. 2ds. the motion. He was extremely earnest to take this power from the Senate, who he said could already sell the whole Country by means of Treaties.

Mr. Ghorum urged the amendments as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

Mr. GOUVERNR. Morris opposed it as unnecessary and inconvenient.

Mr. WILLIAMSON. Some think this restriction on the Senate essential to liberty—others think it of no importance. Why should not the former be indulged, he was for an

[7] The Journal reports a previous motion, see above note 2.

[8] Revised from *Journal*.

efficient and stable Govt: but many would not strengthen the Senate if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over.

Mr. Rutlidge 2ds. the motion.

Mr. Mercer should hereafter be agst. returning to a reconsideration of this section. He contended, (alluding to Mr. Mason's observations) that the Senate ought not to have the power of treaties. This power belonged to the Executive department; adding that Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain; particularly the late Treaty of Commerce with France.

Col. Mason did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory &c. without legislative sanction.

Mr. SARBANES. Mr. President, I also want to address the Senator's treatment of a section of the committee report asserting that hundreds of self-executing treaties dealing with such subjects as foreign commerce, copyrights, patents, and postal services are valid.

I am now going to quote from the committee report, where it deals with the discussion of the concurrent powers for disposing of property, and the use of the treaty power in this regard. In addressing itself to the constitutional text, the committee report stated at pages 65 and 66 of the report, and I am now quoting:

First, the constitutional text gives no reason to assume that the power to dispose of property may be exercised only by statute, and not by treaty. The disposal-of-property clause is drafted in the same way as the provision conferring enumerated powers upon the Congress (article I, section 8): both say that Congress "shall have power. . . ." Where two substantively similar provisions of the Constitution are in their jurisdictional terms worded identically, and where one of those provisions has been construed as conferring concurrent power, it is not unreasonable to construe the other provision also as conferring concurrent power. It has long been established that article I, section 8 of the Constitution confers concurrent power—that the enumerated powers conferred upon the Congress therein may be exercised both by statute and by treaty. To hold that the enumerated powers are by implication excluded from the treaty power would be to hold that hundreds of self-executing treaties dealing with such subjects as foreign commerce, copyrights, patents, and postal services are invalid.

Now, the Senator from Utah quoted that section of the committee report in his statement. I might add that I think—and we have done that on the floor—that we could greatly develop this part of the report with respect to an analysis of the constitutional text to support the proposition which this section of the report supports. This development, in terms of a textual analysis of article IV and articles I and II of the Constitution and the relationship of the treaty power to the power of Congress has been done earlier in the course of debate on these treaties.

In any event, that section was quoted from the report by the Senator from Utah, including in particular this sentence:

To hold that the enumerated powers are by implication excluded from the treaty power would be to hold that hundreds of self-executing treaties dealing with such subjects as foreign commerce, copyrights, patents, and postal services are invalid.

Later in his statement, the Senator from Utah, in addressing this section of the committee report, states the following:

One of the so-called long established examples specifically mentioned by the committee are the hundreds of self-executing treaties dealing with postal services. What is the basis for this claim?

He then goes on to cite from Miller, to say that while there have been some treaties dealing with postal services, many such arrangements have not been done by treaty, and raises the point that there are not hundreds of treaties dealing with postal services. Of course, that is not the assertion that was made in the committee report.

The assertion in the committee report was that hundreds of self-executing treaties deal with such subjects as foreign commerce, copyrights, patents, and postal services. Yet, when the Senator from Utah deals with that aspect of the report, he speaks in terms of hundreds of self-executing treaties dealing with postal services. That was not the assertion that was made. The Senator obviously knew the assertion that was made, because he had quoted it himself not much earlier in the debate.

Mr. President, I have just taken a few moments to make these two points because in one instance it was asserted, in effect, that the Attorney General was not properly quoting Mason but merely drawing a deduction from a quotation, when, in fact, he was using a direct quotation; and in the other instance, because after quoting the committee report, which referred to hundreds of treaties, on a number of subjects one of those subject matters was picked out, and the assertion was made that there were not hundreds of treaties on that one subject.

I think it is important that the record be corrected with respect to those two flagrant errors, and I must state that only the limitations of time inhibit us from bringing forth other comparable examples to the Senate.

Mr. CHURCH. Mr. President, the Senator from Utah has spoken at length on behalf of his amendment. As I have listened to the Senator, however, I have often wondered whether he and I were addressing the same issue. The Senator has referred again and again to the impending threat of an unwarranted usurpation of power by the President. He has reminded us of attempts by a succession of Presidents to circumvent the participation of the Senate in foreign relations, and exhorted his colleagues to stand fast against further intrusions by the Executive. The Senator has thus attempted to frame the issue as one involving an assertion of executive power in derogation of that of the Senate. If this were the issue, as I have previously indicated, I would not hesitate to support the Senator. It is not, however.

What is at stake here is the scope of the treaty clause, a power shared by the President and the Senate. The Executive has made no claim that it may enter into agreements disposing of property rights of the United States without the advice and consent of the Senate. It has disavowed such a claim, and rightfully so. It is the Senator from Utah who argues for a limitation of the prerogative of the Senate to participate in foreign relations. He contends that where a power is expressly granted by the Constitution to the Congress, it is ipso facto removed from the scope of the treaty clause. I agree with the Senator that the manner in which the Senate resolves this question will have a profound and far-reaching effect. If the Senator's amendment is adopted, the powers of the Executive will not be diminished, since the Executive is not claiming for itself the power to dispose of property or to exercise any of the enumerated powers of Congress. What will be diminished is the prerogative of the Senate—and the Senate alone—to advise and consent to the conclusion of treaties. The essential premise of the Senator's amendment is that powers expressly granted to Congress may not be exercised under the treaty clause without concurrence of the House of Representatives. If the Senate accepts this premise, it will have acquiesced in a curtailment of its role in foreign affairs as drastic as anything heretofore attempted by any President.

THE "EXCLUSIVITY" OF CONGRESSIONAL POWER

The Senator from Utah has gone to considerable lengths to demonstrate that the power granted by article IV, section 2, clause 3 to dispose of property is an "exclusive" power. Numerous authorities are cited in support of this contention. Having established this fact, he then contends that proponents of the treaty are attempting to create an exception to this rule of exclusivity. This is a remarkable exercise in circumlocution. It serves to mask the fact that he is the one who is arguing for a vast exception to the universally accepted rule that the treaty clause encompasses all matters which are the proper subject of international agreement (*Asakura* v. *City of Seattle*, 265, U.S. 332 (1924)), and that there exists no precedent to support his position.

Without exception, the cases and other precedents cited by the Senator establish one of two points: First, that the States may not interfere with the power of the Federal Government to regulate Federal property; or second, that the Executive, acting alone, may not dispose of or regulate property of the United States. These points are not at issue. In this sense, the property disposal power can be said to be "exclusive."

Let us look closely at the authorities cited by the Senator from Utah.

First he cites Justice Story in his "Commentaries on the Constitution." The section of Story's commentary he cites volume II, section 1328, however, deals not with the exclusivity of the power of the Congress in relation to the treatymaking power, but rather in rela-

tion to the power of the States to regulate Federal territories. Indeed, in the same treatise Justice Story discusses the treatymaking power in relation to the enumerated powers of the Congress and notes that—

> The power "to make treaties" is—by the Constitution—general; and of course it embraces all sorts of treaties, for peace or war; for commerce or territory . . . and for any other purposes, which the policy or interests of independent sovereigns may dictate in their intercourse with each other. III J. Story, "Commentaries on the Constitution of the United States" (1843) 355.

Justice Story, in a letter dated April 17, 1938, responded to a request by Governor Everett of Massachusetts for his views in connection with the proposed treaty with Britain regarding the Maine boundary. Story quoted with approval a conversation he had had some years earlier with Chief Justice Marshall:

> He [Marshall] was unequivocally of the opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases. . .

By this limitation Marshall was obviously referring to the cession of the territory of the States. Certainly Justice Story cannot be cited as support for the argument that property rights cannot be transferred by treaty.

The Senator from Utah also cites an 1899 opinion of the Attorney General for the proposition that the power of Congress is exclusive. He fails to note that the opinion had to do with whether the executive could transfer public lands and public property in Puerto Rico to individuals. The Attorney General found that the executive could not do so without statutory authority. Clearly a statute was the exclusive means to dispose of property available in this situation, since treaties cannot be concluded with individuals.

Similarly the Senator's citation of an opinion of Attorney General Stone (34 op. Atty. Gen. 322–323) is not on point. This opinion addressed the question of whether patents could be disposed of to individuals by the executive alone. It was found that such disposals could not be effected without the consent of Congress. Again, the treaty power did not constitute an alternative to statutory authority inasmuch as treaties cannot be entered into with individuals but only with foreign nations.

The Senator then goes on to cite as authority for his position a series of cases involving attempts by States to regulate Federal property, including *Wisconsin Central R.R. Co.* v. *Price* 133 U.S. 496 (1890), *United States* v. *California*, 332 U.S. 19 (1947), *Gibson* v. *Chouteau*, 80 U.S. (13 Wall.) 92 (1872) and *Utah Power and Light Co.* v. *U.S.* 243 U.S. 389 (1916). Nothing in any of these cases is remotely related to the treatymaking power. Rather, all stand for the widely accepted proposition that the power of the Federal Government to legislate with respect to Federal territory is exclusive of such a power in the several States.

The one case cited by the Senator from Utah in support of his argument with respect to exclusivity which has anything to do with the treatymaking power is the case of *Sioux Tribe of Indians* v. *U.S.* 316 U.S. 317 (1942). As the Senator correctly noted, the Court stated that—

> Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in the lands must be traced to congressional delegation of its authority.

What the Senator fails to address is the Court's view, expressly recognized twice in that opinion—indeed on the same page of that opinion—as to the type of legislative action that could constitute such a "congressional delegation of its authority."

The Court stated unequivocally that Indians must be compensated for land which is granted to them "by the terms of a treaty or statute" 316 U.S. at page 326.

This is an extremely important point. Not only does the statement of the Court stand for the proposition that property rights of the United States may be transferred either by the terms of a treaty or by statute alternatively; it clearly recognizes what the Senator from Utah has attempted to obscure—that the Senate, in exercising its power to approve or disapprove to a treaty, is exercising a legislative function. Again this is not an issue of the power of the executive versus the power of the legislative branch. Rather, it is an issue derived from the attempt of the Senator from Utah and his colleagues to contend that the legislative authority may be exercised only in one manner—namely, by the passage of a statute by simple majority in both Houses of the Congress. In doing so he ignores the other mode of exercising legislative authority clearly and unequivocally established by the Constitution—namely, the power of the Senate by an extraordinary two-thirds majority to approve, or failing such a two-thirds majortiy, to disapprove, treaties submitted to this body—which upon ratification become the supreme law of the land by virtue of article VI of the Constitution.

The Senator from Utah attempts to extend vastly the scope of the precedents he has cited, which support only the simple proposition that the States and the Executive cannot dispose of property absent legislative authorization. He would have them support the proposition that the grant of express authority to Congress to dispose of property rights not only precludes the exercise of this authority by the States and the Executive, but removes this power—and by necessary implication all others granted to Congress—from the scope of the treaty clause.

The Senator offers no precedents in support of this long-abandoned reading of the Constitution, and in fact, none exists. As I will discuss later, ample precedents do exist in support of the opposite conclusion: that enumerated powers of Congress—including the power to dispose of property—may also be exercised under the treaty clause unless they are expressly limited to legislative action.

Despite, or perhaps because of, the lack of any applicable precedents, the Senator from Utah attempts to make his point by impugning the accuracy and integrity of the report of the Committee on Foreign Relations and by a tortured reading of the testimony of the Legal Adviser of the Department of State. The Senator, for example, implies that the committee's report distorts the conclusion reached in an 1899 opinion by the Attorney General. I am of course thoroughly familiar with the Committee Report, and I have read the quote from the Attorney General's opinion cited by the Senator. The Senator attempts to create a discrepancy where none exists. As I indicated earlier, the question presented to the Attorney General was whether the Executive, acting alone, could dispose of U.S. property in Puerto Rico. His answer, as the committee report notes, was in the negative. He noted, quite correctly that Congress was empowered to dispose of property rights. As the committee report states, the question of whether the President and the Senate may dispose of property rights under the treaty clause was not the issue presented to the Attorney General, since a treaty was not an option available on the facts of the case. I find the Senator's attack on the veracity of the committee's report both bewildering and regrettable; the opinion stands precisely for the proposition for which it was cited in the report.

I am equally mystified by the Senator's assertion that the Department of State somehow has been inconsistent and has "conceded" the point at issue. The State Department's position has been entirely consistent. On one occasion the Legal Adviser testified that article IV did not make "the power of Congress with respect to the disposition of property" exclusive. On another, he stated that article IV does not make "the legislative power the exclusive method to effect such disposition." On both occasions, Mr. Hansell unequivocally took the position that property rights could be disposed of under the treaty clause, as well as by the Congress. The Senator's attempt to wring an inconsistency and a concession from this slight variation in language reveals the poverty of his analysis.

THE CONSTITUTION DOES NOT PROHIBIT THE TRANSFER OF PROPERTY RIGHTS BY SELF-EXECUTING TREATY

The Senator from Utah notes, quite correctly, that the treaty power is not unlimited. It is well recognized that a treaty may not authorize what the Constitution prohibits, and the Senator correctly cites several cases in support of this proposition. But, as the Senator admits, the Constitution does not expressly prohibit the transfer of property of the United States. Nevertheless, the Senator "assumes" that the Constitution prohibits the conclusion of treaties on subjects within the enumerated powers of Congress.

With all due respect, the Senator's assumption cannot change the law. He cites no precedents in support of this asserted prohibition because there are

none. On the contrary, numerous treaties have been concluded on subjects within the express legislative power of Congress. We are all familiar with the many treaties of friendship, commerce, and navigation we have entered into with foreign nations. Yet under the theory of the Senator from Utah all these treaties would be invalid since article I, section 8, of the Constitution gives "the Congress" the power "to reguate Commerce with foreign nations."

For example, in the case of *Geofrey* v. *Riggs*, 133 U.S. 258 (1890), the court held that a treaty regulating rights of French citizens to acquire property in the District of Columbia was valid and effective, notwithstanding that article I, section 8, clause 17 of the Constitution grants "the Congress" exclusive legislative authority over the district. Indeed, this is one of the primary cases cited by the Senator in support of his view, and yet the holding of the case is clearly inconsistent with that view. The Supreme Court has never invalidated a treaty, or considered it to be anything less than the "supreme law of the land," on the grounds that it dealt with a subject within the express legislative jurisdiction of Congress.

In his remarks Monday, and again yesterday, the Senator contended that the treaty before us is not self-executing and thus requires implementing legislation. It is well established, as the Senator has stated, that certain obligations assumed by the United States under a treaty must be implemented by the passage of legislation. The Senator contends. however, that this is also the case where a treaty does not require the United States to perform a particular act but by its terms accomplishes that act. This statement of law is plainly erroneous. The leading case of *Foster* v. *Neilson*, 2 Pet (27 U.S.) 253, 312 (1829) which the Senator cited to support his proposition, establishes a quite different rule. There, the United States agreed that Spanish land grants "shall be ratified and confirmed." Justice Marshall held these words to be promissory in nature. They represented an undertaking to seek ratification by the legislature. Chief Justice Marshal distinguished language of this type from language which operates in the present. As exampe of the latter, he cites a statement that the grants in question "shall be valid" and "are hereby confirmed". If the latter language had been used, the treaty woud have been self-executing, according to Marshall.

All this case holds, then, is that when by its terms a treaty is made contingent on a subsequent legislative action, it is not self-executing. That is a far cry from the proposition for which it is cited. Indeed, in *U.S.* v. *Percheman*, 32 U.S. 51 (1833), Chief Justice Marshall concluded, after further examination of the Spanish and English texts, that the language of this treaty was in fact self-executing and did not require legislation to give it effect.

When we apply the teaching of these cases, it becomes obvious that the present treaty, insofar as it transfers property to Panama, is by its terms self-executing. Article XIII(2) states that—

> The United States of America transfers . . . all right, title and interest the United States may have.

This language speaks in the present. It does not constitute a promise to act in the future. It is manifestly the language of a self-executing treaty.

Let us contrast this with the language of article V of the 1955 treaty with Panama, which was implemented by legislation. That article states:

> The United States agrees that, subject to the enactment of legislation by the Congress, there shall be conveyed.

It is clear that this stipulation for a conveyance was not self-executing. It is equally clear, by contrast, that article VI and VII of that same treaty were drafted in self-executing language and transferred the property they covered without further legislative action. Indeed, the fact that these articles transferred property rights by their own force was expressly recognized by the Congress in the statute passed to implement article V (71 U.S. Stat. 509 § 102(b)). The conveyance in article XIII of the present treaty is drafted in the same, unequivocal, self-executing language.

The Senator places great weight on Prof. Quincy Wright in his work "The Control of American Foreign Relations" (1922), quoting part of a sentence out of context. While it is correct that Wright draws a distinction between treaties creating obligations on private individuals and/or public authorities, he does so only as a general proposition. Moreover, his statement refers only to those treaties requiring the cession of territory. When he gets to the specific matter of treaties of cession, rather than for cession, Wright states:

> Treaties or arbitration awards may require a cession of territory. Such provisions affecting small tracts of territory in boundary settlements have been considered self-executing. The same view would probably be taken of a large cession if conditions were such that it could be considered constitutional.

This is precisely the opposite point of view from that for which the Senator cited Professor Wright.

The Senator from Utah also attempts to draw support from the Convention of 1815 with Great Britain. He contends that, as a result of the debate on that Convention, "Congress adopted the view that a treaty ceding territory is not self-executing and requires legislative implementation to be effective." In support of this assertion he cites the report of the managers on the part of the House. The managers of the Senate did not include any such statement in their report, but rather stated "that of the treaties made in pursuant of the Constitution, some may not, and others may call for legislative provisions to secure their execution" (27 Annals 159). On the issue directly involved, the House receded from its objection (29 Annals 1059). Thus the incident settled that treaties may be self-executing, although they deal with subjects within the enumerated powers of Congress. (2 Story 609).

The Senator's attempted reliance on a 1907 memorandum approved by the Secretary of State is equally misplaced. That memorandum merely recognizes that under the Constitution certain functions such as the appropriation of funds and the raising of revenues can only be accomplished by legislative action. These functions are "expressly confided"—that is, the Constitution by its terms expressly limits their performance—to the Congress. Thus, treaties cannot be self-implementing with respect to those functions. This is not true of the power to dispose of property, which by the terms of the Constitution is not expressly limited to the Congress.

The Senator also asserts that—

> In all previous agreements with Panama it would seem that all cessions of property belonging to the United States have been based on Congressional approval.

It may seem so to the Senator, but only because he chooses to ignore a number of instances in which property rights were transferred to Panama by self-executing treaty. Examples of these transfers were included in the committee's report.

Article II of the 1936 treaty of friendship and cooperation (10 Bevans 742) relinquished to Panama a prior grant of rights in perpetuity of the United States to use certain lands and waters outside the Canal Zone. This transfer was effected without implementing legislation or authorization by Congress. Article II of the treaty of 1950 ceded tracts of Canal Zone land adjoining the city of Colon to Panama. Again, no implementing legislation was called for by the treaty or enacted. As I indicated earlier, articles VI and VII of the treaty of 1955 transferred certain real property to Panama. Unlike article V of the same treaty, which by its terms was intended to be non-self-executing, articles VI and VII did not call for and were not implemented by statute. The Senator's history is thus very selective.

It is true that in 1932 and in 1942 congressional authorization was sought for executive agreements transferring property to Panama. It is also irrelevant to the present discussion that authority was sought, since the Executive has not contended that it may dispose of property outside the treaty process without the authorization of Congress. Senator Connally's remarks, which Senator HATCH cites, must be viewed in this context. It is significant that Senator Connally, as chairman of the Foreign Relations Committee, reported out the 1950 treaty. That treaty also transferred property rights to Panama. There was no suggestion in that report that implementing legislation was required to effectuate the property transfers made by that treaty.

Aside from the inadequacy of the Senator's legal analysis, I find particularly disturbing his attack on the report of the Committee on Foreign Relations, and his statement that "the Senate alleges that the committee's report fails to discuss the question of whether this treaty is self-implementing. The question of implementation has been raised only with respect to the transfer of property. The committee took testimony on this subject—the question of whether the

concurrence of both Houses of Congress was required for property transfers—from several witnesses, including the Attorney General and the legal adviser of the State Department, and that testimony is included in the committee's hearings.

The Senator devoted a great deal of time in his remarks yesterday and Monday to an attack on the committee report. He impugns the integrity of the committee's analysis of this issue, in an intemperate, and often peevish way. For example, the Senator finds the first sentence of the report, which reads "The Constitutional text gives no reason to assume that the power to dispose of property may be exercised only by statute, and not by treaty" to be "obviously irrelevant" since the question is whether property could be disposed of by self-executing treaty. Since the treaty before the committee was, by its terms, self-executing, this clearly is the type of treaty to which the report referred. How could the Senator believe that the committee was devoting a large segment of its report to an issue that no one has ever raised? Obviously the issue under discussion was the issue before us—the issue of the transfer of property rights by self-executing treaty. It is also clear that the quoted sentence is correct with respect to self-executing treaties, as the report itself demonstrates in some detail.

The Senator from Utah also dwelt at some length on the second and third sentences of the report, which note that power under articles I and IV is granted by identical language, that certain article I powers can admittedly be exercised by self-executing treaty, and that it is therefore not unreasonable to construe article IV as also conferring a concurrent power. The Senator labels this statement "false and misleading," but is unable to answer it. He contends that the logic of the report necessitates the conclusion that all enumerated powers of the Congress may be exercised by the President and the Senate under the treaty clause.

A bit later, however, he acknowledges that the report cites several examples of Congressional powers which may not be exercised by treaty. The report notes that the power to appropriate money or to impose taxes cannot be exercised by treaty because the Constitution specifically limits their exercise to action by both Houses. The Senator then argues that since the committee recognizes that these powers are exclusively legislative and since the courts have held that the property disposal power is "exclusive," the committee has therefore conceded that the property disposal power may not be exercised by treaty.

This contention reveals the most persistent fallacy of the Senator's entire argument. The disposal power has been held to be "exclusive"—exclusive of the powers of the states or of the Executive acting alone. No court has ever held that this power is exclusive of the treaty-making power; on the contrary, the courts have upheld the validity of several self-executing treaties which transferred property rights. Numerous treaties of this type have been concluded. The revenue and taxation powers, on the other hand, are limited by the terms of the constitution to statutory action. They have never been exercised solely by treaty. This distinction is elemental and obvious. It is amazing that the Senator finds it so difficult to understand.

Similarly, the report notes that the power to declare war, while not expressly limited to legislative action, has always been regarded as so limited. The Senator from Utah contends that the "legislative history of the territorial clause" indicates that this power is solely reserved for legislative action. To what history does the Senator refer? He has cited none. In fact, as I and other Senators have pointed out, the legislative history and judicial construction of this clause supports exactly the opposite conclusion.

INTENT OF THE FRAMERS

The Senator from Utah, in his remarks yesterday, failed to offer any evidence to support his claim that the framers of article IV intended to limit the scope of the treaty clause. His efforts were again limited to irrelevant or inaccurate attempts to disparage the committee report. Typical of these is his labeling of the committee's statement that the framers "rejected all proposals to limit the treaty power" as false because it creates the impression that the treaty power is absolute and unlimited. No such impression could be created in a reasonable mind, particularly since the committee report acknowledges that several limitations exist on the treaty power. The report merely states a fact: that proposals were made to limit the treaty power, and were rejected. The Senator is unable to challenge that fact.

The Senator's criticism of Attorney General Bell's testimony reveals a similar inattention to the facts. The Attorney General testified that Mr. Mason of Virginia had remarked that the treaty power extended to the disposition of property. Relying on the testimony of Professor Berger, the Senator from Utah points out that the cited remark was made before the debate on the property clause. Both the Senator and the Professor are apparently unaware that Mr. Mason made a similar remark in 1788 during the Virginia Convention. At that time, in the course of a discussion of the ability to alienate property by treaty, Mr. Mason stated that "The President and the Senate can make any treaty whatsoever." (3 Elliott 509.)

The Senator dismisses other arguments advanced by Attorney Bell on the basis that Professor Berger disagrees with these arguments. I suppose it must simplify the Senator's task considerably to accept without question the views of one scholar. I should point out, however, that a vast majority of Professor Berger's colleagues reject his view.

Several weeks ago, I introduced a statement by 15 eminent professors of constitutional law supporting the constitutional validity of transfer of property by self-executing treaty. Dean Louis Pollak of the University of Pennsylvania Law School has authored a detailed analysis, entered into the CONGRESSIONAL RECORD of January 30, 1978, which reaches a similar conclusion. In view of this weight of authority, the Senator's blind adherence to the views of one professor appears questionable.

Perhaps the most significant statement on this subject was made by President Washington in his message to Congress of March 30, 1796, (1 Messages and Papers of the Presidents 195). President Washington stated:

> Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the Government to this moment my conduct has exemplified that opinion—that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated thenceforward became the law of the land.
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> * * * * *
>
> There is also reason to believe that this construction agrees with the opinions entertained by the State conventions when they were deliberating on the Constitution, especially by those who objected to it . . . because in treaties respecting territorial and certain other rights and claims the concurrence of three-fourths of the whole number of the members of both Houses, respectively, was not made necessary.

President Washington's view accords with that of other framers of the Constitution who addressed this question. The Senator from Utah entertains a contrary view. I agree with George Washington.

JUDICIAL AUTHORITIES

Faced with a body of law which supports the authority of the President and the Senate to dispose of property by treaty, and with the absence of any case holding the contrary, the Senator from Utah finds little direct support for his position. He has again resorted to an attempt to disparage the committee report by raising meaningless distinctions.

He summarily dismisses the committee's citation of a number of cases suggesting that the Constitution does not forbid the transfer of property by treaty. The Senator from Utah charges that the committee avoids all mention of cases which hold that the Constitution forbids cessions of territory by a self-executing treaty. I can assure my colleague that, were there any cases so holding, they would have been considered by the committee. In fact, there are none.

The Senator from Utah cites the case of *Sioux Tribe of Indians* v. *U.S.*, 316 U.S. 317 (1942) as directly contrary to the committee's conclusion. That case did not involve the validity of a treaty. It held, rather, that the President, by Executive order, may not grant title to property of the United States. That holding, while manifestly correct, is irrelevant to the issue of transfer of property by treaty. It in no way supports the Senator's position. In fact, the Court states—on the very page quoted by the Senator from Utah—that, unlike the case before it, the plantiff Indians would have been entitled to compensation if land had been granted to them "by the terms of a treaty or statute" (316 U.S. at 326). The Court thus expressly recognized the concur-

rent nature of the property disposal power, the very proposition which the Senator so firmly resists.

I confess that I am unable to fathom the Senator's analysis of *U.S.* v. *43 Gallons of Whiskey*, 93 U.S. 108 (1876). The case is cited by the report in support of the proposition that precedents involving treaties with the Indian tribes are opposite since, as the Court held:

> The power to make treaties with the Indian tribes is . . . co-extensive with that to make treaties with foreign nations.

The Senator from Utah does not challenge this holding but rather engages in an irrelevant and largely inaccurate discussion of the case. Contrary to the Senator's assertion, the case does not involve the regulation of the sale of liquor by act of Congress but by self-executing treaty. Thus, the Court stated that—

> Congress has not done this but the Constitution declares a treaty to be the Supreme law of the land . . . [N]o legislative action is required to put the seventh Article into force. 93 U.S. at 197.

Despite the fact that article 1, section 8, clause 3 of the Constitution expressly grants the Congress the power to regulate commerce with the Indian tribes, the Court in 43 Gallons of Whiskey upheld the validity of a self-executing treaty on the same subject. The case thus supports the proposition that express legislative powers may be exercised under the treaty clause, and further undermines the Senator's theory of exclusivity.

Contrary to the Senator's suggestion, the validity of cases construing Indian treaties is no way impaired by the Indian Appropriation Act of 1871. That act incorporated all Indian lands as territory of the United States, and terminated the sovereignty of the tribes. The act, rather than nullifying the power of the President to make treaties with the tribes, as the Senator asserts, in fact terminated the capacity of the tribes to enter into treaties.

In the case of *Holden* v. *Joy* 84 U.S. 211 (1872) the Supreme Court states:

> . . . it is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to grantee a good title to such lands without an act of Congress conferring it.

This language obviously speaks precisely to the point at issue here. The Senator from Utah stated that this case is a precedent directly contrary to the committees position. I admire the Senator's tenacity in persevering despite such an unambiguous and dispositive statement by Supreme Court, but I must respectfully question his legal analysis.

The Senator states that the treaty at issue in Holden against Joy was authorized by prior act of Congress. This is flatly incorrect, as the Court noted at page 240 of its opinion:

> Attempt is made in argument to show that the . . . treaty was negotiated by force of the act of Congress, *but it is clear that the proposition cannot be sustained*. 80 U.S. at 240.

The Senator argues that the treaty in question did not involve a transfer of lands of the United States. Again, he is entirely mistaken. In the passage quoted above, the Court states the issue as whether the President and the Senate could "lawfully covenant that a patent should be issued to convey lands which belonged to the United States."

The Senator from Utah has made an equally tenacious and equally futile attempt to explain away the holding of *Jones* v. *Meehan*, 175 U.S. 1 (1899), where the Court states:

> The title to the strip of land in controversy having been granted *by the United States* to the elder chief *by the treaty itself* and having descended, upon his death . . . to his eldest son passed by the lease . . . to the plaintiffs for the term of the lease.

The Senator contends that no property of the United States was granted by the treaty, asserting that the Court's holding was based on a ruling of Attorney General Taney that such treaties passed no title from the United States. In fact, the Court explicitly rejected defendant's reliance on Taney's position, which was based on an earlier treaty, and reached the opposite conclusion (175 U.S. at 12). The plain words of its holding indicate that property of the United States was transferred. It is difficult to understand how the Senator from Utah can assert the contrary.

The Senator's frantic and unsuccessful attempts to distinguish cases approving the validity of the transfer of property by self-executing treaty, while unpersuasive, are understandable in view of his admission that, as the committee report notes:

> The Court has never struck down a treaty for disposing of government property.

The Senator explains this total lack of authority by informing us that no self-executing treaty has ever transferred property to a foreign state. If the Senator's position is based on this misapprehension, perhaps he and I can yet resolve our differences. There have been numerous self-executing treaties which ceded to foreign governments, including Panama, property or territory of the United States.

PRIOR TREATY PRACTICE

I have previously discussed Senator HATCH's contorted reading of the Indian treaties involved in *Holden* v. *Joy* and *Jones* v. *Meehan*. Try as he may, he is unable to avoid the plain holding of these cases on two points. The treaties at issue: First, conveyed land to which the United States had title, despite the fact that they also served to cede Indian land to the United States; and second, were self-executing and were not concluded pursuant to prior congressional authorization.

In addition to these Indian treaties, a number of self-executing treaties with foreign nations have ceded property of the United States.

The treaty with Spain of 1819 ceded the Floridas to the United States in exchange for a cession by the United States of its rights and claims to Texas. Article 3 of the treaty is specific:

> The United States hereby *cede* to His Catholic Majesty, all their rights, claims and pretensions to the Territories lying West and South of the above described line.

Congress acted twice to authorize the President to take possession of Florida upon surrender of its claim by Spain. Contrary to the Senator's assertion, nothing in the legislation contained an authorization of the cession of the claims to Texas. That cession was entirely self-executing.

The Senator is wholly inaccurate in characterizing the cession of claims to Texas as "at best the settlement of a boundary dispute." The debates in the House of Representatives show that many Members believed that the treaty indefensibly relinquished a valid right to sovereignty over Texas. President Monroe, in his Annual Message of December 7, 1819, characterized it in that fashion:

> For territory ceded by Spain other territory of great value, to which our claim was believed to be well founded, was ceded by the United States.

The treaties with Great Britain of 1842 and 1846 involved the relinquishment of claims to vast territories. These claims were considered to be very strong, as President Tyler said in his Message of August 11, 1842 (4 Richardson, Messages of the Presidents, 163).

> Both the United States and the States more immediately concerned have entertained no doubt of the validity of American title to all the territory which has been in dispute.

The Supreme Court expressly construed the treaty of 1842 as a cession in *Fort Leavenworth R.R. Co.* v. *Lowe*, 114 U.S. 525 at 541 (1855). The fact that the territory in question was subject to dispute is inconsequential. Nothing in article IV distinguishes between the disposition of disputed and undisputed territory.

THE MEXICAN TREATIES OF 1933, 1963, AND 1970

The Senator from Utah vainly attempts to distinguish these precedents by two irrelevant assertions: First, that the territory ceded to Mexico included land held under private title; and that second, Congress subsequently appropriated money to acquire title from these private owners. The Senator cannot contest the fact that these treaties ceded to Mexico territory of the United States, that is, territory over which the United States had sovereignty. This is clearly a disposal of territory within the meaning of article IV.

It was necessary for Congress to appropriate funds required to acquire the title of private holders whose property was within the territory transferred by the treaty. The transfer of territorial sovereignty was not implemented by legislation, however. This is established conclusively by the fact that each treaty entered into force prior to the passage of any legislation.

The Senator from Utah does not dispute that article IV of the Honduras Treaty of 1971 transferred property without congressional authorization. The treaty is unequivocal. Article IV provides:

> The Government of the United States of America transfers to the Government of Honduras as of the date this Treaty enters into force all land, buildings, equipment and other

real and personal property in the Swan Islands to which it holds title, except as agreed pursuant to Article II of this Treaty.

The Senator casts doubt upon this precedent by pointing out that the value of the property transferred was small and that the transfer was not opposed in the Senate. I am at a loss to understand what constitutional significance the Senator ascribes to these facts. The treaty was clearly self-executing. It clearly transferred property of the United States.

The Senator from Utah has understandable difficulty in attempting to distinguish the clear precedent presented by the Japanese Treaty of 1972. The Senator admits, as he must, that substantial property of the United States was transferred. Article 6 of the treaty transferred both real and personal property of the United States to Japan. Under article 3 of the treaty, the United States relinquished its jurisdictional and governmental rights over the islands, which were of indefinite duration.

Conceding that property was transferred, the Senator from Utah feebly suggests that it may have been authorized by prior statute. This suggestion is groundless. The treaty, by its terms, is self-executing. It was so regarded by both the Senate and the President.

The Senator notes that Japan retained residual sovereignty over the islands. This fact is of no importance, since, under the 1903 treaty, Panama also retained residual sovereignty over the Canal Zone.

The Senator from Utah's analysis of prior treaty practice with Panama has been discussed earlier. It is highly selective and ignores transfers by self-executing treaties in 1936 and 1950. His suggestion that self-implementing transfers accomplished in articles VI and VII of the 1955 treaty were in fact implemented by legislation is simply wrong. Section 102(b) of the act implementing the treaty clearly differentiated between property to be transferred pursuant to article V and the property which had already been conveyed by operation of article VI and VII of the treaty.

Throughout his remarks, the Senator from Utah has tried to support his case by attacking the report of the committee, rather than by citing applicable authorities in support of his position. I regret that he has chosen to conduct the debate on this level. Upon examination, the statements made in the report of the Committee on Foreign Relations, and the legal basis on which this treaty has been drafted, have been shown to be well founded. The attacks made on them by the Senator from Utah simply do not hold up.

First, the argument that the disposal power of the Congress is exclusive of the treatymaking power is without legal basis. By proving that the disposal power may not be exercised by the States or the President alone, the Senator proves nothing. None of the cases cited by the Senator deals with disposal by the President by and with the advice and consent of the Senate, that is, by means of a treaty. And that is what we are talking about.

Second, numerous cases hold clearly that the legislative power of Congress and the treatymaking power are normally concurrent powers. No attempt has been made to rebut these cases.

Third, four Supreme Court decisions support the view that article IV, section 3, clause 2 constitutes no limitation on the treatymaking power. The Senator fails to distinguish these cases. The only case advanced by the Senator, the Sioux Indian case, deals with Executive power and expressly recognizes that valid disposals of territory to Indian tribes can be made by treaty or by statute. There is no case which holds that U.S. territory or property cannot be disposed of by the treaty power.

(Mr. ZORINSKY assumed the chair.)

Mr. CHURCH. Fourth, 14 treaties concluded by the United States have transferred territory or property of the United States without the need of legislation to authorize the transfer. These treaties were self-executing. The courts have declared unequivocally that this practice is consistent with the constitution.

And finally, the best legal minds in the country express no doubt that the treaty power and the legislative power are concurrent when it comes to the power to transfer U.S. territory or property. The leading authorities on constitutional law and outstanding international law experts are all but unanimous in this view.

What we are talking about here is the treaty power, the President and the Senate acting together. It is a power that has worked well for nearly 200 years. It is a power which the framers deliberately chose not to vest in the House. The Senator from Utah maintains, nonetheless, that the Senate's prerogative must be shared by the House. This challenge to the constitutional role of the Senate must be turned back.

I urge the Senate to reject the amendment now before it.

Mr. President, I yield the remainder of my time to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Idaho (Mr. CHURCH), I am not sure I will need the remainder of the time but I appreciate his generosity.

Mr. President, pending before the Senate is an amendment which would forbid the entry into force of the Panama Canal Treaty—even if duly ratified and promulgated—until action is taken by the House of Representatives and Senate acting together to authorize the transfer of property in the Canal Zone.

A serious issue has been raised here. Supporters of this amendment contend that the Senate, in debating and acting upon the Panama Canal Treaty is, in effect, going through an empty exercise. It is contended that the treatymaking clause of our Constitution, found in article II, does not grant sufficient power to the Senate and President to enter into the treaty before us.

Article II, section 2, clause 2, says that the President—

Shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur. . . .

There is no ambiguity whatsoever about this provision, which is located, as one would expect it to be, in that article of the Constitution which enumerates, defines, and limits the powers of the executive department of our three-branch government. It is found there because the field of foreign affairs is one which is inherently and peculiarly within the province of the executive branch. That power, that authority in the field of foreign relations is a necessary one because the United States, as a sovereign nation and a greater power, must speak with one voice abroad, although at home we may have our differences as to what should be said.

As Mr. Justice Field stated in *Geofroy* v. *Riggs* (133 U.S. 258 at 267 (1890)):

The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument. . . .

Article II limits the treatymaking power of the President by making it conditional upon the consent of two-thirds of the Senate. This restraint is part of the careful system of checks and balances which marks the genius of our government.

No one could feel more strongly than I do that it is the duty and the responsibility of Congress to represent the people in the field of foreign affairs. I share the concern of those observers who have noted the concentration of power in the executive branch at different periods of our history.

The way to rectify this imbalance, however, is not to devise novel constitutional theories for asserting the role of the legislative branch. The Constitution itself provides the mechanism for restraint upon the executive branch in the field of foreign affairs, as well as in the field of domestic affairs. It clearly and specifically selects the Senate—and the Senate alone—as the proper legislative body to review and restrain Presidential agreements with foreign powers.

This is not the only restraint which the Constitution places upon the treaty power. Certain legislative prerogatives of Congress as a whole are, without a doubt, exclusive to Congress, and cannot be shared. Thus, "no money shall be drawn from the Treasury, but in consequence of appropriations made by law." And, "all bills for raising revenue shall originate in the House of Representatives." These legislative powers are, by their terms, mandatory and exclusive. The Constitution has made them so. Therefore, treaties may neither impose taxes nor directly appropriate funds.

The so-called property clause of article IV, section 3, clause 2, which states that "The Congress shall have power to dispose of * * * property belonging to the United States" contains no language which excludes concurrent jurisdiction of the treaty power. It can be distinguished, on its face, from exclusive grants of legislative power such as the power to tax, which is an exclusive grant of legislative power; or to draw funds from the Treasury, which is an exclusive grant of legislative power.

I find this construction to be compelling. As noted by Prof. Raoul Berger,

a distinguished scholar who does not share my view of the concurrent nature of the treaty power over disposal of U.S. property and I quote from a memorandum of February 1978 from Professor Berger to Senator CLARK:

The starting point of analysis must be the Constitution itself, not what others have said about it.

Mr. President, this is wise counsel. The place to start is with the Constitution. We must look to the document itself, and presume that each part is consistent with all the other parts, until and unless it is shown beyond all reasonable doubt that an exception is to be inferred, or that one clause limits or invalidates another.

By reading article II and article IV as consistent and concurrent grants of authority—on the one hand, to the President and Senate, on the other, to Congress acting as a whole—we maintain the integrity of both provisions. This should always be our goal, for I very much doubt that we can improve upon the design of the Founding Fathers.

Records available from the debates of the Constitutional Convention, as both Senator SARBANES and Senator CHURCH have accurately shown, lend great weight to this view. First of all, we know that article IV, which grants to Congress the power to dispose of U.S. property or territory, was adopted before the treaty-making clause of article II. The drafting history of the property clause shows no indication of any intent to restrict the scope of the treaty power, and no understanding on the part of the drafters—who went on to debate and adopt article II—that it was a limit on the treaty power.

Thus, during the discussion of the treaty power, the initial debate occurred on whether a majority of the Senate, or more, would be required to consent to treaties. Subsequent to the adoption of the two-thirds rule, the Convention adopted a motion by Mr. Madison which excepted treaties of peace from the two-thirds rule. An amendment was later proposed by Mr. Williamson and Mr. Spaight which would have reestablished the two-thirds rule for a treaty of peace "affecting territorial rights."

Finally, the original provision requiring a two-thirds vote for all treaties was restored.

If—as some would contend—the members of the Convention clearly understood and intended that article IV, which had already been adopted, pre-empted the treaty power with respect to disposition of property and territory, these suggestions never would have been made. Rather, it seems clear that when the Convention came to discuss and adopt the treaty clause, there was a continuing concern on the part of some Members on the very proposition that treaties could transfer property or territory.

Historical practice since the adoption of the Constitution points toward general acceptance of the concurrent power theory. The thesis advanced by proponents of the pending amendment—namely, that the treaty power is limited by legislative powers granted to Congress elsewhere in the Constitution, and specifically by article IV, section 3, clause 2 with respect to the disposition of property—has long been discarded, long ago been discarded. It was first debated in the Senate in 1795, when the Jay Treaty was before this body. Among the objections raised by the treaty was that it regulated commerce; that the power to regulate commerce was vested in the Congress, and that Congress had not been consulted. Who today would seriously argue that treaties requiring only the consent of the Senate may not regulate commerce between this country and other nations—and yet that is the proposition which the doctrine of exclusive legislative jurisdiction would lead us to adopt.

Now, one of the proponents of that theory, which is a constitutional anachronism, and which the proponents of the treaty here today are attempting to resuscitate and to revive, was Thomas Jefferson. But Jefferson's view was strongly resisted by no less a constitutional authority than John Marshall, later to be Secretary of State, later to be Chief Justice of the Supreme Court. According to Marshall, and I quote therefrom:

Marshall's opinion was that a "treaty is as completely a valid and obligatory contract when negotiated by a President and ratified by him, with the assent and advice of the Senate, as if sanctioned by the House of Representatives also, under a constitution requiring such sanction"; and he admitted only that the powers of the House in reference to a treaty were limited to granting or refusing appropriations to carry it into effect.

Marshall's view has long been well accepted—in practice, and in the eyes of eminent constitutional scholars. In his "Commentaries on the Constitution of the United States," Chief Justice Story noted that—

The power to make treaties is by the Constitution general: and of course it embraces all sorts of treaties, for peace or war; for commerce or territory, for alliance or succours; . . . and for any other purposes, which the policy or interests of independent sovereigns may dictate in their intercourse with each other.

So, Mr. President, each of these great men found explicit exceptions to the treaty power—such as the power to appropriate funds—and, while they did not always agree on what those exceptions were, they did agree that the simple grant of legislative power to Congress over a subject matter—such as commerce, or navigation, or disposition of property, or regulation of territories—did not exclude concurrent jurisdiction over the same subject matter by virtue of the treatymaking power. Such a view would, surely, have reduced the treaty power to a nullity, rendering the U.S. Government ineffectual in its dealings with foreign nations.

Perhaps the finest exposition of this view is that of John C. Calhoun, speaking as a Congressman some 25 years before he became Secretary of State:

The grant of power to make treaties is couched in the most general terms. . . . This country is divided into many distinct sovereignties. Exact enumeration here is necessary to prevent the most dangerous consequences. The enumeration of legislative powers in the Constitution has relation then, not to the treaty-power, but to the powers of the State. In our relation to the rest of the world the case is reversed. Here the States disappear. Divided within, we present the exterior of undivided sovereignty. The wisdom of the Constitution appears conspicuous. . . . Whatever, then, concerns our foreign relations.

Let me repeat what John C. Calhoun said at that point:

Whatever, then, concerns our foreign relations; whatever requires the consent of another nation, belongs to the treaty power; can only be regulated by it; and it is competent to regulate all such subjects; provided, and here are its true limits, such regulations are not inconsistent with the Constitution.

Calhoun noted here that a treaty could not alter our form of government, nor do what the Constitution expressly forbids, or "do that differently which is directed to be done in a given mode, and all other modes prohibited." As an example, he cites the mandatory and exclusive language of the Constitution regarding appropriation of funds.

Mr. THURMOND. Mr. President, I wonder if the distinguished Senator will yield?

Mr. ROBERT C. BYRD. Not at this point. I have not interrupted the statements of the opponents of the treaties, and I would prefer not to be interrupted at this point. I will be glad to yield later if I have time remaining.

Calhoun's explanation is incisive, complete, reasoned. It is more extensive than I quote here, and is to be found in volume 29 of the Annals of Congress of 1816, on page 530. Calhoun, while defending a broad interpretation of the treaty power—both in terms of the constitutional language, and in terms of practical necessity—finds limits upon that power. These are the limits found in the Constitution itself—express prohibitions, and directions to do a thing in a particular manner which manner also prohibits all other manners of achieving the same end. This is not the case with the disposition of property clause. where the exercise of such power is granted concurrently to the Congress, as well as to the President and Senate.

Mr. President, it would be a constitutional anachronism if the Senate were to decide that its constitutional authority to advise and consent to treaties pursuant to article II is insufficient to transfer U.S. property in the Canal Zone. I would even say that this would be an abject surrender by the Senate to a constitutional anachronism if we were to so decide.

I submit that not a single authoritative case, not a single holding of a higher Federal court, can be found to the contrary. At least I have not been able to find one.

Mr. President, I oppose the Hatch amendment because I believe that, with all due respect to the authors and the supporters of that amendment, it represents a misunderstanding of our Constitution.

We have heard it said that rejection of this amendment would create a precedent. To the contrary; its adoption would set a precedent—a precedent which would gravely impair the ability of the executive branch to conduct foreign affairs. Its adoption would undermine the constitutional authority of the Senate in

its treaty-making capacity. Its adoption would upset the system of checks and balances of our Government, because it stands for the proposition that, wherever the Congress may legislate, the President and Senate can not act by treaty. The adoption of this amendment would not strengthen, but weaken, the separation of powers doctrine—which is not an abstract theory, but a practical, working system which places certain responsibilities, derived directly from the Constitution, the organic document upon which this Republic rests, squarely on the shoulders of the U.S. Senate. Its adoption would inject the entire Congress into the treatymaking process—a result which, I submit, would not strengthen but would weaken the legislative branch in its control over international agreements.

Mr. President, our ship of state was set sail by men of great wisdom and vision. A mere puff of wind is no sound reason for charting a new course. By this token, a single emotional issue must not be allowed to overshadow a fundamental constitutional concept.

For the plain truth is this: History has already judged the argument put forth by this amendment, and history has found it lacking in merit. History's verdict was a sound verdict and a wise one.

As the debate has shown, there is no case or decision that can provide historical or judicial backbone to the amendment before us today.

In fact, the adoption of this amendment would indeed set a precedent which would gravely impair the ability of the executive branch to conduct foreign affairs. And, while it would chip away at the President's constitutional domain, it would also peel the bark from the Senate's own treatymaking capacity.

I do not believe the Senate wishes to surrender its historic rights and prerogatives, its responsibilities and duties. If we did so we would only weaken the basic framework of the institution we have been asked to serve.

In the course of history, if this amendment were to be adopted, the "yeas and nays" on the Panama Canal treaties—in my opinion—would deserve only a footnote. Only a footnote. The greater implication—and the dangerous one—would be our attempt to rewrite the Constitution.

I understand that 235 Members of the other body have petitioned the Senate to the effect that the House seeks a voice in a particular aspect of this treatymaking process. Well, Mr. President, it is a no-lose proposition to sign such a petition; but it is a no-win proposition to have to show down on these treaties. I talked with a Member of the House this morning who said, "I would be sick, it would make me sick if the amendment before the Senate were to be adopted."

The separation of powers doctrine is not an abstract theory, but a practical, proven, working system. As an anchor of our Constitution, it places certain responsibilities squarely on the shoulders of the U.S. Senate.

I do not believe that the Senate—on this day, or any day—will surrender this constitutional authority or abdicate our responsibility under the Constitution.

Mr. President, this amendment should be defeated. It would do grievous harm to these treaties, to the Constitution, and to the Senate of the United States, which we all serve.

Mr. President, the current president of the American Society of International Law, and eight past presidents of the society, have examined some of the major legal questions related to the Panama Canal treaties.

Among the issues considered by this distinguished group of international lawyers and professors of international law is the question of the constitutionality of the disposition of U.S. property interests by treaty.

These legal authorities have concluded that the President and the Senate have full power to dispose of U.S. property interests in the Canal Zone by treaty.

This viewpoint is the same as that of a group of 15 eminent legal scholars who addressed a letter to the Congress on this subject and concluded that the Constitution "unequivocally permits transfer by treaty of property belonging to the United States."

That letter was printed in the CONGRESSIONAL RECORD of March 23.

Now, to further support that position, we have a statement from this group of leading authorities on international law. They are in complete agreement: The President and the Senate have full power to dispose of U.S. property interests in the Canal Zone by treaty.

This statement was signed by Walter Sterling Surrey, who is the current president of the American Society of International Law, and by eight of his predecessors, acting in their individual capacities.

Mr. President, I believe that this statement, along with the earlier letter from the group of 15 leading legal scholars, provides strong and significant support for the sound institutional basis upon which we are proceeding—if the treaties are consented to by the requisite two-thirds of those Senators present and voting, as provided under article IV, section 3, the treaties will, of their own force, accomplish the transfer of property to Panama.

Mr. President, I ask unanimous consent that the statement and the list of distinguished signatories be printed in the RECORD.

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

SURREY, KARASIK AND MORSE,
Washington, D.C., March 27, 1978.

Hon. ROBERT C. BYRD,
U.S. Senate, The Capitol,
Washington, D.C.

DEAR SENATOR BYRD: I am transmitting herewith the text of a Statement on legal aspects of the Panama Canal Treaties along with a list of past Presidents of the American Society of International Law who have joined me in signing the Statement. The signatories have signed in their individual capacities and not as representatives of the Society or the organizations with which they are currently affiliated.

You may release the Statement to the public in whole or in part as you see fit. Since the issue of the constitutionality of the disposition of U.S. property interests by treaty alone is involved in the current debate, I have excerpted on a separate page the signatories' conclusions on that matter.

Yours sincerely,

WALTER STERLING SURREY.

PANAMA CANAL STATEMENT SIGNATORIES

Present and Past Presidents of the American Society of International Law (Years of Office in Parenthesis) Signing in Their Individual Capacities:

Walter Sterling Surrey, Washington, D.C. (1976–date);

Professor R. R. Baxter, Harvard University Law School (1974–76);

William D. Rogers, Washington, D.C., (1972–74);

Professor Oscar Schachter, Columbia University Law School (1968–70);

John R. Stevenson, New York City (1966–68);

Professor Brunson MacChesney,* Northwestern University Law School (1964–66);

James N. Hyde, New York City (1963–64);

Arthur H. Dean, New York City (1961–62);

Judge Philip C. Jessup, International Court of Justice, retired (1954–55).

(Institutional affiliations shown for purposes of identification only)

STATEMENT

In the national debate concerning ratification of the Panama Canal Treaties, a series of essentially legal questions have arisen with respect to the terms of the proposed Treaties. The authors of this statement, a present and former Presidents of the American Society of International Law and professors of international law, acting in their individual capacities, believe these questions should be objectively addressed.

Under the Panama Canal Treaty, which will be in force until the year 2000, the United States will have the right to protect and defend the Canal from an armed attack or other actions which threaten its security, as well as the right to station, train, and move military forces within the Republic of Panama. Furthermore, since the United States will be charged with the primary responsibility to protect and defend the Canal, it will have unilateral power to decide what constitutes a threat to the security of the Canal requiring action.

Under the Neutrality Treaty, after the year 2000, United States rights to protect the Canal and its neutrality derive from Article IV which declares that the United States and Panama "agree to maintain the regime of neutrality established in the Treaty . . ." Some critics of the Treaties have expressed the view that this language does not adequately and unequivocally state United States rights to protect and defend the Canal. On October 14, 1977, following a meeting between President Carter and President Torrijos, both heads of government released a Statement of Understanding [the "Understanding"] addressing this issue.[1]

The language of the Understanding clearly affirms the right of each of the two countries to "defend the Canal against any threat

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* Signed prior to his recent untimely death.

[1] The Statement of Understanding also dealt with the last sentence of Article VI(1) of the Neutrality Treaty providing that United States and Panamanian vessels of War and auxiliary vessels "will be entitled to transit the Canal expeditiously." The Understanding confirms that this language gives such vessels the right to pass through the Canal "as quickly as possible, without any impediment, with expedited treatment, and in the case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly." All discussion in this statement of the legal effect of the Statement of Understanding applies equally to this Treaty provision.

to the regime of neutrality," which entails "the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal." This language makes clear the United States unilateral right to act. The legal effect of this clarification could derive from an independent legal significance of the Understanding or, as now appears likely, from Senate action incorporating the language of the Understanding as amendments to Articles IV and VI of the Treaty.

Ambassador Linowitz stated at a White House briefing on October 14, 1977, when the Understanding was released, that "there has never been any misunderstanding between President Carter and General Torrijos as to the exact meaning of the language of the Treaties." The Understanding is a "statement which says this is what we [Presidents Carter and Torrijos] have both understood the treaties to mean . . ." Since both signatories issued the same Understanding, it constitutes a reaffirmance of the parties' intent.

This conclusion may be tested by examining the language of the Treaty itself. The United States and Panama have undertaken a joint obligation to maintain the regime of neutrality in the Treaty. At the same time only Panama shall "maintain military forces, defense sites and military installations" within Panama. Although some argue that this latter language means that the United States could never send troops to Panama, this reading is patently inconsistent with the joint obligations of the parties to preserve the neutrality of the Canal. In fact, the use of the verb "maintain" in Article V indicates that while United States forces are not to remain permanently in Panama, should they be needed to protect the Canal from armed attack or other threat they will have an unquestionable right to enter the country to fulfill Treaty duties.[2] This intent was merely confirmed in the Understanding provision that "any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

The Understanding issued by President Carter and General Torrijos is, in our judgment, a legally authoritative statement by the heads of government of the United States and Panama setting forth each party's confirmation of their intent as reflected in Articles IV and VI of the Neutrality Treaty. Under general principles of treaty law, the Understanding would be used by governments and by national and international tribunals in establishing the legally binding undertakings of the two nations.

Several other important legal questions have been raised about the Treaties. Each of these deserves succinct consideration.

1. Will the United States relinquish its sovereignty with respect to the Panama Canal Zone? Under the terms of the 1903 Treaty, the United States never acquired full and unqualified sovereignty over the Canal Zone. Titular sovereignty remained with Panama, and the United States merely obtained the right to act in the Canal Zone "as if" the United States were sovereign. Thus, never having acquired sovereignty over the Zone, the United States does not cede sovereignty to Panama.

2 Are the rights of the United States to protect the Canal and its neutrality limited by the United Nations Charter, the Charter of the Organization of American States, or the Inter-American Treaty of Reciprocal Assistance? None of these documents limits the United States right set down in the Treaties to use force to protect the Canal. The limitations they impose concern the purpose of such action and are designed to insure the territorial integrity and political independence of Panama against the threat or use of force, occupation or intervention. In other words, the United States could not detach any territory from Panama, or alter its government, and the long-term presence of United States forces could only be justified as a proportionate response to a continuing threat to the Canal.

3 What is the impact of the War Powers Resolution on Article IV of the proposed Neutrality Treaty with Panama, whereby the United States and Panama agree to maintain the regime of neutrality for the Canal? Since the language of the Understanding confirms that under Article IV the two countries shall act "in accordance with their respective constitutional processes," the War Powers Resolution will, therefore, as long as it is law, govern any United States action under Article IV. It follows that the determination of which provision of the War Powers Resolution will govern in a particular situation will depend on the specific nature of any future threat to the neutrality of the Canal.

4. Do the proposed Panama Canal Treaties provide adequate safeguards for the users of the Canal, including those from the United States, as to tolls and other matters? A comparison of user safeguards in the 1903 Treaty and those embodied in the Neutrality Treaty reveals not only that no significant user safeguard is withdrawn by the Neutrality Treaty but that in certain important aspects the interests of users are more fully protected under the proposed Treaty than they have been under its predecessor. These include guarantees that the Canal will remain secure and open, that rules and regulations be "just, equitable, *and reasonable*," and that tolls be "just, *reasonable*, equitable, and *consistent with the principles of international law*" (new protections italicized).

5. May the United States dispose of property interests belonging to the United States in the Canal Zone by treaty alone or does such disposal require legislation to authorize the transfer? The Constitution grants the President the power to make treaties by and with the advice and consent of the Senate, and these treaties become the supreme law of the land. The Constitution also empowers the Congress to dispose of property belonging to the United States. Nothing in the language of the two clauses limits the treaty power with respect to dispositions of property. Nor is the Congressional power to dispose of property exclusive. The propety clause, like most of the Article I clauses granting legislative powers, provides that "Congress shall have the power," without any qualification indicating exclusiveness against the treaty power. Furthermore, it is a well-settled rule that the treaty power extends to all areas within the legislative authority of Congress that are not expressly reserved by the Constitution to the exclusive jurisdiction of Congress. Substantial case law, the drafting history of the Constitution and the practice of several states support this proposition. Thus, the President and the Senate have full power to dispose of U.S. property interests in the Canal Zone by treaty without authorizing legislation.

The PRESIDING OFFICER. The Senator from Utah has 3½ minutes.

Mr. HATCH. Mr. President, I yield 1½ minutes of my time to the Senator from South Carolina to ask questions of the majority leader, and the final 2 minutes to the Senator from Massachusetts (Mr. BROOKE).

Mr. THURMOND. Mr. President, on March 4, 1975, I introduced Senate Resolution 97, with reference to which my question occurs.

The last paragraph of that resolution urges that—

> There be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

I realize that a man has a right to change his mind, but the distinguished and able Senator from West Virginia, the majority leader, was a cosponsor of that resolution. I just wonder what has caused him to change his mind since that time.

Mr. ROBERT C. BYRD. I am glad the Senator asked me that question. I welcome the opportunity to get my answer on record again. That same question was asked me a few days ago, and I am sorry the Senator was not here when I answered it.

I am delighted to say that I believe that at some point a wise man may change his mind. Or may not change it, but he at least keeps his mind open to new facts on which to base a considered judgment.

When I cosponsored that resolution, there were no treaties before this body. They were being negotiated. Today the treaties are before the Senate; there is a detailed report from the Committee on Foreign Relations; there is testimony from the Joint Chiefs of Staff supporting the treaties; there is testimony of other responsible people in this administration who have the duty of planning for the security interests of this country; and former president Gerald Ford supports the treaties

The PRESIDING OFFICER (Mrs. HUMPHREY). The Senator's time has expired.

Mr. ROBERT C. BYRD. Madam President, I ask unanimous consent that the Senator from Utah have 2 additional minutes.

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

Mr. ROBERT C. BYRD. Madam President, I have the facts which are contained in these reports, in the testimony, which I did not have in 1975.

Mr. THURMOND. Madam President, the time the Senator is using is not coming out of this side, is it?

Mr. ROBERT C. BYRD. Madam President, I am answering the Senator's question.

I have the advantage, now, of current events, of the events that have transpired since I signed that resolution.

Madam President, the Supreme Court of the United States changes its position on constitutional issues. It rethinks, it reconsiders, it reverses itself. Why should not a Member of the U.S. Senate have the same right? Why should that right not be recognized and respected here—the same right to change one's mind? With additional facts, with the treaties now before us, and with the testimony reflecting the judgments of the Joint Chiefs of Staff, I think that every Senator should retain an open mind, reeval-

[2] The presence of forces any longer than appropriate for that purpose or for any other purpose would violate Article 2(4) of the United Nations Charter and Article 18 of the Charter of the Organization itself which actually incorporates the language of both Articles.

uate the case, reassess it. All those who were signatories of the 1975 resolution should reassess and reevaluate. They might come to the same conclusion that they did then. But this Senator reached a different conclusion—I feel for good and sufficient reason. I am delighted to answer the question.

Mr. THURMOND. Madam President, I can understand why a man has a right to change his mind, and he certainly does, but the facts which concern the Panama Canal are no different today than in 1975. Conditions in Panama have not changed. Especially the constitutional question raised by this amendment has not changed. Thirty-six Senators joined with me on that resolution, not only the able majority leader but others in this body today. Mr. President, I ask unanimous consent that this Senate Resolution No. 97 be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. The time of the Senator has expired.

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

S. RES. 97

Whereas United States diplomatic representatives are presently engaged in negotiations with representatives of the de facto Revolutionary Government of Panama, under the declared purpose to surrender to Panama, now or on some future date, United States sovereign rights and treaty obligations, as defined below, to maintain, operate, protect, and otherwise govern the United States-owned canal and its protective frame of the Canal Zone, herein designated as the "canal" and the "zone", respectively, situated within the Isthmus of Panama; and

Whereas title to and ownership of the Canal Zone, under the right "in perpetuity" to exercise sovereign control thereof, were vested absolutely in the United States and recognized to have been so vested in certain solemnly ratified treaties by the United States with Great Britain, Panama, and Colombia, to wit:

(1) The Hay-Pauncefote Treaty of 1901 between the United States and Great Britain, under which the United States adopted the principles of the Convention of Constantinople of 1888 as the rules for operation, regulation, and management of the canal; and

(2) The Hay-Bunau-Varilla Treaty of 1903 between the Republic of Panama and the United States, by the terms of which the Republic of Panama granted full sovereign rights, power, and authority in perpetuity to the United States over the zone for the construction, maintenance, operation, sanitation, and protection of the canal to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority; and

(3) The Thomson-Urrutia Treaty of April 6, 1914, proclaimed March 30, 1922, between the Republic of Colombia and the United States, under which the Republic of Colombia recognized that the title to the canal and the Panama Railroad is vested "entirely and absolutely" in the United States, which treaty granted important rights in the use of the canal and railroad to Colombia; and

Whereas the United States, in addition to having so acquired title to and ownership of the Canal Zone by constitutional means, purchased all privately owned land and property in the zone making it the most costly United States territorial possession; and

Whereas the United States since 1904 has continuously occupied and exercised sovereign control over the zone, constructed the canal, and, since 1914, for a period of sixty years, operated the canal in a highly efficient manner without interruption, under the terms of the above-mentioned treaties thereby honoring their obligations, at reasonable toll rates to the ships of all nations without discrimination; and

Whereas the long history of friendly and cooperative relations between the United States and the Republic of Panama are prone to deterioration by the dilution of any United States sovereignty or jurisdiction in the canal zone; and

Whereas from 1904 through June 30, 1974, the United States made a total investment in the canal; including defense, at a cost to the taxpayers of the United States if over $6,880,370,000; and

Whereas the investment of the United States in the canal includes the sacrifices of many thousands of United States citizens who have worked to construct the canal and keep it operating smoothly and efficiently for the last sixty years; and

Whereas Panama has, under the terms of the 1903 treaty and the 1936 and 1955 revisions thereof, been adequately compensated for the rights it granted to the United States, in such significantly beneficial manner that said compensation and correlated benefits have constituted a major portion of the economy of Panama giving it the highest per capita income in all of Central America; and

Whereas the canal is of vital and imperative importance to hemispheric defense and to the security of the United States and Panama; and

Whereas approximately 70 per centum of canal traffic either originates or terminates in United States ports, making the continued operation of the canal by the United States vital to its economy; and

Whereas the people of the United States, in various ways and means, have exhibited strong support for retention of full and undiluted jurisdiction over the canal and zone, and the Congress ought to insure the supremacy of the will of the people; and

Whereas the present negotiations under a February 7, 1974, statement of "principles of agreement" by United States Secretary of State Henry A. Kissinger and Panamanian Foreign Minister Juan A. Tack constitute a clear and present danger to the hemispheric security and the successful operation of the canal by the United States under its treaty obligations; and

Whereas the present treaty negotiations are being conducted by our diplomatic representatives under a cloak of unwarranted secrecy, thus withholding from our people and their representatives in Congress information vital to the security of the United States and its legitimate economic development; and

Whereas the United States House of Representatives, on February 2, 1960, adopted House Concurrent Resolution 459, Eighty-sixth Congress, reaffirming the sovereignty of the United States over the zone territory by the overwhelming vote of three hundred and eighty-two to twelve, thus demonstrating the firm determination of our people that the United States maintain its indispensable sovereignty and jurisdiction over the canal and the zone; and

Whereas under article IV, section 3, clause 2 of the United States Constitution, the power to dispose of territory or other property of the United States is specifically vested in the Congress, which includes the House of Representatives; and

Whereas the Congress of the United States is invested with constitutional responsibilities to provide for the common defense and general welfare of the United States, to regulate commerce with foreign nations, to raise and support armies and provide and maintain a Navy, to make all needful rules and regulations respecting the territory of the United States, and to make all laws necessary and proper for carrying into execution these and other powers, all of which denote that it is the solemn duty of Congress to safeguard the canal and zone: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the Government of the United States should maintain and protect its sovereign rights and jurisdiction over the canal and zone, and should in no way cede, dilute, forfeit, negotiate, or transfer any of these sovereign rights, power, authority, jurisdiction, territory, or property that are indispensably necessary for the protection and security of the United States and the entire Western Hemisphere; and

(2) there be no relinquishment or surrender of any presently vested United States sovereign right, power, or authority or property, tangible or intangible, except by treaty authorized by the Congress and duly ratified by the United States; and

(3) there be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

Mr. THURMOND. Senator GOLDWATER has been promised some time.

Mr. GOLDWATER. Madam President, I ask unanimous consent that my remarks appear at this point in the RECORD.

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

● Mr. GOLDWATER. Madam President, I will make only brief closing remarks before the vote in summary of what I said yesterday.

First, I would remind my friends from States with the largest populations that under the theory presented by our State Department 68 Senators representing 34 States containing 60 million citizens can dominate 32 Senators representing 16 States containing 140 million citizens.

If a treaty itself can do the same things as Congress, this means 31 percent of the Nation can overrule the position of 69 percent of the people, without any opportunity for an expression of popular will.

Unless the House of Representatives is allowed to exercise its share of the enumerated powers given to Congress, we may see a new system evolved in America under which the minority controls the majority. This would be totally alien to the design of the framers in establishing a representative government under popular rule.

What are the implications of the novel theory that a treaty can exercise the same powers vested in Congress? If the treaty power is concurrent with the powers of Congress, what end will there be to evasion of the House of Representatives, the body closest to the people?

Congress can declare war. Does this mean a treaty alone, perhaps in the form of a defense alliance, can put the Nation in a war without any separate vote in the whole Congress?

Congress has power to provide for currency. Does this mean a treaty alone can declare the German mark the currency of the United States? Remember, the administration is already seriously considering the issuance of Government bonds in a foreign denomination.

Congress has power to regulate commerce. Does this mean a treaty can embargo all exports of tobacco? Can the Department of HEW carry its antismoking campaign far enough to outlaw the export of tobacco through an international health treaty?

Congress has power to establish courts and make exceptions to the appellate jurisdiction of the Supreme Court. Does this mean a treaty alone can set up international courts with jurisdiction over our citizens, a court which is to be free of review by our Supreme Court?

If a treaty can exercise concurrent powers with Congress, all of these results, absurd now, might happen in the future.

Where is the line drawn? Where will there be an end to the use of treaties to invade the power given to the whole Congress?

The precedent we are asked to set in the Panama Canal Treaty will continue to haunt us through the years. Even if one or two precedents for the transfer of property by treaty may have occurred, they are not of the dimension of the Panama Canal.

And surely the State Department is not contending that a handful of claimed precedents can make valid what the Constitution makes invalid. It is the Constitution that is at issue, not precedents.

If the Constitution requires action by the whole Congress to carry out a treaty which agrees to transfer property, then one or two dubious precedents cannot change the Constitution. Those precedents are wrong and should not be followed again.

Madam President, the Constitution is clear. The spokesmen, who argued and voted for the Constitution in the several State conventions on adopting it, said over and over that treaties would be limited by the express powers granted to Congress.

If we will study history and see what the framers intended, instead of arguing from the viewpoint of what our State Department sees as the theory most suitable to carry out the foreign policy of a 20th century President, we will see beyond doubt that the Constitution has always required the passage of legislation by Congress to execute a treaty agreeing to transfer property belonging to the United States.

Madam president, I urge that we approve the pending amendment.●

Mr. HATCH. How much time remains to the proponent of the amendment?

The PRESIDING OFFICER. Two minutes remain.

Mr. HATCH. Will the Senator allow me to proceed for 1 minute?

Mr. ROBERT C. BYRD. I did not mean to prevent the Senator from taking his time.

The PRESIDING OFFICER. The Senator from Massachusetts has been yielded 2 minutes.

Mr. BROOKE. Madam President, perhaps this debate on the Hatch amendment has been the longest on any amendment on the Panama Canal Treaty. I shall seek to balance it by making one of the shortest statements.

Mr. President, the Senator from Utah has made a strong case for the proposition that any disposition of U.S. property stemming from the canal treaties should only occur after the House of Representatives as well as the Senate has consented to such an action.

Proponents of this treaty have also made a case for the opposite view although their case is weaker than that of the Senator from Utah.

I, therefore, intend to support the pending amendment and urge its adoption. Aside from the arguments offered in its favor which I find acceptable, I am even more compelled to vote in favor of it because of my strong belief that there should be no "short cuts" in the decisionmaking process related to the Panama Canal treaties. The benefit of the doubt on this matter should clearly be given to a strict adherence to procedures. And this means that the House of Representatives, as an equal partner with the Senate in legislative matters, should assume the responsibility I believe the Constitution places upon it regarding the disposition of U.S. property.

I have heard the arguments of the opponents of this amendment. They argue time after time that the United States in other treaties acted differently. But here we have clear title to the property. There has been no dispute about that whatsoever. So I distinguish this case in Panama from other cases that have been alluded to by the opponents.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BROOKE. Will the Senator yield a half minute?

Mr. HATCH. I ask unanimous consent that the Senator from Massachusetts be allowed to continue for a half minute.

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

Mr. BROOKE. There can be no doubt that the House wants to exercise responsibility regarding this matter and I believe the Senate would be wrong in denying it that opportunity by voting against the pending amendment.

I thank my distinguished colleague from Utah for having offered this amendment. I think it is a sound amendment and should be adopted.

● Mr. HELMS. Mr. President, while the pending amendment offered by the distinguished Senator from Utah has been described as a so-called killer amendment, the leadership might well ponder the fact that, if it is indeed, a killer amendment, it is not because of the approval of the amendment calling for a vote of the House of Representatives on the disposal of the Canal Zone.

In fact, the defeat of the Hatch amendment could very well be the killer action.

I wonder, Mr. President, if the able and distinguished majority leader, and the able and distinguished minority leader, and the able and distinguished floor manager of the Panama Canal Treaty, are aware of the actual feelings and convictions of some of the most important Members of the House of Representatives on this issue?

Have they taken into consideration exactly what will be the effect on those able and distinguished Members of the other body should the Senate in its wisdom—or lack of it—deliberately snub that body, and vote to deprive it of its constitutional prerogative in determining whether or not property and territory of the United States shall be disposed of to a foreign power?

On June 26, 1975, the House voted to approve what became known as the Snyder amendment—an amendment which added this language to the 1976 appropriations bill for the Departments of State, Justice, and Commerce, and the judiciary:

> None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone.

This amendment was softened later that year by a conference committee.

But, Mr. President, here is the point:

One of the major opponents of the Snyder amendment was a most distinguished Member of the House, the chairman of the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee, the Honorable RALPH METCALFE of Illinois.

Many Members of Congress remember him as the fastest man in the world in the 100- and 200-yard dash events—an Olympic champion. Mr. METCALFE favors the new Panama Canal treaties.

Well, today Mr. METCALFE—and others in the House who feel as he does—must be intently awaiting the outcome of our vote on the Hatch amendment.

Let us look at what he said on the floor of the House in opposition to the Snyder amendment on June 26, 1975:

> I raise the constitutional question and point out that the Constitution says the President shall have the right to make a treaty, and that the Senate will ratify it, and the House will then have its own appropriate action to take. This is not a sense of the House resolution. What we are, in fact, doing right now is trying to make policy, and this is not the proper place for it. It is not the proper time for it. I think we are unjustly interfering in the negotiations that are taking place, and it is going to impair our relationship with other nations . . . Not only that, we do have, as this body, a right to determine what land will be given away. That is our prerogative, if there is any questions raised.

Mr. President, that is not all.

The chairman of the Panama Canal Subcommittee in the House, Mr. METCALFE, made a major speech on the Panama Canal Treaty issue on May 19, 1977, in which he set forth his views in favor of the projected new treaties.

Again, however, he dwelt at some length on the matter of the disposal of United States property in the Canal Zone.

I quote the paragraph with which he closed his remarks on this particular matter:

> The House, then, through its committees, including the Committee on Merchant Marine and Fisheries, of which I am a member, and the Panama Canal Subcommittee which I chair, intends to guard the constitutional prerogatives of the Congress.

Mr. President, the chairman of the Merchant Marine and Fisheries Committee of the House, the Honorable JOHN MURPHY of New York, has in recent

months testified before two Senate bodies considering the new treaties on the constitutional issue of the disposal of U.S. property. He has taken the identical view which Mr. METCALFE represents.

Mr. President, the chairman of what is probably the key House committee that will have to consider and report out the legislation necessary to implement the new treaties, has told the Senate Committee on Foreign Relations and the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, that the House must vote on the disposition of the Canal Zone.

Has the leadership taken into consideration the fact that by seeking to deny the House a vote on such disposition, it may very well be forcing the other body to take a position refusing to pass any implementing legislation at all?

Is the leadership aware that the two Democratic chairmen I have spoken of are in a position to refuse to even report out any implementing legislation?

Is the leadership aware that a bill incorporating the State Department's draft legislation for implementing the treaties has already been referred to the Merchant Marine and Fisheries Committee of the House in a joint referral.

Mr. President, a vote against the Hatch amendment may very well result in the death of the Panama Canal Treaty and the neutrality.

I shall vote for it. I should hope that Senators who are protreaty will demonstrate they are also in favor of the U.S. Constitution.●

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. having arrived, the Senate will now proceed to a vote in relation to amendment No. 92 by the Senator from Utah.

Mr. CHURCH. Madam President, I move to lay the amendment on the table and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Idaho. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ZORINSKY (when his name was called). Madam President, I have a live pair with the Senator from Texas (Mr. BENTSEN). If he were present and voting, he would vote "aye." If I were permitted to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Hawaii (Mr. MATSUNAGA) are necessarily absent.

I further announce that the Senator from Texas (Mr. BENTSEN) and the Senator from Florida (Mr. CHILES) are absent on official business.

I further announce that, if present and voting, the Senator from Florida (Mr. CHILES) would vote "yea."

The result was announced—yeas 58, nays 37, as follows:

[Rollcall Vote No. 79 Ex.]

YEAS—58

Abourezk	Hart	Metzenbaum
Anderson	Haskell	Morgan
Baker	Hatfield, Mark O.	Moynihan
Bayh	Hathaway	Muskie
Bellmon	Hayakawa	Nelson
Biden	Hodges	Pearson
Bumpers	Hollings	Pell
Burdick	Huddleston	Percy
Byrd, Robert C.	Humphrey	Proxmire
Case	Inouye	Randolph
Chafee	Jackson	Ribicoff
Church	Javits	Riegle
Clark	Kennedy	Sarbanes
Cranston	Leahy	Sasser
Culver	Long	Sparkman
Danforth	Magnuson	Stafford
Durkin	Mathias	Stevenson
Eagleton	McGovern	Weicker
Ford	McIntyre	Williams
Glenn		

NAYS—37

Allen	Griffin	Packwood
Bartlett	Hansen	Roth
Brooke	Hatch	Schmitt
Byrd, Harry F., Jr.	Hatfield, Paul G.	Schweiker
Cannon	Heinz	Scott
Curtis	Helms	Stennis
DeConcini	Johnston	Stevens
Dole	Laxalt	Stone
Domenici	Lugar	Talmadge
Eastland	McClure	Thurmond
Garn	Melcher	Tower
Goldwater	Nunn	Wallop
		Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Zorinsky, against.

NOT VOTING—4

Bentsen	Gravel
Chiles	Matsunaga

So the motion to lay amendment No. 92 on the table was agreed to.

Mr. SARBANES. Madam President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 91

The PRESIDING OFFICER. The question now recurs on the amendment by the Senator from Alabama (Mr. ALLEN), No. 91, which the clerk will state.

The second assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself, Mr. Hatch and Mr. Helms, proposes an amendment numbered 91:

At the end of Article I, section 3, strike the period and insert a semicolon and insert the following: *"Provided, however,* That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.".

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Madam President, first, I ask unanimous consent that the name of the distinguished senior Senator from South Carolina (Mr. THURMOND) be added as a cosponsor to this amendment.

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

Mr. ALLEN. Madam President, this amendment pending before the Senate was laid aside by unanimous consent in order that the distinguished Senator from Utah (Mr. HATCH) might offer an amendment, which was a most important amendment. It was an amendment that would have assured that the Constitution would be followed in the matter of authorizing the disposition of property of the United States. It provided that the provisions of article IV, section 3, clause 2 of the Constitution be observed.

That section provides that the Congress shall have the power to dispose of the property of the United States. It is conceded, Madam President, that the United States has title to the property in the Canal Zone. It would appear that to have that, in order properly and legally and constitutionally to dispose of this property owned by the United States of America, the provision of the Constitution should have been followed.

As a matter of fact, 235 House Members, at least, share that view because they are cosponsors of a resolution that called upon the administration to submit this question—not the treaty—to submit this question of disposing of property of the United States to legislative action by Congress, meaning, of course, the Senate and the House. The Senate has chosen, by tabling this amendment, to disregard this provision of the Constitution.

Madam President, I posed a question earlier today, before the vote, on the matter of the contention by the proponents of the treaty that the President of the United States can negotiate a treaty disposing of property of the United States and that such disposition would take effect on the approval of that treaty by a two-thirds vote of the Senate. To show how fallacious that contention would be, I posed a question which would be a necessary implication from holding that the President and the Senate can dispose of property of the United States without congressional action, with respect to property in Panama. By a necessary extension of that doctrine, any property of the United States could be given to a foreign power by treaty entered into between the President and that foreign power and approved in the form of a treaty by the Senate alone.

I pointed out that on the floor of the Senate, not too long ago, a Senator stated that 97 percent of the land in his State was owned by the U.S. Government. If the President and the Senate can give away the land in the Panama Canal Zone which belongs to the United States, could not the President, in a good neighbor gesture, wanting to right the wrong that took place when the United States took over a large portion of the Western States following the war with Mexico—took it over by conquest and then paid, I believe, a small amount of money in reparations for the land, at gun point—could not the President enter into a treaty giving away 97 percent of one of our Western States, which formerly was part of Mexico, and have it submitted to the Senate for approval in the form of a treaty? Of course not. Every man, woman, and child in that State would march on Washington, and rightly so.

Madam President, it is a necessary extension of this theory that the Senate, by tabling this amendment, has seen fit to adopt, if we can give away 500 square miles of U.S. property in the Panama Canal Zone, of inestimable value. A valuation of $10 billion has been placed on

this property—the canal and the Canal Zone—but even that figure would not compensate for giving away this property, this tremendous asset.

However, according to the administration, according to the leadership, according to the managers of the treaty, all it takes is a treaty entered into by the President, subsequent approval of that treaty by the Senate, completely disregarding the House of Representatives and its rights and prerogatives under the Constitution, opening the way for litigation with those citizens of the United States who might bring action to contest the validity of this disposition of property.

I am not saying that the treaty should be submitted to the House. That is not the question. The question is the requirement of the Constitution that the disposition of property of the United States must be authorized by act of Congress.

I pointed out several times the provision in the 1955 treaty with Panama, in which, on three separate occasions, where they make conveyance of property, they say "subject to the approval of Congress." But we are departing from that longtime policy, which the Constitution has recognized.

They say that times have changed. The constitutional provision has not changed.

I notice that someone has had a copy of Senate Resolution 97, of the last Congress, placed on the desk of each Senator. That was a resolution submitted in the last Congress by 37 Senators—enough to defeat a treaty—which stated the position of those Senators against a treaty giving away the canal and stating that if any such treaty were entered into before the property of the United States could be disposed of, there had to be express congressional action authorizing it. Eight Senators who some weeks ago voted for the Neutrality Treaty, or the Defense Treaty, were cosponsors of that resolution in the last Congress. Well, perhaps they changed their minds. Perhaps it is because it was in the administration of a President of another party. I do not know what caused them to change their minds.

I am not going to mention their names. The Senators know who they are, and any Senator who wants to see if his name is on the resolution can refer to the resolution, which is on the desk of each Senator. But the names of those eight Senators were on that resolution, saying that they would not be for a treaty giving the canal away and that if such a treaty were entered into before the property could be disposed of, there had to be congressional action. In other words, article IV, section 3, clause 2 of the Constitution would have to be followed.

I would have thought that all eight of those Senators would have voted for the Hatch amendment. It is understandable, Madam President, that Senators might change their minds on the advisability of giving away the canal.

I can understand that. It is entirely possible and frequently happens that Senators do change their mind on an issue. But what logic is there for changing their mind on their view of a constitutional question as to what action it takes to comply with the Constitution?

So these eight Senators who in 1975 said they would not be for such a treaty in 1978 voted for that treaty. I can understand that. But I cannot understand how they as attorneys, for the most part—possibly all eight—could have changed their views on their view of the constitutional issue.

So the Senate has decided that article IV, section 3, clause 2 of the Constitution, giving Congress power to dispose of property of the United States does not have to be followed, that the President negotiating the treaty and the Senate giving its advice and consent to the treaty can dispose of property of the United States without an act of Congress.

I say that issue should have been decided on the basis of following the Constitution, and I think that the victory of those who are pushing these treaties will be somewhat hollow if they win by force of might here in the Senate, force of an overwhelming majority in the Senate—I am hopeful not a two-thirds majority—but they can with this overwhelming majority defeat any amendments, no matter how good, no matter how much needed. They can direct the Members of the Senate monolithically to vote against amendments. So we see the leadership, we see the managers of the treaty, and we see the administration stonewalling against amendments no matter how good an amendment is.

These Senators who have said to the House of Representatives, "We are not going to follow this Constitution, we are not going to respect your rights and your prerogatives, we are going to handle this just like we want to because we have the votes here in the Senate and we are going to direct them how to vote," can do it. But I say that their victory is going to be a hollow victory and their victory at the bar of public opinion is going to be somewhat less attractive. Public opinion is of the view that a shortcut was taken on agreeing to these treaties, that the Constitution was ignored. Are they going to have the backing of public opinion in this country for the action that the Senate seems determined to take?

It disregards the necessary and desirable comity that should exist between the two bodies of Congress. It leaves the way open for litigation that would snatch defeat from the jaws of victory on the treaties because if the Supreme Court says the Constitution was not followed in disposing of this property, what value is the treaty? The property, the water, and the land, in effect constitute the treaty. So if the land and the water were illegally and unconstitutionally disposed of you have no treaty. So, by tabling this amendment you leave the treaty open for a legal attack, and you leave the treaty and its validity in a state of doubt. You leave the people of the United States confused as to whether proper procedures were used. You violate rules of comity between the two Houses. Why? Why be afraid of the House of Representatives? Why be afraid of the Senate on a majority vote question, which the legislation would be? I would take a majority vote in both Houses. If you can get a two-thirds vote for the treaty in the Senate is there any doubt that you could get a majority vote in the Senate for legislation authorizing the transfer of this property? Of course not.

The fact that 235 House Members, well over a majority of the Members of the House, have asked that this treaty not go into force until legislation has been enacted by Congress authorizing its disposition does not mean that all 235 of those Members of the House are going to vote against giving the canal away. That means they want their rights and their prerogatives respected, and I have not seen the Senate any less jealous of its rights and prerogatives.

Time was limited on the debate on the other amendment. But I feel, even though it has been stonewalled by the leadership, by the administration, and by the managers of the treaty, the enormity of the bad judgment of the leadership in this matter should be pointed out. I believe that the treaty could be put into force and effect earlier by agreeing to this amendment, removing all question of doubt as to the legality of the process, than by stonewalling against the amendment, disregarding, as I see it, the constitutional provision.

The argument has been made against other amendments. And, by the way, do you know how many amendments we adopted to these two treaties after 2 months of debate? Two. They were the leadership amendments, defective in several areas, as was pointed out here on the floor. They were adopted, because the leadership said "Adopt them," and the Senate adopted them. On all others, they have said "No." These amendments that the leadership proposed and got adopted are so good that they not only make the treaty a good treaty, or the treaties good treaties, they are so good that no further amendments are desired and no further amendments will be accepted. That is how highly vaunted these leadership amendments were.

I will not take the time of the Senate to point out the defects in the leadership amendments, but they did exist, they were pointed out here on the floor, but they were adopted.

I voted for the leadership amendments, because I hoped that possibly they offered some slight improvement over the provisions of the original treaty—mighty little, greatly defective, but possibly some better than the original treaty. But the Senate has acted, and we will move now to other amendments that seem necessary.

The argument has been made in the past as to many of these amendments that they would not please the Panamanians, they would not be accepted by the Panamanians and, therefore, we should not adopt them; that it might cause the calling of another plebiscite.

Well, if so, what is wrong with that, because we need a compact with the people of Panama rather than just with the dictatorial regime of dictator Torrijos?

But this amendment of the distinguished Senator from Utah (Mr. HATCH), of which I was a cosponsor. was not

something putting a burden on Panama or on Torrijos. It merely underscored the required constitutional process for agreeing to the transfer and disposition of property of the United States in the Canal Zone.

So what burden would that have placed on Torrijos? None whatsoever. So they could not make the argument that this amendment would have somehow adversely affected, cast doubt on, the dignity of the people of Panama and the dictatorial regime in Panama. This is merely saying that the United States shall follow the constitutional processes in disposing of this property.

Well, Mr. President, it does not take any argument to defeat constructive amendments that are offered here on the floor of the Senate. It does not take any argument on the part of the leadership, on the part of the managers of the treaty, to defeat amendments. All the managers of the treaties have to say, as Senators troop in to vote, and as the issue is: "Shall the amendment be tabled?"—all they have to say is, pass the word, "This is an 'aye' vote," and proceed to vote "aye," in many cases not even knowing what the amendment is, but knowing what the leadership vote is. That is all it takes.

So, Madam President, are we abdicating our role, the role that the U.S. Senate is supposed to have in our constitutional process? We are supposed to advise the President on this treaty he sent up here. We do not give that advice by writing a letter and saying, "Well, Mr. President, we believe the treaty is defective in a number of points and wish you would check into it and renegotiate this treaty."

We give that advice in the form of amendments to the treaty, in the form of shaping the treaty, by the amendment process.

It took the negotiators some 13 years to agree on this treaty. Can we be assured that after 13 years of negotiation they have come up with a letter-perfect treaty?

Well, the fact that they were revising it right down to the very last moment indicates it is not letter perfect, yet the Senate is asked to reject every amendment that is offered even to the extent of rejecting an amendment that merely called for following the Constitution.

Oh, very well, let us proceed to the pending amendment which, as I say, was the amendment that was pending and which was discussed somewhat prior to the putting in of the Hatch amendment, which was thought to have possibly some chance of being approved, especially in view of the fact that eight Senators who voted the treaty some weeks ago, the Neutrality Treaty, were coauthors of the resolution that said that before this property in Panama could be disposed of there should be legislative authorization, a statute passed by the House and Senate. But I was disappointed in what took place in that regard.

Now, this amendment to article I adds a new section at the end of section 3. It makes this statement:

Provided, however, That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.

Well, we lean over so far backward to see that we do not offend Panama or the Panamanian dictator, that we are unable to refrain from offending the House of Representatives, 235 of whose number have asked that a statute be passed before this treaty goes into effect—we do not mind offending the House, we do not mind offending the American taxpayer, we do not mind offending people who want to see the canal strongly defended, and now let us see if we do not mind seeing U.S. citizens, who are employees of the Panama Canal Company—we are going to see whether we mind offending them and whether we are going to approve kicking them out of their jobs down there with the Panama Canal Company.

The way this thing operates, Madam President, the canal is operated not by the U.S. Government as such but by an agency or commission of the United States, a U.S. commission called the Panama Canal Company.

Now, under the treaties, the Panama Canal Company will cease to exist and all of its assets will be transferred to the Panama Canal Commission, changing the word "Company" to "Commission." That is still going to be a U.S. commission, and all of the property that is under the control of the Panama Canal Company is transferred, starting with the year 2000, to Panama, but prior to that time it is transferred to the Panama Canal Commission. Just a change of name. But ultimately, the commission must transfer it to Panama, without lien and without debt.

However, the treaty provides that as to U.S. citizens working for the Panama Canal Company, when they start working for the Panama Canal Commission—and inquiry revealed the other day that there are now 2,065 U.S. citizens working for the Panama Canal Company—under the treaty, in 5 years the Panama Canal Commission is obligated to see to it that 20 percent of those, somewhat over 400, are no longer in the employ of the Panama Canal Commission. So, within 5 years from now, we have got to get rid, either by attrition, resignation, or whatever, of 400 U.S. citizens who are working for the Panama Canal Company and who would be transferred over to the Panama Canal Commission.

The distinguished Senator from Maryland (Mr. SARBANES) the other day—and I will take his figure as correct, though I think possibly it is a little high—said that 80 percent, already, of the employees of the Panama Canal Company are Panamanians, which would leave 2 percent who are non-Panamanians. So our 2,065 have got to be reduced by 20 percent in 5 years. It is right here in the treaty.

I thought, Madam President, that we were supposed to have control of the canal for the next 22 years. What kind of control is that? It is just rapidly weeding out employees who are citizens of the United States.

And that is not all, Madam President. The treaty says that the Panama Canal Commission has got to adopt a policy that generally—and I think the word "generally" would imply that there would be few exceptions—that generally, they have got to have a possibility that if a non-Panamanian is employed on the canal, it has got to be, because that person has some special skill that is not available in Panama.

How often do you think you would find somebody like that? Two or three a year? So no new Americans are going to be employed during this 22 years that we are supposed to have control of the canal. No Americans employed unless they have a special skill not available in Panama. The treaty says that shall be the general policy of the commission.

What kind of control is that? We already have 80 percent Panamanians, the 20 percent Americans that we have has to be reduced by 20 percent in 5 years, and no more new Americans can be employed unless they have a special skill not available in Panama. That is said to be the general policy which must be adopted by the commission.

Not only that, Madam President: This commission that is to run the canal—it takes over, I believe, immediately on the approval of the treaties and the ratification process and winning this litigation that is bound to ensue—then the commission operates the canal. It is still supposed to be an American commission. Do you know who the members of that commission are going to be? Well, they are going to have five Americans on the commission, and they are going to have four Panamanians—none of them approved by the Senate, and the treaty says Panama shall furnish the United States with a list of the four Panamanians, and they are to be appointed; no security check, no character check, no criminal record check; they are to be appointed, with none of them confirmed by the Senate.

Let us see about that. I do not know what the view of the five Americans is going to be. If there is one there who has some sort of bleeding heart with respect to Panama, and the fact that we mistreated them back in 1903, as has been stated here on the Senate floor, he might take the position of Panama right from the start; then you would have 5 to 4 favoring Panama and Panamanian interests. Well, so be it.

Then nothing is said, I do not believe—I could be wrong, but I do not believe anything is said about what is going to constitute a quorum for doing business of this commission. If they had the four Panamanians there and three Americans, they could transact business and the Panamanian interests would be taken care of, but not the U.S. interests. Everything is stacked in Panama's favor, even to the extent of freezing out all Americans who are now employed there.

Should we not be concerned about the American citizens who have worked on the Panama Canal? Are they not entitled to be considered? Why should we require that 400 of them be eliminated in 5 years? Why should we do that? I do not see any logic to it, myself.

So what does this amendment do? It is simple. It says:

Provided, however, That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.

Well, I do not see why the U.S. citizens cannot keep on doing their jobs. We talk about waiting 22 years; now are we waiting 22 years, when we already have 80 percent Panamanian employees and are going to get the rest of them? We are not waiting 22 years; we are operating that canal, if these treaties are agreed to and ratified, we are going to be operating that canal for the benefit of Panama—and Economic Minister Barletta, of Panama, says Panama is going to be drawing $100 million a year out of the operation. And, of course, Uncle Sam is the guarantor of the amount that Panama is going to get.

So the whole nature of the operation is going to be changed. The United States operates it as a nonprofit enterprise, altruistically for the benefit of the shipping for the entire world. We have not even paid for the canal yet. We still owe $319 million on it. That will be wiped out under the treaties and under the process of operation.

I am still wondering about the statement that we are going to keep the canal for 22 years. The treaty provides that starting in 1990 the administrator of the canal must be a Panamanian. That is jumping the gun by 10 years, it would seem to me. All the while, this U.S. commission, with five Americans on it and four Panamanians, is supposed to be operating the canal. But they will not have been approved by the Senate. We do not know who they will be. We will have no voice in who they might choose, whether they will be men of business judgment. This is a big business down there, operating the canal. There is no requirement there, no security check, no character check. That is the way it will be handled during this 22-year period before we actually withdraw our troops and turn the canal over to Panama entirely.

I submit, Madam President, that we are turning the canal over to Panama right away, if we are going to freeze out all Americans who are working there.

All this amendment would do, Madam President, is to give just a little bit of sense of security to the American citizens who are working for the Panama Canal Company. It lets them continue working there in their present positions until they reach retirement age, until they retire voluntarily, or until they are discharged for cause. Why can we not deal fairly with America and with American citizens? Let us wait the 22 years the treaty is supposed to provide before we kick all the Americans out from down there.

I understand there are Americans who have worked there for years and their sons are coming on, working there. It is a way of life for these people. They should not be penalized just because they are working on the Panama Canal, which is an American enterprise any way we look at it. They should not be penalized. Somebody has to do the work. Because they have chosen to go to the Canal Zone and to work for an American enterprise they should not be penalized by arranging for their early departure from their employment. That is what it would amount to.

What about others who want to become employees of the Panama Canal Commission? Unless they have a special skill not available to Panama, they need not apply. I would not be surprised to see signs on the employment office there at the Panama Canal Commission that "Americans need not apply" during this 22-year period, in which we are supposed to continue the control of the canal. What kind of control is that? "Americans need not apply." In fine print, there would be, "Unless you have some special skill not available in Panama."

We ought to be looking after our own people, to my way of thinking. Maybe that is old hat. Maybe that is old fashioned. Maybe we need to look after the whole world ahead of our own people, but I cannot bring myself to feel that way about it.

I hope the managers of the treaty will accept this amendment. I do not see why it would offend Panamanians. They already have 80 percent of the employees. This amendment says nothing about future employees. This would let them continue to have the policy of not hiring Americans in the future. But, Madam President, it just seems a little strange to me that an American commission, which is set up under this treaty, would be mandated under this treaty not to hire Americans. Is that reasonable? That is what the treaty says. I am not making it up.

Let us see what it says in article X, section 3, paragraph (a), reading from the wording of the treaty:

The United States of America shall establish an employment policy for the Panama Canal Commission—

That is the successor of the Panama Canal Company.

that shall generally limit—

And I use that word—

the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

Here is a U.S. commission at the employment office posting a sign, "Americans need not apply, unless you have a special skill not available in Panama."

What kind of policy is that for us to be accepting? Think of everybody, respect everybody's wishes, everybody's feelings, but the American taxpayer, the American citizen, the American who wants to see the canal defended in the best manner possible. Do not consider their wishes; consider the Panamanian wishes and the wishes of the Panamanian dictator and the dictatorial regime in Panama.

That is part of the trend in this country, Madam President. That is why I hate to see these treaties agreed to by the Senate. There is a trend underway in this country to give away our very substance, to retire from the obligations and responsibilities of being a great world power, to retreat every time we meet resistance, and to say, "Well, sabotage, this, that, and the other, we need the treaties."

(Mr. HART assumed the chair.)

Mr. ALLEN. I believe this vote on these treaties is going to be a test of our will to survive. If we give in here, what is next? Guantanamo. I do not believe the ink will be dry for very long before Mr. Castro asks for his part of the pie. That is, the surrender of our great naval base at Guantanamo.

Mr. President, as I say, this amendment does not seek to cancel this policy saying Americans cannot be employed. Another amendment will be offered at that point. What this does say is that these 2,065 American citizens who are employed by the Panama Canal Company, and who constitute only about 20 or 25 percent of the labor force down there, may be allowed to continue their employment.

Why should we add 2,000 people to the unemployment rolls? Let them work out their useful years working for the canal. I am sure they have a lot of sentiment attached to their work.

Do we consider them? Where are the labor unions in this fight? Why do they not speak up for employees down there? I assume they are members of labor organizations. Why do they not fight for the rights of their people?

I do not know what prevents them from doing that. I should think, if they were interested in their members, they would prevail upon some of their friends in the Senate to vote for an amendment of this sort.

I hope the leadership will accept the amendment. I do not see why the leadership would discriminate against American citizens who are employed by the canal. We talk about legislating against discrimination on account of age, race, or sex. Why do we not legislate against discrimination, because people are Americans?

That is what is involved here. We are discriminating against American citizens. We are saying that the American citizens who are employed there are on the way out and 20 percent of them have to hit the gate in 5 years, and no new ones can be employed unless they have a special skill. And we talk about nondiscrimination.

This is worse than discrimination that exists just as a course of dealings or a course of conduct out in business or industry or in the professions. That is just a practice that has grown up and taken place. In discrimination out in those areas of the private sector, there are no statutes—or, if that is not correct, there are few statutes—that would discriminate against them.

Why are we writing into a treaty that has the same force and effect, if properly agreed to, as our Constitution itself? Why are we writing into this sacred document provisions discriminating against American citizens? I am going to be waiting for an answer in just a few moments, because I am going to yield the floor.

I hope that the distinguished Senator from Idaho (Mr. CHURCH) might look with favor on this amendment. He is frequently on the floor talking about not discriminating against the aged, and I certainly agree with him on that point. He does not want to discriminate on account of race, and I agree with him on that point. He does not want discrimination because of sex. Why, then, should he want discrimination because people are Americans? That is the issue of this amendment.

Mr. President, I call for the yeas and nays.

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

Mr. ALLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ALLEN. I want it to go live.

The PRESIDING OFFICER. Objection is heard.

The second assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 8 Ex.]

Abourezk	Hansen	Moynihan
Allen	Hart	Muskie
Anderson	Haskell	Nelson
Baker	Hatch	Nunn
Bartlett	Hatfield, Mark O.	Packwood
Bayh	Hatfield, Paul G.	Pearson
Bellmon	Hathaway	Pell
Biden	Hayakawa	Percy
Brooke	Heinz	Proxmire
Bumpers	Helms	Randolph
Burdick	Hodges	Ribicoff
Byrd, Harry F., Jr.	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Sarbanes
Case	Inouye	Sasser
Chafee	Jackson	Schmitt
Church	Javits	Schweiker
Clark	Johnston	Scott
Cranston	Kennedy	Sparkman
Culver	Laxalt	Stafford
Curtis	Leahy	Stennis
Danforth	Long	Stevens
DeConcini	Lugar	Stevenson
Dole	Magnuson	Stone
Domenici	Mathias	Talmadge
Durkin	Matsunaga	Thurmond
Eagleton	McClure	Tower
Eastland	McGovern	Wallop
Ford	McIntyre	Weicker
Garn	Melcher	Williams
Glenn	Metzenbaum	Young
Goldwater	Morgan	Zorinsky
Griffin		

The PRESIDING OFFICER (Mr. ANDERSON). A quorum is present.

Mr. SCOTT. Mr. President, I rise in support of the amendment by the distinguished Senator from Alabama and other Senators.

It merely provides that all citizens of the United States who are now employees of the Panama Canal Company be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.

It seems reasonable that this amendment be adopted. On the surface it might appear that it would not be necessary to have an amendment such as this, but when you look at article X of the proposed treaty, you find that U.S. citizens are discriminated against.

Article X is entitled:

EMPLOYMENT WITH THE PANAMA CANAL COMMISSION

It states:

In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations.

This is putting the onus upon the United States to discriminate against its own citizens, because the United States, according to the proposed treaty, shall be operating the canal for the duration of the treaty.

Then we read, down in the second paragraph:

The regulations shall establish a system of preference—

It is not saying equality. It says:

The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission.

First they say that it is the United States that is going to establish the regulations, and then that the regulations shall establish a system of preference for Panamanians.

We hear so much about equality in this country, that we have to have freedom from any bias, because of sex, because of age, because of race, because of religion and then we have something here in a treaty where a new agency would be established, administered by the U.S. Government, that would be an agency of the United States, which would provide a preference for foreign nationals.

That is what the distinguished Senator from Alabama is attempting to eliminate, so that citizens of our country can continue to be employed.

In order to understand this fully, though, I believe we have to look further into article X:

The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established; for foreign enterprises under the law of the Republic of Panama.

I do not know what the law of the Republic of Panama is with regard to foreign enterprise, but in a sense this is a U.S. agency, and apparently the language is referring to it as the same as a foreign enterprise but it says in one place we have to have a preference for Panamanians and in another place that we have to comply with Panamanian law, even though it is an agency of the United States.

Then we look further at section 3(a):

The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

In other words, if you can find Panamanians to do the work, then you cannot have U.S. citizens doing the work. You cannot go outside Panama to recruit people, and I assume that would mean you could not get people from the United States if you can find those in Panama who can do the job during the period of this treaty.

We read further, under subsection (b):

The United States of America will establish training programs for Panamanian employees.

It does not say anything about any training programs for U.S. employees of the Canal Company, but we shall have programs to train Panamanians.

Then, under subsection (c):

Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

In other words, we are going to decrease the ratio of American employees and increase the ratio of Panamanian employees.

We look further down, to section 5:

The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty.

Periodic rotation. Well, somebody who is working on the locks of a canal, someone who is working for the Panama Canal Company, as it is now called, would be rotated every 5 years.

It does continue on and say that:

It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.

This would be something that would have to be determined by the government body made up of both Americans and Panamanians; but the idea is that someone who is working there in something that is not recognized as being irreplaceable would have to be rotated every 5 years.

It might take an individual 5 years to learn to do his job well, and then he would be rotated, whereas if he is a Panamanian he would not be covered, because it says "non-Panamanian employees." If he is an American he would be covered; so, again, this is discrimination against Americans in the treaty that we have before us.

Then we go on to the paragraph numbered 7:

Persons employed by the Panama Canal Company or Canal Zone Government—

These are the names that presently apply to the Canal Zone. It says that these people who are employed by the present governing bodies of the Canal Zone—

prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pur-

suant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States.

Here it makes no distinction between Panamanians and American citizens. When we are talking about rights, then they include the Panamanians with the Americans, but when it is on the negative side, it is only the U.S. employees who are discriminated against.

In other appropriate jobs with the Government of the United States in accordance with the United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama.

Well, again, if they are Panamanians, we find them a job locally. If it is going to be a job with the U.S. Government, where will it be? It could be at the American Embassy. They have Panamanian employees at the American Embassy. We have a number of foreign aid programs in Panama. It is said that more foreign aid is given to the Republic of Panama by the United States on a per capita basis than any other country in the world. So apparently there are U.S. Government agencies which employ Panamanian citizens. But we would have foreign aid in Panama administered by Panamanians.

It is bad enough when it is administered by U.S. citizens, but Panamanians having control over the expenditure of American foreign aid funds for the benefit of their own country just seems to me to be indefensible.

For such persons who are not United States nationals, placement efforts will be confined to the United States Government activities located within the Republic of Panama.

Then we look down further and it says:

Employee unions shall have the right to affiliate with international labor organizations.

I do not believe that is true of American Civil Service employees here in the United States. Again we should make an exception to our domestic laws.

Then under numbered paragraph 10—and I think this is the most costly, by far, of any of the other provisions—it says:

The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them: (a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the Treaty;

The treaty would exist from the time of its ratification until the end of the century, as a general statement, but during that period of time, for a substantial period in it, employees would be entitled to early retirement.

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Mr. President, it is my understanding or my recollection of the law with regard to early retirement that a person who is separated from his job involuntarily, without fault of his own, if he has worked for a minimum of 25 years, can be retired on an immediate annuity, with a reduction if he is under 60 years of age based upon his age. But this is an exceptional situation. It is not granted very often here in the United States.

However, this provision of the treaty says that we are determining that early retirement shall be available to anyone who is employed by the Panama Canal Company. We will provide appropriate early optional retirement. We will determine that conditions exist which invoke applicable American laws with regard to early retirement. So people could retire with 25 years' service, regardless of their age. They could retire with 20 years of service, if they reached the age of 55. This is my understanding of the present law.

The writers of this treaty are not satisfied even with this liberal provision, so they add another section, (b), and indicate that the United States will seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided by law.

Well, for the people in the executive branch of Government, as my colleagues know, the retirement is based on the average pay that the employee receives for the highest 3 years of his Government service. It is calculated on the basis of 1.5 percent for the first 5 years of his employment, 1¾ percent for the second 5 years, and 2 percent for the remainder of the time that he is employed. But this is not satisfactory to the people who have prepared this treaty. They would seek special legislation to provide more liberal benefits to, and calculation of, retirement annuities than is currently provided by law.

Mr. President, as Members of the Senate know, I am opposed to this entire treaty. I hope we will be able to gain just a few additional votes. Thirty-two Senators voted against the Neutrality Treaty. "Neutrality" has a good ring, but this is the Panama Canal Treaty. This is the giveaway treaty. We are talking about an American property giveaway and then paying somebody to take it. It does not have the same connotation as neutrality, but I believe the American people are sick and tired of giving away our national resources.

In this instance, we are talking about a Canal Zone with a replacement value of $9.8 billion. We would pay, between the time of ratification and the time of termination, somewhat over $2 billion to Panama as an incentive for them to accept this roughly $10 billion asset of the United States. To me, the whole treaty just does not make sense, especially so when we consider that it is a vital artery of commerce, something that was envisioned since it was learned that there was an isthmus, a narrow neck, between the two continents that would save, if a canal could be constructed, a great length of time that otherwise would be consumed in going around the continent of South America.

A member of my staff indicated that even now, consideration is being given to a pipeline across Nicaragua to save on the transportation of oil. Of course, if this treaty is adopted, the United States cannot participate in matters of that kind.

Mr. President, I hope that the amendment by the distinguished Senator from Alabama will be adopted, that citizens of the United States that are employed by the present Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, until they retire voluntarily, or until they are discharged for cause.

Mr. President, I yield the floor.

Mr. CHURCH. The amendment of the Senator from Alabama addresses article I of the treaty. In fact, it really should address article X of the treaty, the article dealing with employment with the Panama Canal Commission. During the course of the past 2 hours, every part of article X has been attacked by various Senators, but not one of them has described the purpose of that article. That purpose, Mr. President, is to establish a set of employment policies which will implement an effective and orderly transfer of the operations of the Panama Canal from the purely American control of the existing Panama Canal Company to purely Panamanian control when this treaty expires at the end of the century.

The mechanism for effecting that orderly transition is the Panama Canal Commission, which will operate the canal during the interim period. The commission will be controlled by a board of directors; the United States will hold five seats on that board and the Panamanians four. Thus, control of the commission will remain in American hands during the 22 years of the life of the treaty.

The distinguished Senator from Alabama asked whether it might be possible for the Panamanian minority on the board actually to transact business if all five American board members were not present. Thus, he asked whether it was possible, under certain circumstances, for the Panamanians to outvote the Americans.

These details concerning the actual rules of procedure by which the board would operate are not properly the subject matter of the treaty. Rather, they are properly the subject matter of the enabling legislation, which Congress later will consider, and which we already have before us. Section 206 from that proposed legislation deals with the subject of a quorum for the board of directors in the following language:

Subsection (c) of Section 63 of Title 2 of the Panama Canal Code would be amended to provide that a quorum for transaction of business of the Board of Directors of the Commission shall consist of a majority of the directors, of which a majority of those present are citizens of the United States.

That answers the argument that, somehow, the Panamanian membership of the board might outnumber the Americans for purposes of transacting the business of the Commission.

Given the purpose of article X, namely, to effect an orderly transition, I think it important to understand that at the present time about 80 percent of the employees of the Panama Canal Company are Panamanians. The Panamanian employees, for the most part, occupy the lower positions, those requiring the least skills and commanding the least pay. During recent years, our own Panama Canal Co. has recognized the injustice of operating a canal which is the principal asset of Panama without giving Panamanian citizens a fairer opportunity to participate in its actual operation.

So, long before those treaties came to the Senate, we were undertaking not only to employ larger numbers of Panamanians, but also to slowly work them into the more skilled positions so that they might have fair opportunity to earn a living within their own country.

These treaties in effect continue that policy. They do so on an established timetable which contemplates that the commission itself will go out of existence at the end of the century, at which time the Panamanians should be fully prepared to assume responsibility for operating the canal.

Now, the Senator from Alabama says that article X discriminates against American citizens, that somehow we are, in effect, putting an employment sign up which says, "Americans not wanted," unless special skills, not available in Panama, are required.

I suggest, Mr. President, that just the opposite is true. How could we possibly serve the interests of Americans working for the Panama Canal Commission if we retain them in all of the positions they now occupy, in their present numbers, from now until the end of the century and then, suddenly, terminate them?

Is the way to serve their interests to put them all out of work on the last day of the treaty and then attempt to fill those positions which require a high degree of professionalism and skill with Panamanians who are unprepared to assume these responsibilities and not capable of doing the work?

The Senator's argument, if one were really to accept it, is a prescription for chaos; and, certainly, a prescription that would work against the best interests of the American employees.

Now, given this general objective, let us turn to article X and see how the provisions of that article actually carry out our national purpose.

Remember now, it is the Panama Canal Commission, an agency of the Government of the United States, which will operate the canal during the interim period and employ all of those engaged in that work.

So, section 1 of article X reads:

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

Well, I do not know what exception anyone could take to that.

It is an American agency, the U.S. Government, that shall set the terms and conditions of employment, and our only responsibility is to inform the Government of Panama what our decisions might be.

Section 2:

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

All this section says is that to effect an orderly transition, the Commission will endeavor to fill vancanies, as they occur, with Panamanians who possess the necessary skills for the positions in question.

A natural and sensible proposal. That is the purpose of the interim period.

I find it hard to understand that the same Senators who were saying just 2 or 3 weeks ago that the Panamanians were quite incapable of operating the Panama Canal should now be the ones who are objecting to the very provisions which will make their training over the next 22 years possible, and which will enable them to fill these positions one by one as they qualify for them and as vacancies occur.

The second part of the section relates to our endeavor to insure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama. It does not represent a serious burden.

As I mentioned earlier, some 80 percent of the employees today are already Panamanians. Under the laws of Panama, either 80 percent or 85 percent of the employees of foreign enterprises operating in Panama are required to be Panamanian. The exact percentage depends upon the character of the position. For one type of employees we appear to have already reached these goals. For the other type, this establishes the goal of moving from 80 percent Panamanian to 85 percent, a goal consistent with our effort to move more Panamanians into positions of responsibility and to train and equip them to manage the operation of the canal.

Part (b) of section 2 reads:

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.

Who could object to that? Certainly, no one honestly concerned about the well-being of American employees, because this provision says that the positions the commission shall establish shall not be of a lesser stature or be less favorable to the employee than the positions that now exist.

In other words, there will be no downgrading of positions, and this, obviously, is intended primarily to protect the interests of both American and Panamanian employees of the present canal company.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

Well, of course. The whole purpose of the enterprise is to effect an orderly transition over the next 22 years which will enable the Panamanians to take full charge as competently trained people, when the time comes to transfer the canal to Panamanian ownership.

Therefore, in pursuit of that objective, which obviously serves the interests of the United States since we do not want chaos in Panama when the transition finally takes place, we should follow a policy of filling vacancies with qualified Panamanians whenever possible.

Part (b) of section 3 reads:

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

Notice that all these policies are premised upon positions becoming available in the years ahead. Clearly, our negotiators were always mindful of the needs of American and Panamanian employees who presently occupy positions with the Panama Canal Company. But we shall endeavor, through the commission, to train Panamanian nationals to qualify them to assume positions as vacancies occur, consistent with our objective for an orderly transition over the next 22 years.

Subsection (c) of section 3 of article X reads:

(c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

Here, a goal is established—to move us toward a larger employment of Panamanians during the next 5 years. But the question is, what risk does this goal represent to present employees of the Panama Canal Company?

Figures given to me, which have been obtained the last few minutes, show that there are presently 3,354 American citizens working either for the Panama Canal Company or for the Government of the Panama Canal Zone. Of this number, 31 percent—1,042—are 50 years of age or over, and 14 percent are 55 years of age or over.

It is evident that within the next 5 years, in the normal course of attrition and retirement, we can effect the goal of increasing the employment of Panamanians as set forth in subsection (c) of section 3, without menacing the job of any American citizen. Thus, this provision should not be a source of worry for anyone concerned—and I am concerned, as we all should be—for the fair treatment of American employees.

Subsection (d) reads:

(d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

That simply says that the two governments will exchange information concerning job openings and the qualifications of Panamanians that might fill those vacancies—all consistent with our national purpose.

Section 4:

The United States of America will establish qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

Here, again, the provision is consistent with the objective. We will recognize the licenses issued under Panamanian law, provided that those licenses are sufficient to meet the requirements of the positions. If they are not sufficient, then, of course, additional requirements may be established by the commission.

Section 5:

The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty.

Here, again, the objective is to transfer the operation of the canal, step by step, into the hands of qualified Panamanians, under the general direction of the American controlled commission. A policy of rotation is consistent with that objective. But it should be remembered that this policy applies only to new employees hired after the treaty takes effect and the rotation requirement is not imposed upon present employees of the Panama Canal Company.

Section 6 reads:

With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

That is self-explanatory. It obviously works to protect the rights of both present employees and future employees, and I should think no Senator could take exception to it.

Section 7 reads:

Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States, in accordance with United States Civil Service regulations.

I think that is an exemplary provision. It says that in the event certain positions are eliminated by virtue of the treaty taking effect, any American citizen whose job is eliminated will have priority claim upon the Government of the United States for another job; every effort will be made to take care of any American whose job might be eliminated by virtue of the implementation of the treaty.

Then the section goes on to read:

For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama.

I heard this objected to as somehow being discriminatory. But obviously it is a reasonable provision. If jobs are eliminated that are now held by Panamanian citizens, then the Government of the United States undertakes to do its best to find them another position in Panama.

It would be unreasonable to require the United States to try to find positions in our civil service in the United States for Panamanian citizens. That should be apparent to everyone.

The section continues:

Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumes responsibility are no less favorable than those in effect immediately prior to the entry into force of this Treaty.

What is wrong with that? Anyone who says that he is concerned about fairness for present employees obviously would want the Government of Panama to make such a commitment.

The section continues:

Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

Again that is a provision obviously designed to take care of employees whose positions might be eliminated and to establish a commitment by the Government of Panama to do its best to find them appropriate positions.

Section 8 of article X reads:

The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

That obviously is a provision that protects the interests of our own Government and at the same time assists the Republic of Panama in assuming its new responsibilities under the treaty.

Section 9(a) of article X reads:

The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.

This merely means that the present right of employees to negotiate with the Panama Canal Co. will continue to be honored by the Panama Canal Commission, another provision obviously designed to accommodate the needs of the employees.

Section 10 of article X reads:

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the Treaty;

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Now, here, Mr. President, our negotiators have taken a long step beyond what might normally be expected to insure that no injustice is done to any American employee who does not wish to remain in Panama for the period of the treaty.

Our negotiations have taken into consideration the fact that the rules of the game are being changed. They realized there are American citizens who went to the Panama Canal Zone expecting to work for the canal company all of their

lives. They realized those Americans might have expected that the United States would retain full authority and jurisdiction over the Canal Zone during their lifetimes and that these treaties are something they might not have anticipated. So, they calculated that the needs of these employees would be accounted for by a generous retirement program, including the right to early retirement. And section 10 of article 10 provides all that, even the extent of specifically stating that if it is necessary to change the law to especially accommodate these Americans then the United States shall do so.

(Mr. MOYNIHAN assumed the chair.)

Mr. CHURCH. I have not heard any Senator object to those provisions on the grounds that there was an adverse impact on American employees. I heard the Senator from Virginia complain that this was a special benefit in excess of the ordinary retirement benefits available to other employees of the Government. He seemed to switch ground. He started out by speaking ostensibly on behalf of the employees and ended up attacking this provision.

Clearly, it is fair to make special provisions for American citizens who went to Panama, expecting no change in the status quo, so that they will not be unjustly affected by the changes brought about by the new treaty.

So, Mr. President, I think that article X has been negotiated to provide a mechanism that will enable us to turn over the operation and control of the Panama Canal to the Panamanians at the end of the century, confident that we have prepared them to do the work, confident that the canal will then be competently managed and kept open as a neutral and peaceful waterway. All of which serves the manifest interests of the United States.

It is a sensible provision of the treaty and it has been well drafted to accomplish its purposes. On the other hand, the proposed amendment would in effect seek to incorporate in the treaty a guarantee that all United States citizen employees of the existing Panama Canal Company shall continue in their positions with its successor agency, the Panama Canal Commission.

The proposed amendment is both unnecessary and unworkable. Under the treaty, subject only to the general principles set forth therein, all of which I have now described and explained, the United States will retain authority over relations with employees. Thus, the benefits and guarantees to be provided commission employees are a matter within the legislative jurisdiction of the United States. If we are going to establish any other special provisions not addressed by the treaty, the way to do it is in the enabling legislation. The way not to do it, is to tie our hands by writing them into an international agreement as an amendment of this kind.

As matters now stand the United States is in a position to provide extensive protection to its employees, and the administration will propose to do so as indicated in the draft implementing legislation which has been provided to all Members of the Senate. Indeed, the treaty itself recognizes that existing employees should be encouraged to remain in the employ of the Commission and that, to the extent that the discontinuance or transfer of certain activities of the present company would affect their present jobs, persons displaced from their present positions will be placed in other U.S. Government jobs to the maximum extent feasible. Both the treaty and draft implementing legislation provide additional benefits and protections to employees, including an optional early retirement program and job placement assistance. The Congress will, of course, have continuing jurisdiction to legislate such additional benefits as it may deem appropriate.

Not only would it be inappropriate to make job guarantees for U.S. citizens a matter of international agreement; the specific guarantees set forth in the proposed amendment are unworkable. For example, certain activities performed by the present Panama Canal Company will be transferred to the Republic of Panama at the entry into force of the treaty. The proposed amendment, however, would appear to require that these employees remain with the Commission even though the Commission would have no work for them to do. Not only is such a scheme administratively wasteful; it could result in difficulties in meeting our commitment under article X(3)(c) to reduce the number of U.S. nationals currently employed by the company who will be employed in the future by the Commission. The transfers of functions contemplated by the treaty and normal attrition would allow us to readily meet this commitment without jeopardizing the present employees whatever.

In sum, the proposed amendment is unnecessary, administratively unworkable, and contrary to U.S. interests in maintaining maximum American legislative discretion over the management of the canal and employee relations.

On that basis, Mr. President, I strongly oppose this amendment, and I propose to move to table it. But I see that the distinguished Senator from Alabama is here on the floor and if he wishes to speak again for the amendment I would oblige him and withhold the motion until such time as he has completed his remarks.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I appreciate the indulgence of the distinguished Senator from Idaho.

Mr. President, I would rather not speak under the sufferance of the distinguished Senator from Idaho and, for that reason, I will temporarily withdraw my amendment when it will not be subject to the threat of tabling, and I do withdraw my amendment and ask for recognition in my own right.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

Mr. ALLEN. Mr. President, the distinguished Senator from Idaho, of course, has the right to move to table my amendment. He was very kind and courteous to offer to allow me to speak at this time with respect to the amendment, but I do not wish to speak at the sufferance of the distinguished Senator from Idaho even though that sufferance was very graciously and courteously accorded to me. So at the appropriate time I will reoffer my amendment and discuss the article and my proposed amendment at that time.

Mr. President, the distinguished Senator from Idaho, in discussing my amendment and in discussing the provisions of article X, stated that it had been alleged, I assume by the Senator from Alabama, that the provisions of the treaty discriminate against Americans, and the distinguished Senator from Idaho said quite the contrary, it does not discriminate against Americans. So let us examine the provisions of the treaty—and, by the way, the distinguished Senator from Idaho suggested that if we are dissatisfied with the provisions of the treaty we should not seek to amend the treaty, but we ought to try to amend the legislation that will follow the treaty.

Well, of course, the Senator must realize that as against the express provisions of the treaty you could not pass legislation. So the only way we can remove this discrimination is to address amendments to the provisions of the treaty, not some implementing legislation that may or may not be enacted or that may or may not be enacted as introduced.

So if we are going to try to change this discriminatory provision we have to address amendments to the treaty. The treaty is what has the discriminatory provisions in it, not the implementing legislation. So I assume then we are going to seriously consider the mechanism for seeking to rectify this discriminatory provision.

Now, if the Senate will accept the logic of the distinguished Senator from Idaho (Mr. CHURCH) in saying that these provisions do not discriminate against Americans and, on the contrary, they are there for their benefit, well, the Senate will accept anything. Let us see what the provisions say which we are trying to remedy:

> Within 5 years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company—

And all understand, I am sure, that the Panama Canal Company now operates the canal, which is to be succeeded by the Panama Canal Commission on the entry into force of these treaties, both are supposed to be agencies of the U.S. Government, but the Commission apparently is going to be operating for the benefit of Panama and Panamanians with respect to the employment of American citizens—

> Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

How does that help American citizens? How is that other than discriminatory against American citizens? You have a certain number—I cited earlier in the day the fact that the Panama Canal Company told me that they had 2,065 U.S. citizens working for the Panama Canal Company, and the figure a moment ago quoted by the distinguished Senator from Idaho was 2,084, a difference of some 19, but he pointed out there were for the Panama Canal Zone government and the Panama Canal Company 3,354 employees in all, so this would say, this treaty provision would say, taking the 3,354 as the number, 20 percent less than that must be the number of Americans employed 5 years from now. Well, that is 670—they have got to show the gate, so to speak, to 670 U.S. citizens. Does that operate in favor of American citizens? If 670 have to go in the next 5 years, how does that protect citizens of the United States?

Is that discriminatory or nondiscriminatory? It is quite obvious that it is discrimination against U.S. employees. That is written into the treaty.

They say, "Well, if you don't like what is in the treaty, don't amend the treaty—oh, no, don't do that—amend this legislation that may or may not be enacted."

As I say, you cannot put into an act something that is inconsistent with the provisions of a treaty. A treaty operates at a higher level. That is a contract that has been agreed to between two governments. Obviously unilateral action by Congress in enacting legislation could not vary the terms of the treaty.

So if we followed the advice of the distinguished Senator from Idaho, and waited until this supposed legislation comes along to try to protect the citizens of the United States, we would certainly be closing the barn door after the horse had escaped, after writing into the treaty a provision that we have got to get rid of 670 American employees in 5 years, and then try to rectify that by sticking an amendment on to some legislation that is said to be on its way. That does not seem to be operating in favor of U.S. citizens. For 670 have to go in 5 years.

All right; the distinguished Senator from Idaho took up every single section and every single paragraph of this lengthy article X, to explain it and to show how great this was for the U.S. employees. "Oh, it is fine; it is of great benefit."

The only thing in this whole article for the benefit of the U.S. employee is that he is encouraged to leave, and the distinguished Senator from Idaho was bragging on these great provisions that are in there; if he decides to leave early, if he decides to retire voluntarily, he gets all of these benefits. But nothing is done to encourage them to stay there.

"Oh," he says, "a great number"—I think he quoted 85 percent, or some such figure, are 55 or 60 years of age, and, therefore, they are going to be gone anyway, and this mandatory figure of 20 percent leaving in 5 years is not going to hurt anybody, because they are going to leave anyway.

Then why have it in there? And why would there be anything wrong with the pending amendment, which merely says, for the protection of the U.S. citizens who work for the Panama Canal Company, that they will be able to live out their employment with the company; they will be able to continue working until retirement age? From what the distinguished Senator from Idaho says, that is really nearby for a large percentage of the employees. They can stay on in their work until retirement age, or until they voluntarily retire, or until they are discharged for cause.

If attrition is going to get them anyway, why put a requirement in here that 20 percent have to go in 5 years? Mr. President, it would seem that this would be a most innocuous amendment, to allow U.S. citizens to continue working.

"Oh," he says, "they will want to transfer somewhere else; there won't be any work for them."

Well, there is work for them now. If there is not work for them now, they ought to discharge them. But they are working there now, and this provision would not go into effect until the treaty goes into effect; so if they have got some people down there they do not need, they could move them now and they would come out from under the protection of this amendment.

I do not believe they have any excess employees there. If so, they ought to make adjustments now. But why should not American citizens working for an American company, the Panama Canal Company, and being permitted to continue to work for the Panama Canal Commission, an American commission—why should they not be allowed to continue working? Why should Panama, during this 22-year period that we are supposed to retain control of the canal, not be satisfied with 80 percent of the employees, having added to that such vacancies in employment as might be caused by normal attrition?

Because they have another paragraph in this treaty—and all of this is done for the benefit of the U.S. citizen, according to the distinguished Senator from Idaho; it does not discriminate against him, it is in his favor, they would have us believe.

Let us look at this other paragraph. Right here in the treaty, where it ought to be amended, not by some legislation down the road:

The United States of America—

That is these United States, mandated to take action against U.S. ciizens. Let us see if that is right.

The United States of America—

Says the treaty—

shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

How does that help American citizens? They cannot even get a job with the Commission if some Panamanian has equivalent skills. A U.S. citizen can be employed only if he has not a special skill—and I do not know what that would be—a special skill that is not available among Panamanians. So that would just about close the door to employment of American citizens.

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

Mr. ALLEN. I yield to the distinguished Senator from Nebraska.

Mr. CURTIS. Who is to decide whether a Panamanian citizen up for consideration has the necessary skills?

Mr. ALLEN. The treaty does not say. I am sure the Commission would make the first determination, but if it is not satisfactory to the Panamanians, I am sure they would protest, if they were being mistreated under the provisions of the treaty.

Mr. CURTIS. What would happen if the Panamanians presented themselves and said, "We are qualified and we want to take over all of the top managerial positions"?

Mr. ALLEN. If there was a vacancy, and if one of these positions fell within this 20 percent who have to go in 5 years, if the Panamanians had that particular skill—and we know they contend they can do anything, they can perform any job with the Commission—they would have the right over the U.S. citizen.

What I object to is we have all sorts of laws forbidding discrimination because of age, sex, nationality, religion—all sorts of laws forbidding that—and yet our negotiators write into this treaty, and the leadership and the managers of the treaty seek to uphold, these provisions which not only do not prohibit discrimination against U.S. citizens, but provide for discrimination against U.S. citizens. That is what I cannot understand.

Mr. CURTIS. If the distinguished Senator will yield further, has there been anything about the management of the Panama Canal in the past which has disqualified the United States as operator of the canal insofar as the commerce of the whole world is concerned?

Mr. ALLEN. There has been no complaint whatsoever that I have ever heard of, and I assume no complaint by the Panamanians about Panamanians having jobs, because 80 percent of the jobs in the Panama Canal Company are held by Panamanians. Only 20 percent are U.S. citizens. The treaty tries to freeze them out. It does not add any additional jobs to the number. They are frozen in at the 3,345, or 2,065, depending upon which way we look at it, and no U.S. citizens will be added even though we are supposed to have control of the canal for 22 years.

What the Senator from Alabama does not understand is why a U.S. citizen could not go there at age 50 and work until age 65, well within this 22-year period. But, no, a U.S. citizen cannot get employment by the commission in the operation of the canal unless he has some special skill which the Panamanians do not have. The Senator knows the Panamanians will say they have all skills which are necessary for the operation of the canal. Possibly they do.

Mr. CURTIS. If my friend will yield further, I would like to point out that sometimes we fail to realize just how

much the United States has invested in time, attention, and management, as well as in terms of dollars in making this international canal, this waterway which joins the Atlantic and Pacific, available to the whole world.

Just last week I was reading concerning negotiations of the Clayton-Bulwar treaty 125 years ago, in 1853, or thereabouts. At that time there was discussion about an interocean canal in Central America. The negotiations in reference to that treaty were for the purpose of settling the claims of Great Britain and the United States which would make possible further planning, negotiations, and discussions on the part of the United States.

This is so diametrically opposed and different from the idle charge of colonialism.

A colonial power, when they take over another territory, removes the valuable resources. We have not taken any resources away from Panama. We have brought forth the greatest resource that that area of the world could have by providing a canal to serve the whole world, and also which has brought the highest per capita income to the citizens of Panama of any country in Central America. I thank my distinguished friend for yielding.

Mr. ALLEN. I thank the distinguished Senator from Nebraska for his fine comments, and commenting on the Clayton-Bulwer Treaty between the United States and Great Britain. It did provide that in the event a canal should be built, it would be open to all nations, and it would serve for the benefits of the shipping of the entire world.

That is the way the United States has operated the Panama Canal. It has been operated on a nonprofit basis. Under these treaties, the United States, supposedly, for 22 years, will operate it for the benefit of Panama, and under which Panama will receive, according to the economics minister of Panama, some $100 million per year.

The whole nature of the operation is to change.

What I am objecting to in connection with this amendment is that the terms of the treaty discriminate against the U.S. citizens who are presently working for the canal. I say canal, meaning the Panama Canal Company, to be succeeded by the Panama Canal Commission. They are being discriminated against because 20 percent of them have to go in 5 years, and there will be no additions to this number of U.S. citizens who hold jobs working for the canal unless they have some special skill not had by Panamanians. It would be hard to figure what that particular skill would be. Obviously, there are some two, three, or four positions in the entire operation.

So they are going to fix it where there can be practically no new employees who are Americans, and the employees who are there have to be reduced in number by 20 percent in 5 years. That is said to be for the benefit of the employees.

As I said, if anybody will accept that logic, they will believe anything.

Let us read this provision about the employment of Americans at the canal.

The United States of America—

And this seems to be degrading to me, Mr. President, in talking about some of the amendments we have offered being unacceptable to Panama because they would serve to degrade them, they would be an offense against their national dignity. But here is the United States, as I see it, humiliated in this treaty by mandating that it shall put into effect a policy which discriminates against American citizens in obtaining employment with the Panama Canal Commission.

Let us see if that is a fair statement in the light of the actual provision.

The United States of America shall establish an employment policy—

What is it?

for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

The United States is mandated to put in that employment policy for the Panama Canal Commission.

How does that translate out? Why, it is just like saying the United States shall require the Panama Canal Commission to put up a sign at the employment office: "Under the Panama Canal Treaty, Americans—and I say that in the sense of a citizen of the United States—"Americans need not apply for employment with the Panama Canal Commission."

An agency of the U.S. Government not going to employ American citizens—how ridiculous can you get? A commission of the U.S. Government unable to employ American citizens. I do not know what the EEOC might think about that, I say to my distinguished friend from Nebraska, but it seems to me that that is a definite discrimination, written directly into this treaty, to require an agency of the U.S. Government to apply a policy of discriminating against American citizens. There it is. Read it yourself.

We are told, we do not offer an amendment to that; that will amend the treaty. Amend this bill that is going to come forward.

As I pointed out, a bill cannot change a provision of the treaty, as we all know.

We legislate against the private sector and, I believe, according to the rules of the Senate now, even Members of the Senate are mandated not to discriminate in employment in any way. The private sector is required not to discriminate because of race; not to discriminate because of nationality; not to discriminate because of religion, age, or sex, or any other reason.

(Mr. BAYH assumed the chair.)

Mr. ALLEN. If we found the Panama Commission discriminating against Panamanians, we would not like it. But it is all right for this treaty to discriminate against American citizens.

Those employees down there are members of national unions. I do not know why they have been abandoned by their unions. I have not heard the unions speak out against this discrimination against their members down there. I do not know whether it is part of a larger policy having to do with legislation pending before the Congress. But I have not received any letters from labor organizations protesting against this discrimination against the Panama Canal employees who, I understand, are unionized.

Why is this provision here? To ease out the American employee; a U.S. commission being required to discriminate against American employees. Well, it is not much of a U.S. commission if it is mandated to discriminate against American employees.

Oh, they say, it is all for the best interests of the employee. Well, it will cut his throat. I do not see how that can be helping him a great deal. That is what it does.

An American citizen of advanced age, such as was cited by the distinguished Senator from Idaho (Mr. CHURCH), might have a son or two sons who might want to follow their father in employment by the Panama Canal Commission. He might have a sentimental interest in that type of work. But unless he has some special skill, he need not drop by the employment office. The treaty says:

Nothing doing; you are an American citizen; therefore, you cannot have employment at the Panama Canal Commission unless you have a special skill.

Is that fair to American citizens? If we are talking about the year 2000, when Panama takes over the canal, fine; yes, let them do what they wish.

Mr. CHURCH says something about, well, it is better to do it this way than to let them go on down 22 years from now and get chopped off, everybody at one time. Well, he blows hot and cold. On the one hand, he says, if we cut them all off 22 years from now, it will cause chaos. Then his other statement, so inconsistent with that, is that attrition will solve the matter, anyhow.

On the one hand, he says all of them will be there, in effect, for 22 years, and when they are all terminated, it will cause chaos; on the other hand, he is saying, let attrition handle it. It will take care of it, anyhow. Which theory of the proponents are we supposed to believe?

I do not like the idea of mandating the departure of 20 percent of the employees. If attrition is 10 percent, fine. If it is 30 percent, all right. But do not mandate the separation of 20 percent of the American employees and do not set up an employment policy that mandates a U.S. agency to discriminate against Americans. That is what the treaty does.

What about the amendment? It is simple, but it does provide a little protection for American employees now employed at the canal:

Provided, however, that all citizens of the United States who are now employees of the Panama Canal Company—

That is the agency now in existence there—

shall be permitted to continue their positions with the Panama Canal Commission—

Indefinitely? Without any limitation? No. Listen to the limitation:

until they reach retirement age.

The distinguished Senator from Idaho (Mr. CHURCH) is saying that a large per-

centage—I think he said 85 percent— are over 55. If I am not mistaken, he said they are over 60. But at least about 85 percent of them were in their middle 50's or early 60's. So this would not cause any chaos there, it would seem.

It says, "until they reach retirement age or retire voluntarily or are discharged for cause."

Discharged for cause? He says some of them are going to be transferred over to the Government; therefore, there is no need for them there. Well, that is cause, if they do not have work for them. They can be discharged. But the idea of insisting on reducing the number by 20 percent in the face of the facts that would show that attrition would gradually remove every one of the employees except very young employees by the time this treaty ends—Mr. President, it seems to me that this is an amendment that should be accepted. Without this amendment, U.S. citizens who are employees of the canal are discriminated against and U.S. citizens who are not employees of the canal but who want to be are discriminated against. So, in this day and age—they say, oh, this is a different age from when this 1903 treaty was entered into. They obviously overlooked the 1955 treaty, which more or less ratified and confirmed what was done in 1903. They prefer to talk about the 1903 treaty.

(Mr. MOYNIHAN assumed the chair.)

Mr. ALLEN. Mr. President, as I was suggesting, they say we are in a new age now, different from the situation that existed back in 1903. No longer do we have colonialism around the world, according to the proponents of the treaty. A new day has dawned.

Well, I do not believe a new day has dawned to the extent that we are going to write into a treaty sections that do not prohibit discrimination, which is very properly the order of the day now, but which have sections that provide for discrimination.

The order of the day is to pass legislation forbidding discrimination, discrimination against those who are handicapped, discrimination because of sex, age, color, nationality, religion. By departing from that trend, Mr. President, this treaty provides for discrimination against American citizens.

That is one of the things I have pointed out throughout this entire debate, that these treaties do not try to avoid offending those who want to keep the Panama Canal, those who feel that the treaties do not provide adequate defense of the canal, those who feel that the canal is unfair to the American taxpayer.

We do not mind, according to the action of the Senate earlier, offending the House of Representatives by not allowing or not conditioning the going into force of this treaty upon an act of Congress authorizing the disposition of the property of the United States in the Panama Canal Zone. We do not mind offending Americans and, apparently, we do not mind offending the employees of the Panama Canal Commission who are American citizens. But we sure do mind the possibility of offending Panama.

Mr. President, this amendment would afford some measure of protection to American citizens who are employed in the work of the canal.

Later on, when we reach article VIII, an amendment will be offered that would eliminate the section providing that no American citizen can be employed unless he has a special skill the Panamanians do not have.

I am going to try to eliminate that, as well.

But this amendment that was pending and which I withdrew for tactical reasons to keep it from being tabled a moment ago and shutting off debate, all this amendment does—and it will be reoffered after sufficient debate has been had on the amendment— is that it gives some little measure of protection to American citizens working for the canal.

I do not believe the Senate wants to deprive these American citizens of this small measure of protection. Otherwise, any employee down there, any and every one of them, will be asking himself as they fill this quota of 670 to be separated, "Am I one of them? Will I be one of the 20 percent?"

Why cause that concern to the American citizens who are working for the canal?

The distinguished Senator from Idaho (Mr. CHURCH) says, "Well, attrition is going to take care of them."

Well, if attrition is going to take care of them, why does he need this section saying that 20 percent must go? Why have that Sword of Damocles over every one of the employees, wondering whether it is going to drop on him?

That is what we provide here. The Sword of Damocles suspended by a hair, hanging over the head of every American citizen employed by the canal. "Will I be one of the 20 percent that has to go?"

No one would know whether he would be one destined to go, or not.

The amendment that we have would provide that American citizens now employed, and it is just 20 percent of the whole labor force, an American citizen now employed with the canal can continue working until the retirement age, until voluntary retirement, or until discharged for cause.

I hope the Senate will agree to this amendment or, if the motion is made to table the amendment, I hope the Senate will vote against the motion to table.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska (Mr. CURTIS).

Mr. CURTIS. Mr. President, I want to commend the distinguished Senator from Alabama for his part in the debate on these two Panama Canal Treaties. He has not only been most faithful in his attendance at the debate, but he has been studious and thorough and he has raised many very penetrating questions.

All of this is for the good of our country. We cannot arrive at the right answer to problems by just turning our back on the facts involved.

Many people fear for our country when they know that an important treaty is underway, that when amendments are offered little attention is paid to the debate, and the overpowering forces are brought in only to table the amendment without considering it on its merits.

Mr. President, such a course is not good legislating. It is not the symbol of statesmanship.

I commend the distinguished Senator from Alabama for raising this debate to a high level, for going into the facts and the propositions and the problems so that the Senate might know as well as the American public.

Mr. President, we cannot view this proposal to give up the Panama Canal as an isolated incident.

It is not just one action in which the United States, for some reason or other, believes it is good to give up something It is not surprising that utterances are of the whole world scene. It has to be viewed in the light of our foreign policy, in the light of our defense program. We cannot shut our eyes to the trend in the United States for us to retreat in South Korea. Everybody knows that is to back off and advance the cause of communism as a result.

We cannot separate this question of running away from a world responsibility to operate the Panama Canal from the proposal not to go ahead with the neutron bomb. We cannot separate this proposal from the decision not to have the B-1 bomber. This is all part and parcel of a worldwide retreat from responsibility which would encourage the forces of evil around the world.

Mr. President, it is not surprising that the American people feel very deeply on the question of the Panama Canal. It is not surprising that utterances are made that reveal a high state of emotion about this matter. It is not surprising that some of the rhetoric might exceed that which others approve at all times. But that is the fact.

Yesterday, I received in the mail a statement written by a distinguished American. He served in Congress for a long time. He held important positions in the House of Representatives. He comes from an old and distinguished family in the United States.

The writer of this article is now 90 years old. I refer to the Honorable Hamilton Fish, whose present address is 655 Park Avenue, New York, N.Y. 10021.

Mr. President, here is a gentleman who served his country as a soldier, served in the U.S. Congress, has been an avid student of American history all through the years, of American foreign policy, of our defense program. He is now in his 90th year. I am going to read what Mr. Fish says. He says,

> A vote for the canal treaty aids and abets the Soviet Union and world communism.

Then he goes on to make his case:

> Pro-treaty Senators may try to slice it and cover it up temporarily to deceive and fool our country. The American people however, are far too intelligent to be misrepresented or bamboozled by partisan politics or playing chicken with the Soviet Union, the very silent member of the Communist axis. By Election Day, the American people will know that the surrender of the canal to a pro-Communist dictator in Panama, a buddy of Castro, the catspaw of the Soviet Union, is playing into the hands and arms of the top Moscow Communists who hate

the United States and seek to destroy us, by their 400 nuclear armed submarines and more powerful nuclear weapons.

If pro-treaty Senators don't know this, then they should resign and not wait to be defeated. There is one main issue involved in the surrender of the canal in this nuclear age to a pro-Communist dictator and that is the security of the United States and the lives of the American people. This is totally a non-partisan issue as it involves the existence of the United States and the lives of over 200 million Americans.

It is not a contest of liberals against conservatives, but Americans who stand for our own security against appeasers, unilateral internationalists, one-worlders, peace at any price, and pacifists. I believe in the full freedom of speech for all appeasers and supporters of the canal treaty. But I would be derelict to my own experience and knowledge, as Chairman of the First Congressional Committee, to investigate Communist principles, plans, purposes and policies, to surround and destroy the United States, to remain silent. It would amount to a form of betrayal and near treason in this nuclear age.

Sixteen years ago it was different, when we forced the Soviet Union to take back from Cuba, the big nuclear weapons the Communists had deployed against us. Then we had a 5 to 1 nuclear superiority. Now the Soviet Union has a 2 to 1 superiority in almost every category of nuclear weapons and 5 to 1 in nuclear explosive power. In addition, they have 400 nuclear armed submarines against our 150 and over twice as many navy warships.

Some pro-treaty Senator may ask—why I am, at 90 years of age, so outspoken. The answer is crystal clear—because I love America, and because I know even if some pro-treaty Senators ignore or do not realize that Lenin, the only god of the Godless Communists, whom all of them worshipped, said: "You must encircle the United States and if they do not surrender, destroy them." This is the religious, policial and foreign policy of the Soviet Union. If we surrender the canal to a pro-Communist dictator in Panama, word will be flashed directly to the totally silent partner at Moscow, of the Panama-Cuban-Soviet axis. Before the ink is dry on the treaty, orders will be issued to the top Soviet navy admiral to start sending the beginning of a nuclear armada of submarines and missile ships to fortified bases in Cuba with instructions to make them the strongest submarine fortresses in the world.

Once the encirclement is completed, we will soon become a second-class nation unable to transport our troopships to Europe or Panama. This is only part of the tragic abomination and desolation involved in the Panama treaty which I pray to God will not be ratified. With 200 Soviet submarines based in supply harbors in Cuba, and nearby islands, the Communist armada would dominate not only the Caribbean and Gulf of Mexico, but every important harbor on our Atlantic and Pacific coasts.

The responsibility of aiding and abetting Communism, rests with the pro-treaty Senators who are hiding behind President Carter's appointees on the General Staff, who knew they were politically surrounded and were wise enough to follow sound, military tactics, to retreat in order to fight another day. Every Senator should realize if President Carter had not repudiated his public campaign promise that he opposed giving away the canal, partially or completely, the General Staff would have then agreed with him.

Let the pro-treaty Senators answer the public statement of four former Chiefs of Naval Operations (the highest most obtainable in the U.S. Navy) that declared "loss of the Panama Canal . . . would contribute to the encirclement of the U.S. by hostile naval forces and threaten our ability to survive". None of these men are appointees of President Carter.

Abraham Lincoln said: "To sin by silence when you should protest makes cowards of men". The American people are not cowards and have a right and a duty to protest when their own security is involved. Let the pro-treaty Senators publicly answer the statement of the four leading retired Admirals to 95 percent of our army, navy, air force and marine officers, also to 95 percent of the Veterans of Foreign Wars and 90 percent of the American Legionnaires.

Mr. CHAFEE. Mr. President, will the Senator yield for a question?

Mr. CURTIS. I am happy to yield for a question.

Mr. CHAFEE. I have been listening carefully to this excellent statement that the Senator has been reading from the distinguished former Congressman from New York, Congressman Fish. But I wish to point out a couple of exceptions that I might take to his statement.

He refers to the four former Chiefs of Naval Operations. But, of course, first, I point out that the just previous Chief of Naval Operations has, of course, not remained silent. He has come forward in support of these treaties. That is Admiral Zumwalt.

But I think the key point I wish to make is that it is one thing for men who do not have the responsibility, who are retired, who are gone from the day-to-day problems that have to be solved and do not have the responsibility, to make statements. But the men who have the responsibility, namely, every single member of the Joint Chiefs, the heads of the Marine Corps, Army, Navy, and Air Force plus the chairman, have all come out in support of this treaty.

I just do not think we can overlook that.

Another point I wish to raise with the distinguished Senator's comments is that he sees this as a pattern, all tied in with withdrawal from South Korea, the retreat from South Vietnam, supposedly our giving up the neutron bomb, or possibly even getting out of Guantanamo Bay, or any of those movements.

I cannot speak for the remainder of Senators who are for this treaty, but certainly I in no way feel committed that by voting for this treaty, therefore, I am going to vote for withdrawal of forces from South Korea, for doing something about Guantanamo Bay, or getting rid of the neutron bomb. Nor has the President come down yet on a position on the neutron bomb.

But I just think it is incorrect to make a statement tying all these together in a package.

True, we got out of South Vietnam, but I do not think the Senator would say we should have stayed there under the circumstances, and there was the administration that both of us supported very strongly that provided for us getting out of South Vietnam.

So I say to the public, all who are listening, that those who are in favor of this treaty are in no way for a retreat from America's responsibilities around the world. We take each case on its own.

As for the neutron bomb, let us look at it when the time comes.

But by voting for this treaty we are not going to vote to give up the neutron bomb.

I thank the Senator, and I appreciate him giving me the opportunity to ask these questions and make this statement.

Mr. CURTIS. Mr. President, I thank my distinguished friend, and I say in reply that I do not question the motives, the intentions, or the patriotism of any Senator.

I do feel that regardless of our intentions or our position on any individual item in our defense program or foreign policy we cannot escape from giving attention to the overall effect of what is proposed here in our foreign policy and that we cannot separate them as much as we would like. It is part of what is taking place.

I respect my distinguished friend in his statement about the naval officers now on duty. I think it is a fact so well known that, in terms of the courtroom, we can take judicial notice of the principle that military men on duty are under wraps, they cannot be policymakers, they are by their very training committed to accepting whatever the policy is and making the best of it.

I think that it is true to a considerable extent that after these distinguished defenders of our country retire they no longer have a feeling that they are under wraps, and they are free to speak their beliefs.

Mr. President, continuing the statement of former Congressman Fish, and I am referring to it in full because I believe it is worthy of consideration:

Abraham Lincoln said: "To sin by silence when you should protest makes cowards of men". The American people are not cowards and have a right and a duty to protest when their own security is involved. Let the pro-treaty Senators publicly answer the statement of the four leading retired Admirals to 95 percent of our army, navy, air force and marine officers, also to 95 percent of the Veterans of Foreign Wars and 90 percent of the American Legionnaires, some of whom did not fight overseas, and hold the same views. If these four distinguished American Admirals are wrong, I will surrender my World War I decorations won on the battlefields of France.

He then goes on to say:

I am a life-long Republican and proud of it; after 25 years service in the Congress, ten years as ranking minority member of the House Foreign Affairs Committee and four years as ranking Republican member of the Rules Committee, and never defeated by a Democrat.

I have no right, except as an American, to advise Democrats how to vote, but many of them must sink or swim, survive or perish, on the canal issue, along with President Carter and his vanishing influence in the Democratic Party.

But I have a very definite right to urge all Republican Senators not to follow President Carter down the slippery and treacherous path from which there is no return, to aid and abet our Communist enemies in encircling and destroying our country and our people. If the canal treaty is ratified, God forbid, it will light such a flame of bitterness and anger, that it will not be extinguished until numerous Republican and Democratic pro-treaty Senators will be defeated by their own constituents who have been led astray by double talk and double

worded campaign oratory. They naturally are opposed to playing chicken with our Communist enemies who seek to liquidate the American people by encircling us if the Panama treaty is ratified.

The neutrality vote was nothing but a gesture, useless and meaningless. The final vote on the surrender of the canal, is an abject surrender to a pro-Communist dictator and his Communist allies. By Election Day, the American people will know the whole truth, and also what happens in Panama if the treaty is ratified.

I have just returned from a month's trip to Arizona and California where I only met one person who was for the canal treaties and she came from New York. But the Republicans in New York are 80 percent against the canal treaties and half of them are madder than aroused hornets and will not vote for any Republican protreaty Senators, appeasing or aiding our Communist enemies in spite of the big banks and some of the media. The Republican voters are already sharpening their political axes as they are naturally interested in their own security and survival.

I go on to quote Mr. Fish's words:

The political guillotine will fall of both Republican and Democratic pro-treaty Senators, who follow Carter into opening the way for our avowed enemies to encircle and liquidate the American people. All Americans have a right to protest for the right to survive and I gladly join with Democrats, Republicans, Liberals and Conservatives, in behalf of their rights to security against encirclement of themselves, the United States, our freedoms and human rights, against Communist dictatorships everywhere.

Pro-treaty Senators have written me that there are only 600 Communists in Panama. True or false, it makes no difference. Six hundred armed Communists seized the Kerensky Government in Russia in 1917. But these Senators fail to tell their constituents, that there are 300 Communist Cubans and 200 Communists from Russia, mostly KGB secret service spies, in Panama today.

If the treaty is ratified, God forbid, again and again, they will be replaced by thousands of Communists, including hundreds of army, navy, air force officers and engineers, from the Soviet Union and Cuba. Again, if I am wrong, I will regretfully give away my Croix deGuerre and Silver Star, won on the battlefields of France, fighting for freedom and democracy, just the opposite to the pro-Communist dictatorship in Panama. I hope that every Senator will read this final warning of the hornet's nest they are creating in their own states at the insistence of President Carter, with his 36 percent rating in the last Harris poll. Carter's popularity is still ebbing like the American dollar and his credibility for the ruinous inflation, the decline of the stockmarket and the loss of public confidence, does not make him a knight in shining political armor, to cause misguided Republican Senators to follow him down into the dismal swamp of dispair and defeat.

The only possible reason might be that they would be committing political suicide to help drive a few more nails into President Carter's political coffin if the treaty is ratified, which will obviously help elect Republicans throughout the nation.

I am not a prophet or the son of a prophet but even the Biblical prophets warned the existing government of its ruinous policies and used very strong words in their denunciation. It does not take much courage or strong guts, to tell the truth in trying to safeguard the nation and its survival.

The statement of President Carter to coerce Israel in order to provide a PLO homeland west of the Jordan River, within sight of Jerusalem, is like placing a Communist rattlesnake in your own backyard. That is precisely what President Carter is trying to do in Panama. This final warning to all patriotic Senators will be given extensive circulation in every state where there is an election of a pro-treaty Senator, no matter the cost. The American people are entitled to know the truth. If there is any unfounded statements, they will be omitted. The real issue is the truth and our own security and the survival of the American people.

That is the end of the statement of the Honorable Hamilton Fish, former Congressman, soldier and patriot, now 90 years of age.

(Mr. LEAHY assumed the chair.)

Mr. CURTIS. Mr. President, perhaps there are some who justifiably feel that the words I have just read of former Congressman Fish are a bit strong, that they are more critical than they ought to be. They may be correct.

The point is it is a viewpoint that is worthy of consideration. If honorable American people believe that our country is in danger by reason of this step proposed in reference to the Panama Canal, thank heavens we live in a country where they can speak out and say so.

I remind you of what I said at the beginning of my remarks, that Panama and the proposal for us to give away the canal is not an isolated incident. It is not in a vacuum, severed and apart from the rest of all the things around the world. It has to be viewed in the light of the retreat in South Korea; it has to be viewed in the light of how we became entangled in Vietnam; it has to be viewed in the light of our overanxiousness to unilaterally disarm; it has to be viewed in the light of the administration's position to not go forward with the B-1 bomber; it has to be viewed in the light of our Government's attitude toward important weapons such as the neutron bomb.

In that light it becomes a part of our foreign policy, a part of our global policy. Is it a retreat? The answer is obvious.

I also ask the question when have liberty and freedom been served by retreat? When has the world been assured of peace through appeasement? Are we to form our policy because a handful of radicals say "Boo, there is going to be trouble if you don't surrender the Panama Canal"? Or do we have a responsibility to look at the facts, to examine the record and see whether our operation of the Panama Canal has been honorable?

I have heard no argument to the contrary.

We should also examine the facts and find out if the United States has operated the Panama Canal for the benefit of the whole world. Have we kept true to our commitment that we would operate the Panama Canal at cost so the nations of the world could carry on their commerce?

Oh, the Panama Canal was not built by America as a moneymaking proposition. That canal was not built for the purpose of controlling the commerce of the world and saying, "This country can pass, another one cannot." It was built after decades of planning to serve the commerce of the world, to permit goods to flow from the Atlantic to the Pacific, from the Pacific to the Atlantic, and in time of need for us to transport our ships and troops through the canal in order that we could defend our own country.

So many Americans point with pride at the Cuban confrontation of a few years ago and the position America took, and the backdown on the part of the Communists. One of the reasons why that was successful was because of the great number of warships that passed through the Panama Canal.

Do you think if we surrendered this canal a decade or two from now we would have the same opportunity if a controversy arose with Cuba and with Russia? The answer is obvious.

I think that this treaty ought to go back to the negotiating table. We ought to go as far as we can in meeting just demands of the Panamanians.

It is very evident that the cost of government at all levels in every place has gone very high. That no doubt is true in reference to Panama. So, as one Senator, I would welcome an opportunity without surrendering the canal, to be more generous financially with Panama.

It is also very likely that we do not need all of the land in the Panama Canal Zone for the operation of the canal. Those of us who visited down there know that the population is growing, their industry and jobs are growing. They have built many buildings, and I am sure they can use a little more land. I, for one, would welcome a chance to give back to them any land that is not needed in connection with the canal or is not likely to be needed.

But on the question of surrendering the canal—and that is the issue we face in this treaty—we are faced with a question that involves our foreign policy, our defense policy, our responsibility as a leader in the world, our responsibility to all the other nations of the world to make it possible for the commerce to move through.

We owe a responsibility to continue a sound and efficient operation of that canal.

Oh, Mr. President, if there are reasons for giving up this canal, why can we not hear them in this debate? How would the commerce of the world be improved by our giving up this canal? How would the defense of our country be enhanced by giving up the canal? How would the thrust of world communism be restrained by our giving up the canal?

If there are such reasons, why are they hidden under a bushel? Mr. President, the mere charge that not to do it is colonialism does not stand up. We have been most generous with Panama. We have made Panama the most prosperous nation in Central America. The very presence of the canal there, with the maintenance by the United States, enhances their economy a great deal.

Mr. President, Americans have never had a desire to force their way of life on other people. Americans are not guilty of trying to bring converts to the American way of life by means of the sword. On the other hand, all through the centuries, Americans have felt that we should use our moral strength to protect liberty around the world. We seek individual liberty for ourselves and for all

mankind, because all men should have it. We should forever be an exponent of liberty.

If we are to enter into a treaty with Panama concerning the canal, in the interests of liberty we ought to insist that an election be held, and that the Panamanian citizens be allowed to choose a government of their choosing, not of ours but of their choosing, to negotiate for them.

Mr. President, General Torrijos was never elected head of the Panamanian Government. He seized control with a gun. The last elected president was banished. He cannot even come forth and express his opinion about this treaty. They have not had an election in that country since 1968. Oh, where oh where is the American principle of standing for human rights?

One of the most important rights is the right to vote. That is the right by which, when we exercise it, we can obtain other rights. It is through the vote that citizens can make their wishes known. If they have the right to vote, they can expect those who hold office to act responsibly. If they do not have the right to vote, how can they hold anybody responsible? How can they change their government when they disagree with the way it is being run?

I declare unto you that there is no right to vote in Panama. If you think I am in error, cite me the time when they have held an election in the last 10 years. There is no right to vote if you do not have any elections.

Mr. President, the issue of the Panama Canal is of interest to all the people of the world. It is especially of interest to all the nations that conduct commerce. It is of special significance to all people who have the privilege of enjoying liberty.

If we want to take a step in reference to the future of the Panama Canal, why do we not insist that they hold an election in Panama and elect a government that speaks for the people?

Oh, Mr. President, it will be argued that many governments not elected have entered into treaties, and they have been binding. I am not talking about the legalities of a document; I am talking about human liberty. Either we are for it or we are not. If we are not for human liberty, we should insist that those governments with which we deal be governments chosen by the people—unless, of course, they are hostile governments, and our dealings are motivated by a different reason.

Mr. President, I have had prepared and caused to be printed an amendment. It happens to be amendment No. 63. It provides that before this treaty takes effect, neither the treaty concerning permanent neutrality or the treaty concerning operation of the Panama Canal shall enter into effect until signed by a chief of state of the Republic of Panama who is duly elected by a public election, supervised by observers dispatched by the United Nations, and involving candidates of more than one party.

Oh, I know that will be branded as nonsense. It will be branded as butting into other people's affairs. Not at all. It does not provide that they shall elect somebody acceptable to us. All it provides is that before we deal with them, the people of Panama will have to choose someone. If that be heresy, it will have to be heresy, but I believe that that is a good American principle, that elections ought to be held, that citizens ought to have the right to choose their own leaders, that they ought to have the right to hold their leaders accountable; and if we are proposing to take this step of ratifying this treaty for the benefit of Panama, let us deal with a duly elected representative government of the people of Panama.

Mr. President, the statement seems unchallenged that Panama's Torrijos has spent a lot of money, that he spends more money than he takes in, that he has accumulated a lot of debts, and that it takes 40 percent of his budget to pay the interest on his debts, that he is desperate for funds. If he does not have any funds, how is he going to pay his creditors?

I make no charge of any dishonest, unworthy, or inappropriate action of any American bank or any other American corporation operating in Panama. But I say this, that the proponents of this treaty, especially those who served on the committee in charge, should come forth with a full disclosure of the Panamanian debts to American institutions; tell us how much is owed; when it is due; what the prospects of paying are, if the treaty is not ratified, and what are the prospects of paying those debts if the treaty is ratified.

I make no charge whatever, but I say this Senate and the American people are entitled to that information. If it comes out that American financial institutions do not have a stake in the ratification of this treaty, the American people ought to know it. If the reverse is true, they ought to know it. Whatever the facts are, they could act accordingly and they could better interpret this treaty and the efforts for it.

Mr. President, I wish to propound a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state the inquiry.

Mr. CURTIS. Are we under controlled time?

The PRESIDING OFFICER. We are not. There are no amendments pending. The Senator from Alabama withdrew the amendment which was previously pending.

Mr. CURTIS. Is there a rule of germanness so far as debate is concerned at this hour?

The PRESIDING OFFICER. The 3 hours under the Pastore rule have expired.

Mr. CURTIS. Mr. President, I shall then proceed to very briefly discuss another subject because it is timely. I expect to use no more than 4 or 5 minutes to do so. I know I have a right to do it, but I make that explanation in the interest of orderly debate and in seeking the indulgence of my colleagues.

The PRESIDING OFFICER. The Senator is recognized.

SOCIAL SECURITY FINANCING

Mr. CURTIS. Mr. President, this morning a subcommittee of the Committee on Finance opened hearings on social security finance. I wish to present to the Senate the statement I made at the opening of those hearings. There I said:

Mr. Chairman, the Congress is facing a real test. We must now answer to the people concerning the payment of their promised Social Security benefits. This is a concern, not only of the retired, but to those who will retire.

It is well that we consider a few of the facts that we are facing. The problems in Social Security financing were created by the Congress and the Congress must face up to those problems. It is unthinkable that the government's commitment to pay these benefits should be repudiated, lessened or paid with IOU's.

With the general funds of the government operating with a huge uncontrollable deficit, any form of paying benefits out of the general fund, including a tax credit or deduction for the payment of Social Security taxes would in reality be paying the beneficiaries with IOU's. I am sure that eventually it would convert the Social Security Retirement System into a welfare program.

The high Social Security taxes that some of our people are feeling now are not the result of the action taken in the latter part of 1977. These high Social Security taxes are the result of previous actions of the Congress.

The victims of an excessive Social Security tax are the middle-class people, and particularly those earners who are in the upper brackets of the middle-class. In my opinion, this is because the Congress, instead of spreading the tax burden evenly, has chosen to soak the more fortunate. Now with the growth of our economy, plus the ravages of inflation, this so-called more fortunate group becomes a great portion of the rank and file.

One of the basic evils which has been practiced in the past, has been to raise Social Security revenues by over-extending the covered wage base. At the present time, when the Social Security taxes are levied on earnings up to $17,700 per year, only one-sixth of the Social Security taxpayers have earnings in excess of this wage base. So when we raise needed revenue by levying only on one-sixth of the taxpayers, the burden becomes heavy and ruinous. This is further compounded by the factor of the built-in features in the law which bring about automatic increases in the wage base.

Another evil that has been perpetrated in our Social Security System has been the voting of increased benefits without providing for the revenue in any manner. In 1972 the Congress voted for a 20 percent increase in benefits without providing the necessary revenue. Much of the added revenue that the Congress voted in 1977 will go to reimburse the Social Security fund for this past unsound action. In other words, our people will have to pay added taxes, not for current and future benefits, but for past debts.

In the action taken on the Social Security tax in late 1977, the Congress could have provided for the deficit in the Social Security fund by levying a tax rate increase of one-half of one-percent on the earnings of each Social Security taxpayer. This failed on a roll call vote in the Senate and the Congress, once more, increased the covered wage base.

In considering Social Security financing, we should keep in mind that the benefit formula is very properly tilted in favor of the low income. This is right and I favor it. We should also keep in mind that the provision

in our tax law for the earned income credit, likewise very properly benefits the people of low income. We should not continue to raise revenue under the pretense that we are soaking the few, by increasing the covered wage base or adding to the burden of the employers.

The Congress has provided for a commission to study all of these problems and come up with a recommendation within two years. It is my hope that what is said at these hearings will be helpful to that commission. In the meantime, we should not sacrifice soundness in our efforts to get a quick answer.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

A SALUTE TO DEAN JAMES E. FOY

Mr. ALLEN. Mr. President, I wish to take this opportunity to salute and pay tribute to a remarkable Alabamian, Dr. James E. Foy, of Auburn University.

Dean Foy, who served as dean of students at Auburn University for 28 years, retired on March 31, 1978. Alumni, students and friends honored him on this notable occasion with a "celebrity roast."

Raised in Eufaula, Ala., Dean Foy worked his way through high school and college by working at a number of odd jobs. He received his undergraduate degree and master's degree from the University of Alabama and holds a Ph. D. from Michigan State University.

The recipient of numerous honors and awards, Dean Foy has remained active in civic work throughout his professional career. A member of the Auburn Rotary Club from 1950 to 1977, he served as chairman of the Auburn United Fund Drive; president of the Auburn PTA and Lee County PTA; chairman of the Alabama College Committee blood program.

He has been a prime mover in the blood donation program at Auburn. On one occasion, 4,373 pints of whole blood were donated at Auburn in a 3-day period. This was the second highest one-drive donation program in the world.

Dean Foy served four terms as regional vice president of the National Association of Student Personnel Administrators. He also served as president of the Alabama Council of Student Personnel Educators during 1971–72.

As dean of student affairs at Auburn University, Dean Foy was responsible for overseeing a professional staff of 30 persons plus support personnel. His responsibilities included student government activities, the Auburn Union Building, fraternities, campus organizations, student activities, men's discipline, religious life programs, and intramural and recreation activities.

I join Dean Foy's many friends and admirers in expressing gratitude for his extraordinary contributions to Auburn University. Of all his accomplishments, none ranks higher than the positive influence Dean Foy had on the lives of literally thousands of young people.

A patriotic citizen and outstanding educator, Dean Foy leaves behind a legacy of excellence and an admirable standard for those who will follow in his footsteps.

At this time, I extend my very best wishes to Dean Foy and Mrs. Foy as he retires from an illustrious career at Auburn University. I am confident the coming years of retirement will be filled with accomplishments and prosperity for Dean Foy and his family.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

AMENDMENT NO. 91

Mr. ALLEN. At this time, Mr. President, I call up my amendment and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself, Mr. HATCH, and Mr. HELMS, proposes amendment No. 91

At the end of Article I, section 3, strike the period and insert a semicolon and insert the following: "*Provided, however,* That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.".

Mr. ALLEN. Mr. President, this amendment has been fully discussed. It is an amendment that will prevent discrimination against the citizens of the United States who are employees of the Panama Canal Company. I believe that the amendment is needed to knock out the provisions of the treaty that do discriminate against U.S. citizens who are employees of the Panama Canal Company in that they require, over the next 5 years, a reduction of the number of U.S. citizens working for the canal company of 20 percent. In other words, it would be some 600 employees who are U.S. citizens who must be terminated within the next 5 years.

Another section of the same article, which will be addressed later, but which is analogous to this provision of the treaty, provides that the United States of America must establish an employment policy for the Panama Canal Commission, which succeeds the Panama Canal Company, that would provide that no U.S. citizen can be employed with the Panama Canal Commission unless he has skills that are not available among Panamanians. It definitely establishes an anti-American discrimination in the treaty. At a time when we legislate against discrimination of all sorts—discrimination as to race, religion, nationality, age, sex—why is it that in the treaty, we discriminate against American employees? I think that it is certainly unwise to mandate that an American commission, which the Panama Canal Commission will be, must establish this arbitrary policy discriminating against citizens of the United States.

The amendment merely provides that any person who is now employed by the Panama Canal Company can retain his employment with the Panama Canal Commission when the transfer is made and that he can continue working for the Commission until he retires of reaching the mandatory retirement age, or if he retires voluntarily, or if he is discharged for cause. So it does prevent the arbitrary discharge or the arbitrary termination of the employment of U.S. citizens who are presently employed on the canal.

I have no further argument to make. I have argued the matter at several different times. At this time, I am ready to vote on the amendment.

Mr. CHURCH. Mr. President, I thank the Senator very much for clearing the way for a vote on this amendment. He is quite right, the matter has been discussed at length.

I would hope that the Senate would lay the amendment on the table, but before making that motion, I wish to yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Idaho (Mr. CHURCH).

The PRESIDING OFFICER. The Senator from West Virginia.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, under the agreement which was reached some several days ago, as a matter of fact prior to the Easter nonlegislative period, the distinguished minority leader (Mr. BAKER) and the distinguished Senator from North Carolina (Mr. HELMS) and I, were authorized under that agreement and directed to meet at 3 o'clock p.m. today to determine, if possible, an earlier date than the date of April 26, which had been included as the latest date for a final vote on the treaty in the earlier unanimous-consent agreement.

Those three Senators have met and we had a very frank discussion, a congenial one, and I am about to propound the request which emanates from that meeting and from the discussions among Senators who were proponents and who were opponents of the treaty prior to the meeting.

But before promulgating the request, I want to express my personal gratitude to Senator HELMS and to Senator LAXALT.

Senator LAXALT has been one of the leaders in opposing the treaty. He has fought a very respectable, dignified and worthy battle thus far.

I also express my appreciation to the distinguished Senator from Alabama (Mr. ALLEN) who has proven himself, as always, to be a very resourceful and able protagonist or antagonist, whatever the situation may be in which he finds himself.

I express my own personal gratitude to the distinguished minority leader who has used his good influences on his side of the aisle with both the proponents and the opponents of the treaty in an effort to reach some kind of a preliminary agreement which we would propose to the Senate for its unanimous consent, hopefully.

But before I do that, I also express appreciation to the distinguished Senator from Idaho (Mr. CHURCH) and to the

distinguished Senator from Maryland (Mr. SARBANES) for the cooperation that they have demonstrated throughout in an effort to reach an agreement that will be acceptable to the Senate and one which will expedite the action in a reasonable fashion on the treaty.

Now, here is the request which I now make on behalf of myself and the distinguished minority leader, and I believe I can state with the approval of the distinguished Senator from North Carolina, and again, I want to express my gratitude.

I ask unanimous consent that with relation to the pending business before the Senate, Executive N, Calendar No. 2, of the 95th Congress, 1st session, the so-called Panama Canal Treaty, that the Senate complete its consideration of the treaty as in Committee of the Whole no later than the close of the session on Thursday, April 13.

Mr. HELMS. No, the 18th.

Mr. BAKER. This is the Committee of the Whole.

Mr. HELMS. I see.

Mr. ROBERT C. BYRD. And that amendments made as in the Committee of the Whole shall be considered as having been concurred in by the Senate and no further amendments to the treaty, debate, or motions with respect thereto, will be in order. Provided further, that the Senate proceed to the resolution of ratification on the Panama Canal Treaty when it resumes consideration of the treaty on Friday, April 14, 1978, and that the vote on the resolution of ratification on the Panama Canal Treaty occur at the hour of 6 p.m., on Tuesday, April 18, 1978.

Provided further, that at 12 noon on Friday, April 7, 1978, the Senator from Oklahoma (Mr. BARTLETT) be recognized to call up an amendment to article 13 of the Panama Canal Treaty, and that debate on the amendment be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from Oklahoma (Mr. BARTLETT) and the Senator from Idaho (Mr. CHURCH).

Provided further, That at an hour no later than the hour of 10 a.m. on April 12, the distinguished Senator from Alaska (Mr. STEVENS) be recognized to call up an amendment to article XIV of the Panama Canal Treaty, and that debate on the Stevens amendment be limited to 3 hours to be equally divided and controlled, respectively, between the Senator from Alaska (Mr. STEVENS) and the Senator from Idaho (Mr. CHURCH).

The PRESIDING OFFICER (Mr. NUNN). The Senator from Tennessee.

Mr. BAKER. Mr. President, reserving the right to object and I will not object, I wish to join the majority leader in expressing my appreciation to those principally involved in working out the details of this unanimous-consent request and participating in the negotiations that led up to it.

There have been times in the course of this debate when there was speculation in the press and on the floor that the debate might extend ad infinitum and, indeed, we might be faced with a filibuster.

We have not been faced with a filibuster, and I wish to express my gratitude and appreciation to the opponents of the treaty for conducting themselves, I believe, in a highly responsible way and in seeing there was detailed and appropriate debate and discussion of these issues, but without prolonging the debate or unduly delaying the exercise of the expression of the will of the Senate.

I would especially like to express my appreciation to the distinguished Senator from Nevada (Mr. LAXALT) who has acted in many ways as one of the leaders of the opposition, who has often expressed his desire to see this matter brought to a conclusion at an appropriate time; to the distinguished Senator from Alabama (Mr. ALLEN) who has clearly shown his willingness to consider the termination of this debate in an orderly way and who, indeed, was the first to suggest the procedure, I believe, that we are now following, and I think it has worked very well at this point; the Senator from North Carolina (Mr. HELMS) who has not only been an energetic opponent of the treaties, but a responsible adversary, and to whom I wish to express my appreciation not only for his good offices in bringing us to this point at our meeting at 3 o'clock today, but in his negotiations with Senators who are in opposition to the treaty in bringing this to the point where we could propose this request.

I know the Senator from North Carolina wanted to set this time for April 20 and that he, indeed, proposed that time in a meeting, and, for a variety of reasons that I will not elaborate on here, the convenience of a number of Senators would be greatly enhanced if we moved the time from the 20th to the 18th. I simply wish to acknowledge that it was an accommodation by the Senator from North Carolina and those for whom he spoke that his initial request for April 20 was revised to permit us to propound this request for April 18.

Mr. President, I express my appreciation to the distinguished Republican whip for agreeing that we proceed in this manner, notwithstanding that we had to provide for a special arrangement for him to call up his amendment to article XIV, which he kindly agreed for us to do. Otherwise, it would not have been possible to arrive at this agreement.

In a word, it is clear that a great number of Senators have put a great amount of work and effort, in an accommodating spirit, to bring us to this point. I think it sheds great credit on the entire Senate that we are in a position where it appears that we may be able to terminate the debate on this important, emotional, and volatile matter in an orderly and appropriate way, and I do not object. I join the majority leader in his request.

Mr. ROBERT C. BYRD. Before the Senator does that, will the Senator yield?

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. I inadvertently failed to mention the fact, as the distinguished minority leader has pointed out, that the distinguished Senator from North Carolina (Mr. HELMS) advanced the date of the 20th and argued for it strongly. But in light of the fact that certain Senators would be inconvenienced greatly if we did not vote on the 18th, the Senator, in his usual understanding and cooperative fashion, agreed to go along with the 18th. I am glad the minority leader mentioned that.

Mr. ALLEN. Mr. President, reserving the right to object, I thank the distinguished majority leader and the distinguished minority leader for their characteristically generous and complimentary remarks about the Senator from Alabama.

I had not been advised of the shift from the 20th to the 18th. I will not raise any point as to that, if the distinguished Senator from North Carolina has agreed to it, as I understand he has.

I would like assurance on one thing. I think this is understood, but it has not been stated explicitly. It is understood that we will remain on a one-track system—that is, remain on the Panama Canal Treaty—unless by unanimous consent some emergency matter is set ahead of it.

Mr. ROBERT C. BYRD. If this order is entered into, the Senator has my assurance.

Mr. ALLEN. I thank the Senator. That would be by unanimous consent—any shifting?

Mr. ROBERT C. BYRD. It would be.

Mr. ALLEN. I am not quite sure from the propounding of the unanimous-consent request——

Mr. ROBERT C. BYRD. Permit me to amend that: Barring an unforeseen emergency, which I know the Senator will understand. I will have to qualify it.

Mr. ALLEN. Of course, if we used up a substantial portion of this intervening time, adjustment could be made in the ultimate time for voting. Is that correct?

Mr. ROBERT C. BYRD. The Senate could enter into a new——

Mr. ALLEN. For example, if the energy package or a similar emergency measure should be set before the Senate—the farm bill, for example—if that takes up any substantial amount of time, would that have the effect of moving the final vote backward, then?

Mr. ROBERT C. BYRD. I would want to say yes to the Senator. In either of those events, either of those two items, I would hope it would be taken up only by unanimous consent, in which case it would be up to the Senator. He would retain his rights to retain as the price of that consent that the time for the vote on the treaty be delayed by as much time.

Mr. ALLEN. It would not require unanimous consent to bring up such a matter.

Mr. ROBERT C. BYRD. I understand that, but I am saying that I hope that if either of those contingencies arises, I will seek to bring it up only by unanimous consent.

Mr. ALLEN. That is certainly all the assurance I need. I appreciate the attitude of the distinguished majority leader.

I have not seen a draft of the unanimous-consent request. I understood the distinguished majority leader to say that there would be no amendments in the Committee of the Whole after the 13th.

Mr. ROBERT C. BYRD. No amend-

ments to the treaty after the close of business on the 13th.

Mr. ALLEN. No amendments to the treaty. What about the time-honored custom of allowing amendments to be presented, though not debated, after the time for the vote? Would that be protected?

Mr. ROBERT C. BYRD. That would be followed, which would mean that we might have to go beyond midnight in order to accommodate Senators who have amendments that had not been called up prior to the close of business. We would just have to delay the close of business on Thursday.

Mr. ALLEN. What would be done then between the 13th and the 18th, a 5-day period? What would occupy the Senate then?

Mr. ROBERT C. BYRD. There are only 3 days the Senate normally would be in session—Friday, Monday, and Tuesday—out of those 5 days, and we would be on the resolution of ratification.

Mr. ALLEN. There is no limitation, then, on the number of amendments that could be offered to the resolution of ratification?

Mr. ROBERT C. BYRD. No. When we reach the hour of 6 p.m. on Tuesday, the 18th, if there are amendments to the resolution that have not been called up and Senators wish to call them up, they may do so, without debate.

Mr. ALLEN. I might comment that the managers of the treaty have been extremely accommodating when we get to the item of the resolution of ratification. They have been generous about allowing amendments to this resolution but not quite so generous in allowing amendments to the treaties. It would lead one to believe that possibly not too much store is set by the value of an amendment to the resolution of ratification, though it has been used to placate and to encourage the support of some Senators, I believe. Is that correct? [Laughter.]

I thank the Senator. I have no objection.

Mr. ROBERT C. BYRD. I thank the Senator for not requiring an answer to that $64 question.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object, I wonder if I might pose a question to the distinguished majority leader.

I have read very quickly the unanimous-consent request. I do not have any reason to delay the final vote. I understand that there may be as many as 19 amendments between the time this agreement is entered into and the 13th of April, which would be a week from tomorrow. Will there be some effort to make certain that everyone who has amendments that they deem to have some merit will have some time to debate those amendments? Once we are locked into a time agreement, someone can come along and take 3 days, and the other Senators might end up with 5 minutes.

The Senator from Kansas has four or five amendments, two of which I probably will call up; but I do not want to enter into some agreement and lose 2 days or 8 days, whether it is the 20th, the 26th, or the 18th, and find myself in a clump at the end, just offering an amendment and getting a vote on it.

Mr. ROBERT C. BYRD. I can appreciate the situation the Senator addresses, and conceivably it could arise. But let me assure the Senator—and I believe I can do this, with the two managers on this side of the aisle present—that every effort will be made, if desirable, to develop a sequence for amendments, a time to vote on them, or a time to vote in relation to them. I would be eager to work with the Senator from Kansas on that, because we have been put on notice that he has several amendments, and perhaps some arrangement can be worked out which will fully protect the Senator from Kansas.

Mr. DOLE. The Senator from Kansas would be willing to enter into very reasonable time agreements, just some opportunity to discuss a couple of reservations—that will come later—but a couple of amendments I hope to call up, possibly as early as next Monday.

I know that other Senators have amendments. There may be as many as 19 amendments. If we take an hour or hour and a half, we each will have an equal opportunity to discuss the amendments.

Second, once we are locked in, we lose what proper leverage we might have in getting up and down votes on our amendments. Once we agree that we are going to vote on the 18th, the 20th, or the 26th, we cannot properly suggest that we might discuss the amendment at length, unless we are offered an up and down vote, because we have fixed a time. Would there be any disposition on the part of the managers to protect up and down votes on amendments?

Mr. ROBERT C. BYRD. Mr. President, I first point out, I say to the distinguished Senator, that the agreement itself I do not think would be a factor in the decision of the managers, and I do not pretend to speak for them—they are going to speak for themselves—as to whether to utilize tabling motions or not. And I assume that there will be some amendments which will be voted on up or down. But this agreement would not waive the rights of Senators to move to table. But may I assure the Senator again that he has been very forthright and very forthcoming in his offering of amendments. He has not attempted to unduly delay action on those amendments. He has made his case, and he has been willing to let the Senate make its decision thereon, and I respect him for that. I am sure that the managers on this side will shortly address themselves to the problem and will want to work with him in protecting his rights to call up his amendments and have adequate time to debate them.

But as to the tabling motions, I would have to say that I do not believe it would be wise on this occasion to set a precedent to the effect that there will be no motions to table in order to get an agreement because if we do that once then future agreements can hold us to the same kind of requests which would be waiving the rights of Senators, and I hope the distinguished Senator will see the reasoning behind the statement I just made.

Mr. DOLE. Then, also, I understand under the unanimous-consent agreement the distinguished Senator from Oklahoma, Senator BARTLETT, will be recognized on Friday, April 7, to offer an amendment to article XIII. Offering that amendment to that article in no way prejudices any other Senator from offering an amendment at a later time to article XIII.

Mr. ROBERT C. BYRD. No.

Mr. DOLE. Finally, with reference to a point raised by the distinguished Senator from Alabama, the conference committee has agreed on an outstanding compromise to the farm legislation which we would like to bring to the floor maybe on Monday, and as one interested party we would hope that might be taken up. We would be willing to come in early so that it would not interfere with the Panama Canal Treaty debate. But there is that at any time, if we agree to this at least, to bring up emergency-type legislation.

Mr. ROBERT C. BYRD. Yes, I would hope we could have a time limit on the conference report, and I believe the distinguished Senator again has always been very helpful and cooperative in working out time agreements on legislation that comes out of the committees.

Mr. DOLE. I think the distinguished chairman, Senator TALMADGE, suggested a total of 2 hours.

Mr. ROBERT C. BYRD. If we can work out some kind of time agreement like that and come in early enough that it would not impinge on the rights of Senators and the desires of Senators in connection with the Panama Canal Treaty and if we can get an agreement like that, then there will be no problem.

Mr. BAKER. Mr. President, will the Senator yield to me on that point just for a minute?

Mr. DOLE. Yes.

Mr. BAKER. Consistently throughout this debate I indicated I would object to any procedure that would have the effect of putting us on a two-track system. Once or twice we have taken care of matters of extraordinary importance and, of course, the farm situation is a matter of extraordinary importance. So as far as I am concerned I would not object to an arrangement that would permit or limit the time in advance of turning to the consideration of the treaty on a particular day such as on next Monday.

I would very much hope we could get a fairly short time limitation on it and the 2 hours that the Senator from Georgia (Mr. TALMADGE) suggests sounds to me like an excellent time. So if we can get 2 hours, say, at the beginning of the day on Monday, that would not breach my commitment I made to other Senators that I would not agree to turning to other matters until we had finished with the consideration of the Panama Canal Treaty.

I thank the Senator for yielding.

Mr. DOLE. Mr. President, further reserving the right to object, the distinguished majority leader——

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow me to say this in addition, while conference reports are privileged matters and ordinarily would not require a time agreement and could be called up at any time, we are in executive session, so a conference report could not be called up in executive session, and both the minority leader and I would, I think, feel compelled to require unanimous-consent agreement on such matter before we consented to bring it up.

Mr. DOLE. Further, with reference to the amendment to article XIII—I guess I did not ask a complete question—that again would not preclude an amendment at a later time to article XI, or article X, or article XII?

Mr. ROBERT C. BYRD. No. Once we go through the amendments in sequence at the end, whatever the time is that is set forth in this agreement, at the end any Senator may go back and offer an amendment to any article, even though the time has expired, but he could get a vote on his amendment.

Mr. DOLE. And is it possible at this time to enter into some agreement that the Senator from Kansas might be recognized on Monday to call up amendment No. 10?

Mr. ROBERT C. BYRD. There is no problem. If the Senator would like me to do that in this request we could do so.

Mr. DOLE. To article XII.

Mr. ROBERT C. BYRD. To which article?

Mr. DOLE. No. Article XII, amendment No. 10.

Mr. ROBERT C. BYRD. On Monday?

Mr. DOLE. Yes.

Mr. ROBERT C. BYRD. At no later than a certain hour?

Mr. DOLE. Yes.

Mr. ROBERT C. BYRD. No later than 1 p.m. Monday?

Mr. DOLE. Yes.

Mr. ROBERT C. BYRD. Mr. President, I include that request.

Mr. ALLEN. Mr. President, reserving the right to object, if the distinguished Senator from Kansas is recognized as to article X, does that mean that if we are on article III we would leapfrog the intervening articles and go to article X and not go back to the other articles until we finish the last article?

Mr. ROBERT C. BYRD. No, it would not mean that at all. It would mean just for the purposes of that one order the Senator from Kansas would be recognized at no later than that hour to offer his amendment to article X. Upon the disposition of that amendment——

Mr. ALLEN. We go back to wherever we were; is that correct?

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. I thank the Senator.

Mr. DOLE. The article XII amendment?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. DECONCINI. Mr. President, reserving my right to object, I am sorry, I say to the majority leader, but will he go over that one more time for us westerners who think slow?

Mr. ROBERT C. BYRD. Does the Senator mean my response to Senator ALLEN?

Mr. DECONCINI. No. The time agreement just agreed to or about to be agreed to with the Senator from Kansas.

Mr. ROBERT C. BYRD. With respect to the Senator from Kansas, he would have an amendment to article X, I believe it is, and if the order is agreed to, regardless of what article we may be on next Monday, at no later than 1 p.m. the Senator from Kansas will be recognized to call up his amendmtnt to article X.

Mr. DOLE. Not article X. Amendment No. 10.

Mr. BAKER. Amendment No. 10.

Mr. CHURCH. Amendment No. 10.

Mr. ROBERT C. BYRD. Amendment No. 10 to article XII, and there shall be a time limitation on that amendment of 2 hours to be equally divided in accordance with the usual form. Upon the disposition of that amendment, then the Senate will automatically revert to the status quo.

Mr. DECONCINI. Where does the farm bill fit into this?

Mr. ROBERT C. BYRD. The farm bill does not fit in unless there is a conference report that comes back here with an agreement on it.

Mr. DECONCINI. Prior?

Mr. ROBERT C. BYRD. Yes, an agreement on a conference report.

Mr. DECONCINI. Yes.

Mr. ROBERT C. BYRD. Eventually, I guess, there will be a place to fit it in.

Mr. DECONCINI. I thank the majority leader.

Mr. ROBERT C. BYRD. But that will require unanimous consent.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators, and I especially again pay my tribute to Senators who have helped so much in bringing about this agreement.

Mr. CHURCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, I now move to table the amendment of the Senator from Alabama and call for the yeas and nays.

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

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I want to make sure now that we did include the Senator from Kansas in the order and that there be a 2-hour time limitation on his amendment No. 10 to article XII no later than 1 p.m. next Monday.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is on agreeing to the motion to lay on the table the amendment of the Senator from Alabama. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Delaware (Mr. BIDEN), the Senator from Alaska (Mr. GRAVEL), the Senator from Mississippi (Mr. STENNIS), and the Senator from Washington (Mr. MAGNUSON) are necessarily absent.

I further announce that the Senator from Texas (Mr. BENTSEN) and the Senator from Florida (Mr. CHILES) are absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from North Dakota (Mr. YOUNG) is necessarily absent.

The result was announced—yeas 56, nays 36, as follows:

[Rollcall Vote No. 80 Ex.]

YEAS—56

Anderson	Hatfield, Paul G.	Morgan
Baker	Hathaway	Moynihan
Bayh	Hayakawa	Muskie
Bellmon	Heinz	Nelson
Bumpers	Hodges	Packwood
Byrd, Robert C.	Hollings	Pearson
Case	Huddleston	Pell
Chafee	Humphrey	Percy
Church	Inouye	Proxmire
Clark	Jackson	Ribicoff
Cranston	Javits	Riegle
Culver	Kennedy	Sarbanes
Danforth	Leahy	Sasser
Durkin	Long	Sparkman
Eagleton	Mathias	Stafford
Glenn	Matsunaga	Stevenson
Hart	McGovern	Weicker
Haskell	McIntyre	Williams
Hatfield, Mark O.	Metzenbaum	

NAYS—36

Allen	Garn	Roth
Bartlett	Goldwater	Schmitt
Brooke	Griffin	Schweiker
Burdick	Hansen	Scott
Byrd, Harry F., Jr.	Hatch	Stevens
Cannon	Helms	Stone
Curtis	Johnston	Talmadge
DeConcini	Laxalt	Thurmond
Dole	Lugar	Tower
Domenici	McClure	Wallop
Eastland	Melcher	Zorinsky
Ford	Nunn	
	Randolph	

NOT VOTING—8

Abourezk	Chiles	Stennis
Bentsen	Gravel	Young
Biden	Magnuson	

So the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

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

Mr. STAFFORD. I ask unanimous consent that I may yield without losing my right to the floor.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Vermont has the floor. Will Senators please take their seats?

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER. The Sen-

ate is still not in order. The Senate will be in order.

The Senator from Vermont.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Vermont has yielded to me with the understanding that he not lose his right to the floor.

I merely take the floor at this time to ascertain whether or not there is another amendment to be called up and voted on today, so that the Senate may have that information.

I see no indication that there will be an amendment called up and voted on today; therefore, I take the liberty of announcing that there will be no more rollcall votes today.

COOPERATION WITH PANAMA

● Mr. PELL. Mr. President, from time to time during the debates on the proposed Panama Canal treaties, questions have arisen about the ability of Panama to operate the canal on its own and about Panama's desire to do what is necessary to keep the canal maintained and operating properly. Essentially, these concerns boil down to whether Panama really shares our judgment about the importance of the canal and whether Panama really intends or is able to cooperate fully with the United States in insuring the efficient and neutral operation of the canal.

In this connection, it may be helpful to look at some past examples of United States-Panamanian cooperation. While several specific cases could be cited, I would like to highlight one particular example that offers considerable encouragement regarding the future of the canal. The example I have in mind is the Gorgas Memorial Laboratory located at Balboa Heights in the Canal Zone.

I recently communicated with the present director of the laboratory, Dr. Abram S. Benenson, and I would like to share with my colleagues the following pertinent extract from Dr. Benenson's letter to me dated March 14, 1978:

The President of the Republic of Panama suggested in 1921 the establishment of a "Gorgas Institute" to commemorate Maj. General William Crawford Gorgas, the man who made it possible to build the canal without the tragic loss of human lives experienced by the French and who then served as Surgeon-General, U.S. Army, throughout World War I. Accordingly the Gorgas Memorial Institute of Tropical and Preventive Medicine was incorporated in the U.S. and, with offices in Washington, D.C., has provided to this date the policy and financial supervision over the activities of the Institute in Panama.

A functional laboratory in Panama was made possible by passage of H.R. 8128 by First Session, Seventieth Congress, which authorized a permanent appropriation of funds for the maintenance and operation "of a laboratory to be known as the Gorgas Memorial Laboratory." This bill was approved by President Coolidge on May 7, 1928. In April 1929, the Gorgas Memorial Laboratory began its operation in Panama City on land and in a building which had been donated by the Panamanian Government for this purpose. We now enter our 50th year of continuous research on tropical diseases carried out by American and Panamanian personnel, and have achieved the reputation of being one of the strongest research laboratories in Latin America.

For the first 20 years of its operation, the scientific personnel were American, supported by Panamanian technicians. With time, Panamanian scientists began to develop, some from our own technical personnel, some of whom were aided by the laboratory to obtain professional qualifications in the United States. Since 1947, Panamanian scientists have worked side by side with those from the United States. Today the laboratory has a professional staff of 27 of whom 10 are Panamanian nationals; of the nine research departments, four are headed by Panamanian scientists. Our administrative and supporting staff, totaling 106, are Panamanian; we function under Panamanian laws and the Panamanian Labor Code, save for special legislation exempting this laboratory and the non-Panamanian scientists from import duties and exempting the laboratory from those requirements of the Labor Code which involve union activity.

Since 1929 there have been five directors of the laboratory. My predecessor as director is a Panamanian who received his training in the United States during the 1940's, joined the laboratory and developed into one of the outstanding arbovirus experts of the world. His expertise was recognized by his selection in 1977 for the Richard Moreland Taylor Award in Arbovirology, the first non-US citizen and the first who did his work outside of the United States to receive this high honor.

I do think that the record of this organization shows that US and Panamanian personnel dedicated to a common goal will strive as partners toward that end, regardless whether the directorship is held by a Panamanian or a US national. Success is dependent on mutual respect and understanding of the differences in customs and traditions.

After having served as director for the past 10 months, I find myself increasingly enthusiastic over what this US-Panamanian group will accomplish. We have expanded our staff this past year, and are seeking additional funds to more fully exploit the opportunities. We have every reason to expect continued and increasing Panamanian participation over the next 50 years.●

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Does the Senator from Vermont have some morning business he wishes to transact?

Mr. STAFFORD. The Senator from Vermont does have business, including the introduction of a bill.

Mr. ROBERT C. BYRD. With the permission of the Senator, I ask unanimous consent that there now be a period for the transaction of routine morning business of not to exceed 1 hour, with statements therein limited to 10 minutes?

Mr. STAFFORD. That is agreeable to me.

Mr. ROBERT C. BYRD. With statements therein limited to 10 minutes each.

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

AMENDMENT NO. 1761—SPECIAL EDUCATION OF GIFTED AND TALENTED CHILDREN

Mr. STAFFORD. Mr. President, I am today submitting an amendment which would provide for a modest but significant expansion of Federal support in the special education of gifted and talented children. I take this action with the full knowledge that other very worthy proposals have been and will be offered; but I believe that this bill must be introduced if we are to examine fully the major options in this area before final legislative determinations are made.

The appropriateness of a responsible Federal involvement is well established. The basic Federal study of the education of perhaps our greatest resource, our gifted and talented children, occurred with publication of the "Marland Report" in 1972 (after former U.S. Commissioner of Education Sidney Marland). That report asserted that the most conservative estimate of the proportion of gifted and talented children within our Nation's school-age population is around 3 percent. It is clear that these childrens' needs are being neglected. A 1977 survey conducted for the U.S. Office of Gifted and Talented indicated that, of 32 States reporting, only two, California and North Carolina, serve a number of gifted and talented children equaling at least 3 percent of their school-age population. Thirty States reported appropriating a total of $56.23 million toward the special education of gifted and talented children in school year 1976–77. Yet eight States accounted for over 90 percent of this total appropriation. Clearly it is appropriate to promote a Federal catalytic function in this area.

It is not necessary for me to elaborate the case for a Federal program. That case was eloquently and thoroughly laid before us by my distinguished colleague and friend, perhaps the best friend as well that gifted and talented children have had in either House in recent years, Senator JACOB JAVITS. Let me applaud the Senator for the expansion of the Federal role which he proposes in his own bill. I agree with his basic purpose.

What distinguishes the bill I am introducing is that it would acknowledge and reinforce existing professional and administrative interaction between the special education of gifted and talented children and the special education of handicapped children. The advantages of doing so are:

Historically, special educators and administrators have perceived themselves as belonging to a profession committed to the education of all exceptional children, handicapped, and gifted.

Already 26 of the States take the combined (exceptional child) direction in their statutory and/or administrative approaches.

Such an approach avoids both the duplication of many existing delivery systems and the impossible task of creating wholly new delivery systems nationwide.

The U.S. Office for Gifted and Talented already is housed within and is under the jurisdiction of the U.S. Bureau for Education of the Handicapped.

There is substantial support throughout the Nation for maintaining and reinforcing in this session of the Congress the "combined systems" or "exceptional child" administrative approach.

The following national organizations have endorsed an expansion of the

Federal role which would reinforce the linking of special education delivery systems across the spectrum of exceptionality. This list includes both groups which are primarily advocates for the handicapped and those which are primarily advocates for the gifted.

American Coalition for Citizens with Disabilities.
Council of State Directors of Programs for the Gifted.
United Cerebral Palsy.
Mensa.
American Association for Gifted Children.
American Foundation for the Blind.
The Council for Exceptional Children.
National Association of State Directors of Special Education.
National Association of State Boards of Education.
National Association for Gifted Children.
American Association for the Advancement of Science.
Gallaudet College.
The Association for the Gifted.

State-level organizations favoring this approach include:

Michigan Association for the Gifted.
North Carolina Association for the Gifted.
California Association for the Gifted.
Iowa Association for the Gifted.
Minnesota Association for the Gifted.
Northeast Exchange for the Gifted and Talented (NJ, VT, RI, CT, NH).
Central Indiana Association for Gifted and Talented.
Missouri Association for the Gifted and Talented.
Minnesota Council for the Gifted and Talented.
Utah Parent Association for the Gifted and Talented.
Michigan Association for the Academically Talented.
Connecticut State Board of Education.
Idaho State Department of Education.
California State Department of Education.
Iowa State Department of Public Instruction.

The bill I am introducing is timely, because the Committee on Human Resources is now working on the reauthorization of the Elementary and Secondary Education Act. The committee's deliberations include the future of educational programs for the gifted and talented.

It is important that the future of those programs be as successful as possible. The bill I am introducing clearly indicates to the Commissioner of Education the need for further strengthening of and attention to the gifted and talented component within the Bureau of Education for the Handicapped. It provides for expanded Federal support, with funding authorization independent from that provided for handicapped programs.

It should be recalled that the first special education component within the U.S. Office of Education was the section on exceptional children and youth, established in 1931. The basic strength of this bill is that it builds upon this historic action and keeps all special education programs together administratively. This bill would maintain and expand the successful existing delivery systems.

This bill is in the form of an amendment to S. 1753, a bill to extend the Elementary and Secondary Education Act of 1965, and for other purposes.

I ask unanimous consent that the text of the amendment be printed in the RECORD at this point.

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

AMENDMENT No. 1761

At the appropriate place in the bill insert:

SEC. . (a) The Education of the Handicapped Act is amended by adding at the end thereof the following new part:

Part H.—"SPECIAL PROGRAMS FOR GIFTED AND TALENTED CHILDREN"

"GRANTS TO STATE AND LOCAL EDUCATION AGENCIES"

"SEC. 671 (a). The Commissioner is authorized to make grants to state educational agencies in order to assist them in the planning, development, operation, and improvement of programs designed to meet the special educational needs of gifted and talented children and youth at the preschool, elementary and secondary school levels.

"(b) The Commissioner is authorized to make grants to local educational agencies and Indian tribes for the improvement of special educational programs for gifted and talented children. In making such grants the Commissioner shall give special consideration to applications which propose innovative and creative approaches to meeting the special educational needs of gifted and talented children and those which emphasize the identification and special education of economically disadvantaged, handicapped, American Indian and bilingual gifted and talented children.

"(c) No less than 25 percentum of the grants under (b) shall be made to local educational agencies which meet the eligibility criteria of section 103(a)(2) of [Title I] of the Elementary and Secondary Education Act of 1965.

"GRANTS FOR PERSONNEL DEVELOPMENT

"SEC. 672. (a) The Commissioner is authorized to make grants to state education agencies and institutions of higher education and other appropriate institutions or agencies to assist them (1) in providing preservice and inservice training of professional personnel to conduct training of teachers and other specialists in fields related to the education of gifted and talented children and youth; (2) in providing preservice and inservice training for personnel engaged or preparing to engage in employment as teachers of gifted and talented children and youth, as supervisors of such teachers, or other special personnel providing special services for the education of such children and youth.

"(b) The Commissioner is authorized, where appropriate, to combine a grant to an approved recipient under this section with a grant to an approved recipient under part D of this Act.

"RESEARCH AND DEMONSTRATION PROJECTS

"SEC. 673. (a) The Commissioner is authorized to make grants to State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related puposes and to conduct research, surveys or demonstrations, relating to education of gifted and talented children and youth, including the development and conduct of model programs designed to meet the special educational needs of such children and youth.

"(b) The Commissioner is authorized to make grants or contracts to public or private agencies, organizations, or institutions which together or singly shall constitute a clearinghouse to disseminate information about programs, services, resources, research, methodology, and media and materials for the special education of gifted and talented children and youth.

(c) The Commissioner is authorized, where appropriate, to combine a grant to an approved recipient under this section with a grant to an approved recipient under parts C and E of this Act.

"DEFINITION

"SEC. 674. For the purposes of this part, "gifted and talented" means children and, where applicable, youth, who are identified at the preschool, elementary or secondary level as possessing demonstrated or potential abilities that give evidence of high performance capability in areas such as intellectual, creative, specific academic, or leadership ability or in performing and visual arts, who by reason thereof, require special education services.

"AUTHORIZATION

"SEC. 675. For the purpose of carrying out this part, there are authorized to be appropriated $25,000,000 for the fiscal year 1979, $35,000,000 for the fiscal year 1980, $45,000,000 for the fiscal year 1981, and $55,000,000 for the fiscal year 1982."

(b)(1) Section 402(b)(3)(B) of the Education Amendments of 1974 is repealed.

(2) Section 404 of the Education Amendments of 1974 is repealed.

S. 2838—FEDERAL JUDICIAL DISTRICTS IN ILLINOIS

Mr. PERCY. Mr. President, I am today introducing with my colleague, Senator STEVENSON, legislation to realine the Federal judicial districts in Illinois.

Illinois currently has three judicial districts: One covering the northern quarter of the State and two covering the eastern and western sections of the rest of the State. These latter two, the eastern district and the misnamed southern district, run counter to the natural east-west flow of commerce in Illinois and cause significant transportation difficulties for many attorneys, clients, and witnesses. In addition, some residents of the western division of the northern district have felt that they do not receive adequate Federal judicial service.

Because many Illinoisans were of the opinion that these problems arising from the alinement of our Federal judicial districts should be corrected, in 1975 I requested that a committee be organized to study the existing system and make recommendations for improvement. John R. Mackay, former president of the Illinois State Bar Association, agreed to chair the committee that was subsequently formed.

The Committee to Study Federal Judicial Districts in Illinois held public hearings in Rockford, East St. Louis, Chicago, Peoria, and Champaign-Urbana. The committee heard testimony from the 44 witnesses and amassed hundreds of pages of exhibits.

The committee presented its recommendations in April 1976. I forwarded copies of these recommendations to all Illinois Federal judges, U.S. attorneys, Federal marshals, and members of the Illinois congressional delegation, as well as other affected individuals. The legislation we are introducing today reflects the work of the committee and the comments of these other experts.

The major impact of this legislation is

to realine the existing eastern and southern districts into a central and a southern district with their common boundary running east to west. This will greatly reduce the cost and inconvenience now faced by many Illinoisans using the Federal court system, and it will bring together in each district areas and individuals with a more common identity and community of interest.

The bill also places the county of Kankakee within the northern district, rather than within the new central district. This will provide Kankakee residents with more convenient access to the Federal courts.

The only issue on which the members of the Committee to Study Federal Judicial Districts did not agree was how to resolve the isolation felt by some residents of the western division of the northern district. A majority of the committee believed that this area would best be served by the creation of a new district encompassing the existing western division and other contingent counties. However, several members of the committee as well as others who commented on the committee's recommendations opposed such a change.

Upon consideration, Senator STEVENSON and I have concluded that the needs of residents of the western division can be served through less drastic and more easily facilitated means. Specifically, in light of the growing caseload in the northern district and inclusion of three additional judgeships for this district in the omnibus judgeship bill passed by the House of Representatives, we anticipate that a judge could be appointed to the western division on a full time basis. Such an appointment is the perogative of the chief judge; however, I want to point out that it would resolve a longstanding concern.

It should be clearly understood that this proposal contemplates the addition of the new Illinois Federal district judgeships contained in the omnibus judgeship bill now pending before a House-Senate conference committee. We waited to introduce this legislation until it was clear that Illinoiis would have a sufficient number of judgeships to make the new district alinement workable.

Both the House and Senate versions of the omnibus bill provide for an additional judgeship for what is now the eastern district of Illinois. The Senate bill provides two additional judgeships for the northern district and the House bill, which was adopted when more recent data on caseloads was available, provides three. These new judgeships will make it possible for this proposed realinement to be effectuated.

As soon as the omnibus judgeship bill is enacted into law, we will introduce an amendment to the legislation we are proposing today. The amendment will provide for the assignment of the additional judgeship slated for the eastern district under the omnibus bill to the new central district. This will result in the assignment of three judges to the new central district and two judges to the new southern district.

Mr. President, in conclusion I want to once again express my very deep appreciation to the members of the Committee to Study Federal Judicial Districts in Illinois, the Illinois State Bar Association, and the many others who took time from their busy schedules to assist in this effort through their counsel and advice. I ask unanimous consent that a list of the members of the committee and those giving them administrative assistance be printed in the RECORD following Senator STEVENSON's remarks, as well as the text of the bill.

Mr. STEVENSON. Mr. President, I am pleased to join with my colleague from Illinois, Senator PERCY, in introducing this legislation to revise the Federal judicial districts in the State of Illinois.

The present structure of districts in the State has remained unchanged since 1905. The character and development of the State have changed, however, and efficient utilization and administration of the Federal court system requires realinement of those outmoded boundaries.

The principal thrust of this legislation is to replace the existing eastern and southern districts with new central and southern districts which more accurately reflect the makeup of the State. The present configuration of the eastern district is illogical and awkward. Parts of the eastern district are located south of the southern district. Areas with no present or historical community of interest, such as Cario in the southernmost part of the State and Kankakee, more than 300 miles to the north, are linked together for purposes of the Federal courts; some participants in court proceedings thus must drive hundreds of miles to attend.

Further, the development of urban centers in the State has made the existing boundaries incongruous. For example, the current structure places the countries of Madison and St. Clair in separate districts, although both are essentially part of the East St. Louis metropolitan area. Service to central areas of the State, such as Danville and Champaign-Urbana, will undoubtedly be improved by the creation of a new, compact central district.

Finally, the new district lines realistically take into account the east-to-west flow of commerce in the State, across which the existing Federal districts cut.

The proposal embodied in this legislation arose out of the work of the ad hoc committee to study Federal judicial districts in Illinois. organized at the request of Senator PERCY. The committee's report, made public in April 1976, was the result of extensive hearings held around the State and incorporates the views of concerned jurists, bar associations, court officials, members of the bar, and citizens. The members of the committee, who served without compensation, deserve the gratitude of the people of Illinois for the service they have performed.

One of the findings of the committee was that the citizens of the western division of the northern district have not been receiving adequate service from the Federal courts. The present structure of the northern district, under which a judge sits only periodically in the western division, has resulted in substantial expense, delay, and inconvenience for those served by the court. Indeed, there is evidence that many parties otherwise entitled to the advantages a Federal court offers have been, out of practical necessity, forced to use the State courts. There is some sentiment in the State to split the northern district into two districts. But the administrative difficulties and expense attendant to that proposal would outweigh its anticipated benefits, and Senator PERCY and I agree that the problem can be solved by less drastic measures.

The only alteration proposed by this legislation for the northern district is, therefore, the inclusion in its boundaries of Kankakee County, which, considering its proximity to Chicago, should improve service to the citizens there. However, one workable solution to the longstanding problem in the western division would be the appointment of a judge to sit permanently in this division. Although judicial assignments are, of course, the perogative of the chief judge, I urge the establishment of such a permanent seat, which would be the simplest and least expensive solution to a situation which has plagued the western division for decades and would insure access to the Federal courts for the citizens of northwestern Illinois. The enactment of the omnibus judgeship bill, which includes additional judgeships for the northern district, should make this a feasible option.

The realinement of Federal judicial districts and the creation of new central and southern districts proposed in this legislation will establish a more sensible, convenient, and geographically accurate division of the State and will improve the service and accessibility of the Federal court system to the people of Illinois. I urge its prompt consideration.

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

S. 2838

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 93 of title 28, United States Code, is amended to read as follows:

"§ 93. Illinois

"Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern districts of Illinois.

"NORTHERN DISTRICT

"(a) The Northern District comprises two divisions.

"(1) The Eastern Division comprises the counties of Cook, De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, McHenry, and Will.

Court for the Eastern Division shall be held at Chicago.

"(2) The Western Division comprises the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago.

Court for the Western Division shall be held at Freeport and Rockford.

"CENTRAL DISTRICT

"(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Knox, Livingston, Logan, Macon, Macoupin, Marshall, Ma-

son, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Woodford, and Warren.

Court for the Central District shall be held at Peoria, Springfield, Danville, Rock Island, and Quincy.

"SOUTHERN DISTRICT

"(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

Court for the Southern District shall be held at Alton, East Saint Louis, and Benton, and Cairo."

SEC. 2. Section 133 of title 28, United States Code, is amended by striking out the item relating to Illinois and inserting in lieu thereof the following:

"Illinois:
"Northern ---------- 13
"Central ---------- 2
"Southern ---------- 2".

COMMITTEE TO STUDY FEDERAL JUDICIAL DISTRICTS IN ILLINOIS

John R. Mackay, Chairman, Wheaton; Arthur T. Lennon, Vice-Chairman, Joliet; William F. Costigan, Bloomington; John M. Ferguson, Belleville; Sandor Korein, East St. Louis; Robert S. Hill, Benton; Durward J. Long, East Moline; Robert D. McKnelly, Kankakee; Bradner C. Riggs, Rockford; Raymond L. Terrell, Springfield; Robert L. Tucker, Chicago; Elmer Michael Walsh, Jr., Chicago; and Keven M. Forde, Chicago.

ADMINISTRATIVE ASSISTANTS TO THE COMMITTEE

Howard H. Braverman, Associate Executive Director and General Counsel of the Illinois State Bar Association.

Wiley W Edmondson, Special Counsel to the Committee.

Richard M. Guerard, Special Counsel to the Committee.

Robert E. Graighead, Illinois State Bar Association.

Mr. HELMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. What is the pending business?

The PRESIDING OFFICER. The pending business is morning business of not to exceed 1 hour.

Mr. HELMS. I will seek the floor when we return to the treaty.

TAX REFORMS AND SOCIAL SECURITY TAXES

Mr. WALLOP. Mr. President, the Senate is quickly approaching the date when it will examine the President's tax package and perhaps reconsider the ill-conceived social security financing amendments that were so hastily adopted last year. The economic programs adopted by this Congress in the months ahead will shape the character of economic recovery for the next several years. We have the choice of continuing on a path that erodes free market incentives for business, or taking a course that allows incentives to reward and stimulate the most dynamic sector of our economy. That sector is small business, whether it is the store owner in Wyoming or a trucking company in New York.

Small business has been dealt a series of devastating blows by the Federal Government over the last few years. Inflation, social security tax increases, and the mounting cascade of Government paperwork all combine to cripple small business and destroy the hope of beginning a new enterprise. One of my constituents, June Addis, of Casper, Wyo., has been kind enough to share her views with me on this problem, and I believe that my colleagues would benefit from reading this letter as we approach the subject of tax reforms and social security taxes. Mr. President, I ask unanimous consent that Mrs. Addis' letter be entered in the RECORD.

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

CASPER, WYO., *February 12, 1978.*

Hon. Senators HANSEN AND WALLOP,
Wyoming,
Washington, D.C.

DEAR SENATORS: Recently a bankruptcy judge in Cheyenne said that the reason 95% of small businesses don't make it is that they have the mistaken idea that they can make a living off the income of that particular business. The American dream is fast becoming the American disillusionment. Six years ago we went into business for ourselves, not knowing what we were getting in to; we are still in business at this moment. My observations are this; the government is continually making it harder for a working person to make a living. We have to pay my husband a salary; we have to pay double social security. Why do we not have a choice? Why don't the government employees have to pay social security? We have to pay a fortune for advice from accountants and corporate tax lawyers; they advise us to buy life insurance so that when one of us has the misfortune to die, the one left can use the insurance money to pay taxes on whatever the IRS decides to evaluate our business at; however, without my husband, there is no business; it is too complex for me. However, we are advised that his patents can be arbitrarily evaluated, etc., etc., which will leave myself and two children broke and in debt. I notice in a recent U.S. News & World Report article that even life insurance can be taxed at death.

Well, what does this mean to us? We have the tendency not to care. I know personally a family that has been on relief now to the third generation, all healthy and able to work. They want for nothing. The government will bury them too, and the home they own will not be subject to estate and inheritance taxes. I grew up loving my country, but three years ago this changed. I am a conservative Republican who believes in hard work, or used to, but now when I look at the tax scale, I see the harder we work, the more stress my husband is subjected to, and the less we get to keep, so why bother? The only thing tax reform does is raise our accounting fees.

It is really a laugh; the U.S. so worried about "human rights" when right here, the government does not exist for the good of the individual, but I must exist to "feed" the government. It is fortunate for this country that some people still have pride because if we used our common sense, we would just all go on welfare. It is my opinion that estate tax and inheritance tax are corrupt to the core—completely unjust—subject an individual to extremely cruel and unusual punishment—and take unfair advantage of every human being in this country. We have been to three different attorneys and have received three different methods of wording our documents. We have no assurance whatsoever that any of our will is correct, our corporate charter worded correctly, etc.

Please send me the proper information from the House Ways and Means Committee or whoever is responsible for this technical jargon that forces citizens into court daily. It would seem to me that I have a right to know a correct way of doing things so that our property (which is worth very little in cash, but can be evaluated at whatever the IRS chooses) can pass on with as little tax as possible. This is truly "double taxation." It seems to me that the IRS and accountants and lawyers have a little game going on between them, and what one doesn't get from the working man, the other will—they'll get it whether we are dead or alive, too. I was never afraid to die until I disdiscovered what it would mean to my family who has the misfortune to survive me. We are told we can give to each other $3,000 per year as a gift, tax free. I wish we had $300 to give to each other.

When my children grow up, I hope they get a good-paying government job with all the benefits and security they all get with it. All they can inherit from us is pain and uncertainty.

Thank you for the job you are trying to do for people of Wyoming and this country. We really appreciate it.

Sincere thanks,

JUNE ADDIS.

P.S.: Just an afterthought—something is drastically wrong with the taxing system for the small businessman, what, I don't know. There must be an assumption on the part of those writing the tax laws that people who go into business for themselves have lots of cash when really, everyone we have ever known, including ourselves, have gone into debt and are constantly staying there. If the present trend continues, new ideas will not become manufactured; they will die on the drawing board.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are four measures on the calendar which have been cleared on both sides of the aisle. I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 660, 661, 663, and 664.

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

TRUST OF RESTRICTED LANDS ON THE UMATILLA INDIAN RESERVATION

The bill (H.R. 2540) pertaining to the inheritance of trust or restricted lands on the Umatilla Indian Reservation, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-718), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill, H.R. 2540, is to modify Federal law with respect to interstate

descent of interests in trust or restricted lands on the Umatilla Indian Reservation in Oregon in order to reduce the amount of land going out of Indian ownership.

BACKGROUND

Federal law, in general, regulates the inheritance or devise of interests in property held in trust by the United States for an individual Indian or held by such Indian in fee subject to a restriction by the United States against alienation. Under such law, the Secretary of the Interior is required, except as may otherwise be provided by Federal law or regulation, to apply the laws of the State in which such property is located.

Prior to 1969, the law of descent and distribution in Oregon provided that real property within the State would descend in equal shares to the children of the deceased, subject to the right of dower in a surviving spouse which consisted of only a life estate in one-half of all land the deceased owned at death. Thus, until 1969, the Secretary, in accordance with Oregon law, awarded dower rights to widows, and estates by courtesy to widowers, of Umatilla Indians who died intestate, possessed of interests in trust or restricted lands.

In 1969, Oregon State law was amended to provide that a surviving spouse would receive one-half of the net estate, including real property, of a person dying intestate. The application of this new law by the Secretary to the estate of Umatilla Indians dying intestate has resulted in trust lands passing out of Indian ownership in those cases where the decedent has left a non-Indian or non-tribal member as surviving spouse, who takes in fee the descendant's interest in the trust or restricted lands. In addition, the Umatilla Tribe is also very concerned that application of this new law will lead to increased checkerboard land ownership and fractionated heirship lands.

H.R. 2540 seeks to reduce the amount of land going out of Indian ownership on the Umatilla Reservation and to prevent the further checkerboarding of lands on the reservation.

H.R. 2540 provides that, notwithstanding Oregon State law, interests in trusts or restricted land of the estate of a Umatilla Indian, dying intestate, shall descend to the decedent's children and to the issue of any deceased child by right of representation. If no children survive the decedent, the interests would descend to other lineal descendants, again applying the rule of representation.

The bill also provides that the surviving spouse of a deceased Umatilla shall have a right to a life estate of an undivided one-half interest in the trust or restricted lands of the decedent. Should the deceased leave an approved will, making provision for the surviving spouse, the spouse would be entitled either to take the life estate or to take under the provisions of the will, but not both.

EXTENSION OF BENEFITS AND SERVICES TO THE PASCUA YAQUI INDIANS OF ARIZONA

The Senate proceeded to consider the bill (S. 1633) to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes, which had been reported from the Select Committee on Indian Affairs with amendments as follows:

On page 1, beginning with line 6, strike "such association in accordance with its constitution and by laws approved by the Secretary of the Interior" and insert "the Pascua Yaqui Tribe in accordance with section (e) of this Act";

On page 2, beginning with line 4, strike through and including line 12, and insert in lieu thereof the following:

States. For purposes of section 2 of the Act of August 16, 1957 (71 Stat. 371; 42 U.S.C. 2005a), the Pascua Yaqui Indians are to be considered as if they were being provided hospital and medical care by or at the expense of the Public Health Service on August 16, 1957.

On page 3, line 3, after "Indians" insert "and shall be held as Indian lands are held";

On page 3, beginning with line 5, insert the following:

Consent of the United States will be given to the exercise of criminal and civil jurisdiction by the State of Arizona pursuant to sections 1321, 1322, of title 25, United States Code: *Provided*, That the United States may effect a complete or partial retrocession within two years of enactment of this Act upon request of the Pascua Yaqui Tribe in consultation with the Governor of the State of Arizona: *Provided*, That acceptance of retrocession of all or any measure of civil or criminal jurisdiction, or both, by the United States, shall be affected by publication in the Federal Register which shall specify the jurisdiction retroceded and the effective date of retrocession.

On page 3, beginning with line 17, strike through and including line 23;

On page 3, line 24, strike "(c)" and insert "(d)";

On page 4, beginning with line 1, insert the following:

(e) Within one year from the date of enactment of this Act, the Pascua Yaqui Tribe shall adopt a constitution and bylaws or other organized governing documents and membership role. The Secretary of Interior shall review such documents to insure that they comply with the provisions of this Act.

The membership of the Pascua Yaqui Tribe shall consist of—

(1) (a) All present members of the Pascua Yaqui Association who apply for membership within one year from the date of enactment of this Act, pursuant to the membership criteria and procedures provided for in the official documents of the Pascua Yaqui Indian Tribe.

(b) The direct lineal descendants of any person hereafter on the official Pascua Yaqui tribal membership role.

(2) Persons of Pascua Yaqui blood who are citizens of the United States who have demonstrated a significant relationship with the Pascua Yaqui Tribe in their application for membership as provided for in the official governing documents to be adopted by the Pascua Yaqui Tribe under authority of this Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Pascua Yaqui Indian people who are members of the Pascua Yaqui Association, Incorporated, an Arizona corporation, or who hereafter become members of the Pascua Yaqui Tribe in accordance with section (e) of this Act, are recognized as, and declared to be, eligible, on and after the date of the enactment of this Act, for the services and assistance provided to Indians because of their status as Indians by or through any department, agency, or instrumentality of the United States, or under any statute of the United States. For purposes of section 2 of the Act of August 16, 1957 (71 Stat. 371; 42 U.S.C. 2005a), the Pasqua Yaqui Indians are to be considered as if they were being provided hospital and medical care by or at the expense of the Public Health Service on August 16, 1957.

(b) The provisions of the Act of June 18, 1934 (48 Stat. 484), as amended, are extended to such members described in subsection (a).

(c) The Secretary of the Interior is directed, upon request of the Pascua Yaqui Association, Incorporated, an Arizona corporation, and without monetary consideration, to accept on behalf of the United States and in trust for the members described in subsection (a), the title to the real property conveyed by the United States to such association under the Act of October 8, 1964 (78 Stat. 1196), and such trust land shall be the reservation of such Pascua Yaqui Indians and shall be held as Indian lands are held.

Consent of the United States will be given to the exercise of criminal and civil jurisdiction by the State of Arizona pursuant to sections 1321, 1322, of title 25, United States Code: *Provided*, That the United States may effect a complete or partial retrocession within two years of enactment of this Act upon request of the Pascua Yaqui Tribe in consultation with the Governor of the State of Arizona: *Provided*, That acceptance of retrocession of all or any measure of civil or criminal jurisdiction, or both, by the United States, shall be effected by publication in the Federal Register which shall specify the jurisdiction retroceded and the effective date cf retrocession.

(d) Section 4 of the Act of October 8, 1964 (78 Stat. 1197), is hereby repealed.

(e) Within one year from the date of enactment of this Act, the Pascua Yaqui Tribe shall adopt a constitution and bylaws or other organized governing documents and membership role. The Secretary of Interior shall review such documents to insure that they comply with the provisions of this Act.

The membership of the Pascua Yaqui Tribe shall consist of—

(1) (a) All present members of the Pascua Yaqui Association who apply for membership within one year from the date of enactment of this Act, pursuant to the membership criteria and procedures provided for in the official documents of the Pascua Yaqui Indian Tribe.

(b) The direct lineal descendants of any person hereafter on the official Pascua Yaqui tribal membership role.

(2) Persons of Pascua Yaqui blood who are citizens of the United States who have demonstrated a significant relationship with the Pascua Yaqui Tribe in their application for membership as provided for in the official governing documents to be adopted by the Pascua Yaqui Tribe under authority of this Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-719), explaining the purposes of the measure.

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

PURPOSE OF THE MEASURE

The purpose of S. 1633 is to extend congressional recognition to the Pascua Yaqui Tribe of Indians in Arizona. This bill also directs the Secretary of the Interior to accept on behalf of the United States, and in trust for the members of the Pascua Yaqui Tribe, approximately 202 acres which were conveyed by the United States to the Pascua Yaqui Association by act of Congress in 1964. S.

1633 also repeals section (4) of the Act of October 8, 1964, which has prevented the Pascua Yaqui Indians from being eligible for certain benefits, services, and assistance provided to Indians because of their status as Indians.

BACKGROUND

The Yaqui Indians are descendants of the ancient Toltecs who ranged from what is now the city of Durango, north to southern Colorado, and west to California. The U.S. boundary line, determined by agreement with Mexico, divided the Indian territories occupied by Pimas, Papagos, Apaches, Yaquis, and other Indians. Between 1880 and 1910, thousands of Yaquis who fled Mexico to escape the Mexican landowners and dictatorial Mexican Government were accepted by the United States and given asylum in the Arizona territory. Many of the Yaquis settled near Tucson in what came to be known as the Pascua Village.

In 1964, the Federal Government conveyed 202 acres of Federal land near Tucson to the Pascua Yaqui Association, a formal governmental organization established at the request of Congress to manage the conveyed land. (Act of October 8, 1964, Private Law 88-350, 78 Stat. 1196). The express major purpose of this Association is to administer the lands granted to it for the collective use and benefit of all its tribal members.

However, section 4 of the Federal act which provided land to the Yaquis restricted them from receiving services and benefits under other Federal Indian laws. As a result, the Yaquis have been unable to participate in economic development or educational programs, and tribal members are denied access to available medical services on nearby Indian reservation. S. 1633 would make the Yaqui Indians eligible for all services provided to other Indians through any agency, including the Bureau of Indian Affairs and the Indian Health Service.

NEED

The introduction of S. 1633 coincided with the Secretary of the Interior's publication of proposed new Federal regulations that would establish procedures for governing the determination that an Indian group is a federally recognized tribe (42 Fed. Reg. 30647 (June 16, 1977)). While the Pascua Yaqui Tribe of Indians may meet many of the proposed criteria set out at section 54.7(c)(1)-(10), the Solicitor's Office of the Interior Department has indicated in an informal opinion that the Secretary would nevertheless be barred from recognizing the Pascua Yaqui Tribe. The basis for this position is section 4 of the Federal act (78 Stat. 1196) which transferred 202 acres of land to the Pascua Yaqui Indians. As mentioned earlier, this section renders Federal statutes that apply to Indians because of their status as Indians inapplicable to the Pascua Yaquis. Therefore, even if the proposed regulations were enacted, the Pascua Yaquis would be ineligible for administrative recognition.

Federal recognition would also assist the Pascua Yaqui Tribe of Indians in the development of their land in order to create a secure, permanent homeland where the living conditions of its members would be improved and tribal culture would be preserved. In pursuance of this goal, the Yaquis have attempted to improve the substandard and crowded housing conditions existent on their land.

Beginning in 1973, the tribal members formed their own construction company and built their own homes at the rate of one new home a month, the most recent being financed by the Farmers Home Administration. The construction work was subject to on site inspection by Federal inspectors to insure compliance with the Federal Minimum Property Standards (Department of Housing and Urban Development), "Minimum Property Standards," 4900.1, 1973 ed., volume 1, page 1.

However, in the spring of 1976, the Pima County building inspector "red tagged" the homes under construction because of alleged violations of the county building code. Despite an opinion from the Solicitor's Office which held that Pima County had no legal authority to enforce its building codes on the Federal reserved lands occupied by the Yaquis, Pima County refused to allow them to continue construction. Enactment of S. 1633 would place the Yaquis' land in trust and would relieve Pima County from enforcing its building codes on the Yaquis' land.

LAKE HERBERT G. WEST

The Senate proceeded to consider the bill (S. 1568) to name the lake located behind Lower Monumental Lock and Dam, Washington, "Lake Herbert G. West, Senior," which had been reported from the Committee on Environment and Public Works with amendments as follows:

On page 1, line 9, strike "Senior,";

On page 2, line 4, strike the comma and "Senior";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lake located behind the Lower Monumental Lock and Dam, Washington, a part of the project authorized by the Act of March 2, 1945 (Public Law 14, Seventy-ninth Congress, first session), in accordance with the plan submitted in House Document Numbered 704, Seventy-fifth Congress, third session, shall hereafter be known as Lake Herbert G. West, and any law, regulation, document, or record of the United States in which such lake is designated or referred to as "Lower Monumental Lake" or is referred to by any other name, shall be held to refer to such lake under and by the name of "Lake Herbert G. West".

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read:

A bill to name the lake located behind Lower Monumental Lock and Dam, Washington, "Lake Herbert G. West."

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. RANDOLPH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-721), explaining the purposes of the measure.

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

PURPOSE

The purpose of S. 2533, as reported, is to name the lake located behind Lower Monumental lock and dam, Washington, for Herbert G. West, a distinguished citizen of Walla Walla, Wash.

GENERAL STATEMENT

Herbert G. West served as executive vice president of the Inland Empire Waterways Association, predecessor of the Pacific Northwest Waterways Association, from 1934 to 1967. During that time, he was instrumental in the planning, implementation, and public acceptance of the system of Federal dams on the Columbia and Snake Rivers, which have resulted in bringing navigation 465 miles from the mouth of the Columbia to Lewiston, Idaho. These dams have also contributed millions of kilowatts of electrical power to the region as well as irrigation and recreational opportunities.

Mr. West was a locally, regionally, and nationally known leader. He served on the boards of several national water resources organizations, was mayor of Walla Walla, Wash., and was leader in many other fields of activity before his death in 1974.

CONTRACT DREDGING

The Senate proceeded to consider the bill (H.R. 7744) to amend the acts of August 11, 1888, and March 2, 1919, pertaining to carrying out projects for improvements of rivers and harbors by contract or otherwise, and for other purposes, which has been reported from the Committee on Environment and Public Works with amendments as follows:

On page 2, line 21, after "fleet" insert "fully";

On page 2, line 21, after "operational," insert "as determined by the Secretary,";

On page 4, line 14, strike "or replacement";

On page 5, line 1, strike "or replacement";

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. RANDOLPH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-722), explaining the purposes of the measure.

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

PURPOSE OF THE LEGISLATION

The purpose of H.R. 7744, as reported, is to clarify national policy regarding the respective roles of the Army Corps of Engineers and private industry in fulfilling the national requirements on dredging of rivers and harbors. The bill also clarifies the procedure to be utilized in preparing the Government estimate of the cost of performing work for purposes of analyzing the reasonableness of a contractor's bid.

The committee agrees that principal reliance should continue to be placed on private industry in performing required Federal navigation dredging. A healthy dredging industry is necessary to ensure the economical and timely execution of the program. In its own effort to meet this goal, the corps has already instituted an industry capability program to determine the feasibility of increased reliance upon the private dredging contractors.

This legislation assures industry that work will be available if it builds modern, technologically advanced equipment. This bill should provide the necessary incentives for private industry to undertake the expenditure of large sums of money, particularly on new hopper dredges. This commitment may not occur without this legislation.

With regard to the clarification of cost estimating procedures, the committee agrees that when no Government plant is available to perform a job, it is appropriate to use an

estimate for a "well equipped contractor," and the committee therefore has agreed to include this provision in the bill.

COST OF LEGISLATION

Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510) requires publication in this report of the committee's estimate of the costs of reported legislation, together with estimates prepared by any Federal agency. Based on information from the Corps of Engineers, enactment of this legislation is not expected to result in any increased costs to the United States.

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office.

Because no cost is to result no CBO report is included.

The PRESIDING OFFICER. Is there further morning business?

Mr. ROBERT C. BYRD. Mr. President, I understand Senator STEVENS has morning business to conduct.

ALASKA D-2 LANDS ISSUE

Mr. STEVENS. Mr. President, as I have said in the past, one of the major issues which will face Congress this year is the Alaska d-2 lands issue. This issue deals with the final disposition of substantial acreage in Alaska as potential additions to the national parks, forests, wildlife refuges, and wild and scenic rivers systems. In the next few weeks, this issue will come more and more to the attention of this body, and I will try to provide information to all Senators regarding the many issues which must be decided in order to pass d-2 legislation.

In many ways, this issue addresses the duty of Congress to consult with and satisfy the needs of States which Federal legislation will affect. The d-2 bill will directly affect only one State, and Alaska's people are keenly aware of the implications of this legislation. As this develops in the Senate. I will provide this body with the reactions and concerns of Alaskans to the proposed d-2 legislation.

Recently the Alaska State Senate passed a resolution concerning the important d-2 land issue. This resolution focuses on legislation which is currently being considered in the House of Representatives. The Senate companion to the House bill is one of the proposals before the Senate Energy Committee. Amendments to H.R. 39 have been touted as satisfying concerns that Alaskans have voiced with regard to this legislation over the past year. These amendments, however, have not satisfied Alaskan concerns and much work must be conducted by the Senate to deal with these needs prior to the passage of d-2 legislation. The Senate of the State of Alaska recognizes this and has asked that this resolution be brought to the attention of the Congress. Mr. President, I ask unanimous consent that the resolution be printed in the RECORD.

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

SENATE RESOLVE NO. 1

Be it resolved by the Senate:

Whereas the Alaskan Native Claims Settlement Act of 1971, Section 17(d)(2), specified that the Secretary of the Interior may withdraw up to 80 million acres of Alaska federal land for possible addition to the national park, forest, wildlife refuge, and wild and scenic river systems; and

Whereas the U.S. Congress is addressing this issue during the current session; and

Whereas a careful inventory of the mineral potential of the land that may be included in a management category, which would foreclose mineral exploration and development, must be undertaken and completed; and

Whereas access for transportation, recreation, and utilities must be guaranteed in all preservation system designations in Alaska; and

Whereas, before there is a blanket designation of large areas of Alaska as wilderness, the traditional, careful environmental and economic impact study must be made on each wilderness proposal; and

Whereas large blocks of land with identifiable agricultural potential should be included in management systems which would allow for future agricultural development; and

Whereas any valid selections made by the state or Natives under the Statehood Act or the Alaska Native Claims Settlement Act should be honored; and

Whereas state management of resident game on federally owned land in Alaska must be guaranteed, as the state is in a better position to manage this game and such management was provided for under the Statehood Act; and

Whereas cooperative federal-state procedures or institutions should be established to make future recommendations or designations on policy, planning, and management of Alaska's federal and state land; and

Whereas, while it is recognized that there is an existing need for certain land in the State of Alaska to be classified in traditional preservation system categories, the areas under consideration are too large; and

Whereas municipalities in the state support the multiple-use concept, which provides a professionally thorough and unbiased analysis of land-use potential and compatibility of uses, giving appropriate weight to economic, social and environmental factors; and

Whereas municipalities in the state oppose any legislation that would create instant land-use classifications severely restricting land and resources without consideration for other land-use potential;

Be it resolved that the Alaska State Senate formally opposes the provisions of H.R. 39 as originally submitted, the recommended changes proposed by Secretary Andrus, and the committee substitute proposed by Congressman Seiberling, which will designate vast Alaska acreage in single-purpose use systems, precluding the opportunity to further evaluate these areas to satisfy national needs or the opportunity for state selections; and be it

Further resolved that the passage of this bill without (1) a careful mineral inventory and guaranteed access provisions; (2) traditional environmental and economic impact studies; (3) provisions for future agricultural development; (4) completion of the selection process by the state and Natives; (5) state game management as guaranteed under the Statehood Act; and (6) cooperative federal-state planning and development, would be against the best interests of the citizens of the state and nation alike; and be it

Further resolved that the Alaska State Senate urges the United States Congress to adopt a version of the Alaska National Interest Lands Act which will incorporate the desires and needs of Alaskan citizens, as expressed in this resolution.

Copies of this resolution shall be sent to the Honorable Jimmy Carter, President of the United States; the Honorable Henry M. Jackson, Chairman, Senate Energy and Natural Resources Committee, and all members of that committee; Representative Morris K. Udall, Chairman, House Interior and Insular Affairs Committee, and all members of that committee; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

SUSAN ALVARADO

Mr. STEVENS. Mr. President, since I have been the assistant minority leader, I have had the advantage of having the assistance here on the floor of the Senate of the first woman to serve as an assistant to the leadership on either side. Barbara O'Reilly, of the Gannett News Service, has just written an article concerning Susan Alvarado, who I really think is doing an excellent job for all Members of the Senate. I am delighted to see that the Gannett News Service has recognized what she is doing, and the fact that she is unique in her capacity here on the floor of the Senate.

Mr. President, I ask unanimous consent that the article be printed in the RECORD at this point.

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

SUSAN ALVARADO

WASHINGTON.—Susan Alvarado is a backstage prompter, but she prompts U.S. Senators, not actors.

She stands in the rear of the Senate chamber, looking slightly out of place among the rows of polished mahogany desks and burnished leather chairs and sofas, with their for-men-only look.

But when the buzzer sounds and the Senators start barreling through the cloakroom doors to vote, she becomes an integral part of the production.

The questions come flying at her: What are we voting on? What amendment are we on? When do you expect the next vote? How are the conservatives voting on this one? What's been said on this so far?

She talks fast, shooting out facts.

Sometimes a senator isn't at all familiar with the item up for vote. It might be an issue that had nothing to do with his committee work or constituents' interests. His vote will be based entirely on what she says.

She is one of three staff members representing the Republican leadership on the Senate floor. She briefs Republicans only, gives them the minority leadership's position on each item and sometimes, when asked, she even gives advice on how they should vote.

She is the first woman to break into these powerful ranks, in either party.

"At first it was hard for the senators to get used to the fact that I'm a woman, especially the older senators," she said between sips of coffee in the Senate dining room one day recently. "But now I'd say 15 to 25 of them trust me. . . ."

It's easy to understand why some senators initially mistook her for a page.

She's 23, about five-feet-four, has dark, glossy hair in a contemporary cut and was wearing an outfit that resembled a uniform in an all-girls' Catholic high school—wool blazer over a white blouse with open collar, wool plaid skirt in a conservative length and bright and shiny penny loafers. (She in fact was a student in an all-girls' Catholic high school only six-and-a-half years ago.)

She looks like an advertisement for clean living, definitely not in the Elizabeth Ray mold.

It doesn't take long, however, to understand why she's in the job.

She's smart, thinks fast, talks fast, moves fast, takes control. Her mind seems to be in high gear, facts instantly recalled and assimilated, observations made, insights given. She brings complicated national issues into the conversation breezily, handles them comfortably, talks about their newest developments as if she's commenting on the weather.

Alvarado was catapulted into this job last year when she was named legislative assistant to the minority whip, Sen. Ted Stevens of Alaska. She went to work with two men, one 55, the other 35, elected by the 38 Republican senators to guide and advise them on the Senate floor. They work under the direction of Stevens and the minority leader, Sen. Howard Baker of Tennessee.

Many a congressional aide aspires to this position. She landed it after working as a staff aide in Stevens' office for only two years. When he was elected minority whip last year, he selected her from his office staff and from many outside applicants.

"When I got this new job," Stevens said, "I needed someone who didn't need to be told what to do. Susan had handled military matters for me during an important time. When we got involved in that long tax reform bill during the last Congress, she handled it.

"She's just good, that's all. She knows what she's doing. Her head's screwed on straight. She's doing an excellent job."

The fact that she's a woman didn't enter into his decision-making, he said. "I've got a lot of women doing jobs that other offices don't have women doing. It's performance that counts."

Her job as one of the Republican cogs on the Senate floor begins every morning in her plush office, just off a small Capitol rotunda with sparkling chandelier. It's an historic place where the Supreme Court helds its first meetings. She speed-reads the New York Times, Wall Street Journal, Washington Post, Washington Star, the Congressional Record and a few news magazines—and forgets little.

Late in the morning she walks down the hall and around the corner to the Senate chamber, where she remains from the start of the session to the finish, absorbing information from several sources, digesting it, then producing it quickly and coherently on demand.

She schedules assistant whips (Republican freshman senators), making sure one is on the floor at all times. Under Stevens' direction, she tells them when they should object to items brought up by Democrats for consideration.

Frequently, when floor debate requires it, she runs to a telephone in the cloakroom, calls a senator at his committee meeting or other business and suggests he come to the floor.

Lunch, if there is one, consists of graham crackers and raisins gulped during a lull in the session.

By the end of the day she's suffering from an information implosion. "By the time I get home to watch the 11 o'clock news, my brain has had it up to here," she said.

Her salary is $24,000—"a long way from the $9,000 I started at."

Alvarado originally applied for a job on Capitol Hill because she was interested in Alaskan issues, a result of having lived in Anchorage during her junior high school years. It was one stop in the life of an Air Force brat who was raised in such diverse places as Madrid, Spain, Dayton, Ohio, and Alexandria, Va.

When she circulated her resume to the offices of Alaska's two senators and one congressman, she was a recent graduate of Ohio State University (with a degree in political science after only three years) and had spent a year traveling in Europe, skiing in Colorado and teaching tennis for Washington-area country clubs. (She had been one of six starters on the Big Ten champion Ohio State women's tennis team.)

She attributes her fast job advancement partly to luck and timing, but also to ability and a drive to succeed that many women don't have.

"I think the reason for my success, for wanting this situation, for handling it, is the fact that I've participated in sports all my life," she said. "A lot of women have never competed, have never known what it was like wanting that next point, wanting to win, wanting to take it all." (She's still athletic, jogs a few miles three times a week, and plays tennis with Sen. Lowell Weicker, a formidable opponent, every Saturday.)

But the current challenges command priority over anything else in her life. "My close friends say, 'I hope you don't get to 30 and wonder, where did my 20s go?' But it's the price I have to pay for doing what I'm doing," she said.

When she does get a chance to socialize on weekends, she chooses to date men who don't work on Capitol Hill. "The last thing I want to talk about is politics." There's another reason for this, too: She wants to avoid romantic liaisons on the job. "In no way do I want to tarnish my professional image. And nothing would blur this (image) faster, everything going up in smoke. You have to draw your lines."

Alvarado, who has thoughts of going into politics someday herself, said she sees Senators in a different light now than when she started this job. She thinks less highly of some and has gained respect for others. "The people the press tends to think are able may not be the same ones the staff thinks are able."

And she sees them now as individuals. "Was I intimidated? Initially, yes. We tend to Deify them. They are the select few, the highest body in Congress. I still respect them as senators, but now I see them as men as well, as personalities."

She added, "I'm not intimidated by anybody anymore at this stage of the game."

The PRESIDING OFFICER. Is there further morning business?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PREVENTING MEDICINE WITH NATIONAL HEALTH INSURANCE

Mr. HELMS. Mr. President, the proposal to nationalize American health care continues to rest upon some of the most fascinating myths and inaccuracies. This should come as no surprise, since proponents of Federal control of the practice of medicine want to convince people that socialized medicine is better than free enterprise medicine, which with all its problems still provides Americans with the finest health care system in the world.

In this month's issue of the American Spectator, William Simon, former Secretary of the Treasury, undertakes an incisive examination of the many fallacies and factual distortions used to sell nationalized health insurance. Mr. Simon's analysis provides a needed dimension of realism to the debate over the merits of national health insurance and I commend it to the attention of my colleagues.

Mr. President, I ask unanimous consent that the following article entitled "Preventing Medicine" by William E. Simon be printed at this point in the RECORD.

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

PREVENTING MEDICINE

Although he remains relatively calm about welfare and unusually silent on the subject of education, Mr. Carter's ebullient HEW Secretary, since the moment of his appointment, has issued an incessant stream of complaints about the system of American health care.

"We perceive health care in America today," says Joseph Califano, "as a vast, sprawling, highly expensive, and virtually noncompetitive industry. . . . a unique system of economic relationships that are commanding, and controlling, an ever larger share of our nation's resources." That is the essence of Califano's complaint. And his solution? "National Health Insurance to protect all Americans from the crushing burden of medical expenses is essential."

Perhaps the first thing to note here, in both Califano's statement of the problem and his proposed solution, is the striking lack of logic. There is little competition in the health care industry, Califano charges. Therefore, nationalize it. But this is rather like saying that the way to solve the problem of the Imperial Presidency is to establish a Monarchy. The concept of the divine right of kings would do little to democratize the White House. Nor would the socialization of the health care industry, no matter what else it accomplished, increase competitiveness. Further, to imply that Americans now burdened with medical bills would be miraculously relieved of those burdens if their bills were first recycled through Washington is not only illogical, but downright dishonest.

True, there is a cost problem. In 1976, the national health care bill came to just under $140 billion, a difficult figure to come to grips with. But the answer, surely, is not massive federal intervention. As even the President's Council on Wage and Price Stability (COWPS) admitted in 1976, after years of avoiding the issue: "It is all too apparent that right now with current reimbursement programs and the ubiquitous and often conflicting morass of regulations, the Federal government, instead of being part of the solution, is part of the problem of rising health care costs."

Nor are the analyses which occasionally issue from Califano' own bailiwick much more reassuring. Hard and fast federal figures on the subject are difficult to come by, but according to one recent HEW estimate, a comprehensive "sperm-to-worm" program, such as that being proposed by Senator Edward Kennedy, could boost the nation's health care tab to $248.3 billion by 1980. Other proposals before Congress are little better. One, favored by the American Medical Association, could raise the nation's health care bill to $243.8 billion by 1980; a plan favored by the insurance industry would increase the cost to $234.5 billion.[1]

[1] The tendency for such federal programs to grow tremendously should not be overlooked. Medicaid was supposed to cost $200 million per year when it was proposed in 1966. By 1968 the annual cost had jumped to $1.9 billion. In fiscal year 1977 Medicaid cost $10.3 billion.

Logical? According to most measures and nearly every honest estimate, a federal takeover of the health care system would push prices up very near the outer limits of our ability to pay them. Partial federal intervention is now driving prices skyward, as COWPS points out; total federal intervention would accelerate the process. When the problem is discussed as the solution, we may be right in feeling that things are just a bit out of whack.

But logic seems to play no role in the discussion. Califano and his health-care planners simply skip around the figures, never taking them seriously, even when the government itself puts them out. Occasionally, when pinned down, they will acknowledge the figures, but argue that they are inaccurate. Such estimates cannot be accurate, they say, because they do not take into account the basic cost-cutting theories now espoused by the government.

One such theory involves the practice of preventive medicine, and runs this way: If financial barriers to access are eliminated on the primary level (doctors' offices, clinics, etc.) through a comprehensive health insurance program, then minor health problems will be arrested before they develop into major problems, thereby reducing the cost of treatment.

On the face of it, this is an attractive theory. But on reflection it makes little sense, for the vast majority of our health problems are not problems that early care can prevent. How many of us, when we think back over the past year, have been to see a doctor about a problem that an earlier visit would have prevented? In general, the answer is precious few. A cracked rib, an infected eye, an infected ear, bronchitis, viral afflictions of all kinds, a sprain, a strain, a fall, a broken arm, a broken leg—these ailments and others like them form the bulk of the problems that we take to our doctors. None of them would be prevented by early visits.

There are, of course, extremely effective preventive procedures. Hypertensive medication for high blood pressure comes to mind, as do certain methods of cancer screening. But cost alone is seldom the barrier which prevents us from seeking such treatment. On the whole, the diseases involved here are of such consequence that those fearful of being afflicted would not find a relatively modest doctor's fee in any way a cause for procrastination. True, there may be people both genuinely concerned and genuinely unable to pay. But they are already covered by Medicaid or Medicare. For those not so covered, with marginal medical budgets, there are thousands of free clinics. For the rest of us, the fact that we procrastinate springs from something infinitely more complex than a physician's fee, and abolition of that fee would make the prospect of a visit to the doctor no more seductive.

Human nature presents a profound problem for the proponents of preventive medicine. We cause most of our own basic health problems by eating too much, smoking too much, and drinking too much. We refuse to exercise, we drive our cars unsafely, and some of us won't even use seatbelts. All this, say preventive medicine proponents, is the result of our "life-styles." Change those life-styles, and there would be far fewer health problems. All of which, of course, is true. But the advocates of preventive medicine run into trouble when they attempt to explain just how free medicine would effect a significant life-style change. Indeed, it might be argued that a government which encourages us to put total responsibility for our health into its hands could end by making us even less responsible for our own health. Some day, of course, they may have us all out at lunch hour, exercising in the parking lots to the tune of loudspeakers. But until then, if Califano actually believes that a socialized system would compel us to trot obligingly into our doctor's office so that he can tell us to stop smoking so that we can then go home and do so, his view of human nature is hopelessly muddled.

Nor does his view of the basic human condition seem much clearer. The most important preventive techniques are those that detect and prevent major medical problems. But to characterize such techniques as "money saving" is surely to miss an important point—we all die anyhow, and few of us die healthy. Save us from one thing, and we will eventually suffer from and die of another. And a great deal of money will be spent on us in the process. Consider: A man found to have operable prostate cancer at 40 may be saved to enjoy the benefits of a pacemaker at 65. Or a woman whose hypertensive problems are brought under control at relatively little expense at 60 may at 70 suffer from advanced senility and be placed in a nursing home. In each case, a great deal more money will be spent on such patients than would have been spent had the preventive techniques not succeeded.

This is as it should be, for that is what American medicine is all about. But here again, in the government's characterization of such techniques as "money saving," we run into one of those great reversals of logic. Such techniques by definition must cost, rather than save, money. The only real way to save money on that man with the prostate cancer is not to treat him at all. That, of course, is something no American doctor would think of doing. But, public statements about preventive techniques as money savers aside, there are hints that the idea has occurred to high HEW officials. In public, they continue to take the approved line on preventive medicine. In private, however, they are saying things that suggest a radical redefinition of the preventive concept, one which more nearly squares with logic but violates every precept of American medicine.

Recently, for instance, a storm briefly swirled through HEW when an internal memo was leaked to the press. The memo, from Robert Derzon, director of HEW's newly created Health Care Financing Administration, suggested that Califano consider a number of ways to bring costs under control. Among Derzon's suggestions: discourage the use of sophisticated medical technology; limit the supply of doctors; slap controls on doctors' fees; encourage welfare mothers to get abortions; and persuade the states to adopt "living wills" by threating to withhold federal funds.[2]

Abortions would be beneficial, explained Derzon, because "every unwanted birth prevented saves about $1,000 annually in welfare payments and another $100 in Medicaid funds." Too many kids, costing too much? Simple. Abort them. Too many old people? "Over one-fifth of Medicare expenditures are for people in their last year of life," Derzon observes pointedly. The solution? Living wills, an approach which encourages oldsters to acquiesce in euthanasia. Neat. Not everyone quite appreciated the simple beauty of Derzon's approach, however. As Harry Schwartz of the *New Yok Times* pointed out, "Mr. Derzon likes euthanasia. . . ." Such a predilection on the part of the high HEW official who will probably be tapped to run any system of national health insurance is something less than reassuring.

Derzon, in typical bureaucratic fashion, has since denied meaning what he said. But as Schwartz points out, "what is irrefutable is that these and related ideas have recently been actively discussed at the highest policy levels of HEW."

Closely tied to the theory of preventive medicine is the assault on what Califano and the federal planners call "runaway medical technology." Right now their argument is that what needs controlling most are costs at the upper level. Give them the power to pay the total health care bill, they say, and they will hold down those costs by refusing to pay for certain procedures and types of treatment. But do we really want that? Most of us, when someone close becomes very sick, will seek out the very best treatment money can buy. To this end we shop for private insurance policies which guarantee that we will be able to pay for it—and if we do not have such insurance, we will go deeply in debt to pay for that treatment. But now the government is talking as though it intends to save us from those urges—whether we want saving or not by denying us certain kinds of services and treatment.

What would that mean? It might mean, for instance, that a child with a brain tumor would not have access to a sophisticated brain scanner that could pinpoint the tumor's location. It might mean that the hospital nearest to the heart attack victim would not have a cardiovascular unit. With the government firmly controlling the purse strings and determined not to pay for such equipment, it would not be purchased.

Increasingly, national health insurance proponents are depicting hospitals as luxury playgrounds for medical dilettantes, and breathtaking medical technologies as expensive toys for grownup boys. (One HEW expert, at a recent meeting in Washington, referred to some of the most important technological devices of the century as "whatsydutsy machines.") Get rid of all that frivolous technological stuff, the attitude seems to be. It just drives up costs, and if we all practice preventive medicine, we won't need it anyhow. What is seldom acknowledged is that hospital improvements and medical technology aim either to preserve life or to enhance its quality. When the time comes for each of us, we would probably prefer to have had our money spent in this manner. But, again, perhaps the unstated arguments is that the single best way to save money is to prevent life from lingering.

Here, as in so many other cases, Califano has things backwards. If he and his peers truly wanted to hold down costs and enhance the quality of care, they would start at the other end and attempt to eliminate services on the primary level. As any physician will tell you, this is where health care expenditures are truly wasted. As matters now stand, doctors are plagued by a horde of patients with self-treatable or nonexistent afflictions. There is the patient with the scratchy throat, the patient concerned with excessive or inadequate body hair, the patient who sometimes gets a funny feeling in his right shoulder, the patient who simply enjoys the attention of a physician and finds his office a satisfying social center. And as third-party payments increase—and with them the illusion of free medicine—so do such patients increase proportionately.

Califano, however, is working from the other end. He intends to encourage more utilization on the primary level by providing free and unlimited access to services, while at the same time limiting access at the upper level. With unlimited access, concludes a Rand Corporation study of National Health Insurance, treatment in doctors' offices would increase by 75 percent. This increase would take place precisely where it is needed least; and what's more, it would dramatically siphon off dollars essential to our care.

In effect, the Califano approach consists of taking resources from those who genuinely need them and distributing them among those who do not. If he were to take a similar approach to education, he might end by funding postgraduate courses for cafeteria help and janitors, while denying them to all

[2] A "living will" spells out the conditions under which a person would not want to continue living—e.g., dependence on a life-support system.

students with an I.Q. over 125. Were the same approach taken to welfare, able-bodied bachelors might be encouraged to go on relief, but disabled women with dependent children would be discouraged.

National Health Insurance is simply not the most effective way to guarantee the nation's good health, nor is its method of allocating the health care dollar either wise or just. Nor is its current rationale in any way logical. Health care costs are soaring, we are told. Therefore, we must institute a system that by the most conservative estimates could add $16 billion a year to those costs. If Califano and his colleagues really believe that, then they're bananas.

But they're not, of course. At least not all of them. Most of the HEW planners are simply doing their jobs. And this is especially true of Califano. He is a hired gun, and a good one, the quintessential Washington operator, totally loyal to whoever happens to be paying his fee. He has been told to pave the way for a system of National Health Insurance, and that is what he is doing. His method is an effective one. He looks for whatever apparent weakness appear in the present system and he shoots holes in them, and it is irrelevant whether or not his charges are untruthful or exaggerated. And because he does it well, it occurs to few that his facts are frequently either distorted or simply wrong. But they are.

Take his most basic assertion—health care costs are spiraling out of sight. Califano would have us believe that the increase in these costs is outstripping the increase in the costs of all other commodities. But this is not the case. In fact, according to the Consumer Price Index (CPI), medical costs over the past decade have not risen nearly as rapidly as the costs of many other essential services. According to an analysis of the CPI by the American Medical Association, the equivalent of a dollar's worth of medical care in 1967 costs $1.85 today. In comparison, insurance and finance charges which cost a dollar in 1967 have risen today to $1.97; legal expenses have risen to $2.00; and postal fees, under government supervision, have risen to $2.22.

Many other costs have also outstripped medical costs. A dollar's worth of auto repairs in 1967 now goes for $1.90; appliance repair has risen to $2.00; plumbing services are up to $2.10; house reshingling, $2.33. Then there are the consumer products—sugar, coffee, seafood, rib roasts, bacon, ham, tuna fish, potatoes, and, of course, electricity and everything connected with energy. Even a dollar's worth of blue jeans in 1967 goes for $1.90 today.

Consider, as well, the bite the Social Security tax is taking out of consumers' paychecks. From 1967 through 1977, the maximum Social Security tax increased approximately twice as much as health care costs over the same period. And with the massive new increases enacted by Congress—the members of which, incidentally, do not have to contribute—the sky's the limit.

Nor are comparative price-rises under the present system expected to be particularly dramatic, even though, federal programs permit millions of poor Americans to enjoy virtually limitless access to health care. According to a projection by Predicasts, Inc., expenditures for education since 1957 will have risen in 1990 by a yearly average of 8.2 percent. Welfare costs will have risen 11.1 percent over the same period, and health care costs will fall in the middle at 10.9 percent.

If this forecast is at all accurate, the situation seems much less alarming than Califano would have it. But Califano is not interested in figures that undermine his case, and he chooses his statistics carefully. Thus, whenever he complains about rising costs, he goes to the Social Security Administration's compilation of health care statistics for 1975 and 1976. These are two good years, for the statistics, if taken alone, do seem to demonstrate that health care costs are *the* major problem.

But what Califano and others who single out these two years do not discuss is that the size of the figures is due not so much to costs out of control as to costs under controls—the Nixon controls, that is, which remained in effect in the health care field a year after they were lifted in most others.

Thus in 1975, the first full post-control year, medical care costs as recorded on the CPI shot from 5.7 to 12.5 percent—certainly an alarming statistic when taken in isolation. But in 1974, the year in which the rest of the economy was freed from controls, the CPI for all items jumped from 4 to 9 percent, and in 1975 it climbed to 11 percent. In 1976, the third control-free year, the CPI for all items leveled off at 7.1 percent. In the same year, the second year in which health care costs were free from controls, the medical care component of the CPI dropped from 12.5 to 10.1 percent.

Economists call this phenomenon of post-control prices rising to their natural level a "bulge." The bulge is commonly thought to subside after two years. But in the case of the CPI for all items, it was a three-year process, while the figures for 1975 and 1976 cover only the first two years of the health care component bulge. Thus, the relevant comparisons would be between 1974 and 1975, and between 1975 and 1976. When one compares the figures year for year, as Califano does, the comparison between the cost of medicine and the cost of everything else must inevitably be distorted.

In fact, if one stretches the span out a bit the results are quite different. If, for instance, one averages the medical price rise between 1973 and 1976, and then compares that increase with the rise in costs of all other items, the rate of increase is almost exactly the same. All items on the CPI during that period rose 31.1 percent. Medical costs rose 31.5 percent. That means that since 1973, health care costs have risen at a rate less than one-half of one percent higher than all other items.

It is not quite fair, of course, to confine such an analysis to the 1973–1976 period. Between 1965 and 1973, for instance, health care costs rose 9.6 percent more rapidly than other costs. But these were the years of the great gathering together of federally insured patients, and that increase is directly attributable to federal programs. In any event, it is surely as fair to compare costs between 1973 and 1976 as it is to complain only about the price rises of 1975 and 1976, without acknowledging the effects of price controls.

Califano's tendency to overstate and to use statistics selectively is especially apparent in his frequent assaults on pharmaceuticals. Among all major industries, pharmaceuticals have been most successful at keeping prices down, and in terms of real dollars we are paying considerably less for our prescription drugs now than we were a decade ago. Between 1967 and 1977, according to the Social Security Administration, prices for all goods rose approximately 44 percent. During the same period, however, the price of prescription drugs rose just a bit less than 19 percent.

That figure is especially remarkable when you consider the effect of FDA regulations on the drug industry. During the mid-1960s, it cost approximately $1.5 million to develop a new drug and win federal approval to market it. Today, that cost has risen to an estimated $15 million. Yet in 1976, when other costs were rising 5.7 percent, drug prices rose only 3.9 percent.

Nevertheless, despite the figures, the prices of drug products are under almost constant attack in Washington. Senator Kennedy has called for (but not held) hearings on drug prices. The Naderites, in their sixties, with-it fashion, talk of "drug ripoffs." And Califano, in his peculiar rococo style, talks of "patent monopoly pots of gold at the end of the research rainbow."

In each of the areas discussed here—preventive medicine, the "drug ripoff," spiraling costs—the fashionable indictments of the present health care system collide with a collection of real-world facts. But these facts are seldom aired, for the men who set the terms of the national debate simply are not interested in hearing them. These men have been appointed to bring in a system of National Health Insurance. So the existing system is by definition bad, and anything at all is fair that might help to discredit it.

Their job is not an easy one, however. For one thing, the line shifts radically from year to year. Ten years back, when the economy was booming, we were told that although National Health Insurance would be expensive, it was necessary because many Americans were receiving unequal care. Then came Medicare and Medicaid, the problems of equity and access were alleviated, and we were told that, although we were all getting it, American medical care was shoddy and incompetently practiced; that we were not getting what we paid for; and that, although National Health Insurance would be expensive, it would enable the government to exercise control over the *quality* of care.

Now, however, the line has shifted again. It isn't quality we're worried about any longer. It's cost, pure and simple. Previously the approach was to try to convince us that National Health Insurance was affordable. Now we're being told that we cannot afford not to have it.

One wishes, before Califano nationalizes our system of medicine, that he would reassure us all by pointing to just one instance in which government intrusion into the private sector has resulted in a less expensive product—or for that matter, a product of higher quality. To my knowledge, that has never happened, and it would be highly unlikely to happen in the complex field of health care.

But perhaps we needn't worry. The first target date for National Health Insurance was late 1977. Then it was moved up to mid-1978. Now Califano is talking about early 1979. In the meantime, as the projected NHI cost estimates continue to soar, the American people, already afflicted by inflation and threatened by a huge new Social Security tax bite, may decide they simply do not want to foot the bill for a nationalized system of medicine. Besides, as most Americans who think about it have come to understand, we already *have* a comprehensive national health care system, created by the private sector. And in comparison to the systems of those nations—especially Great Britain—where medicine has been socialized, it doesn't look bad at all.

"SEXUAL APARTHEID" IN THE ARMED SERVICES

Mr. PROXMIRE. Mr. President, last month the Los Angeles Times printed an interesting editorial on women in the military, which concluded that—

> To continue to exclude women from serving in combat units, simply because they are not men, would be a form of sexual apartheid that has no place in modern American society.

It is easy to point our finger at divisions in South African society but much more difficult to recognize and correct them in our own.

Women have been denied equal employment opportunity in the armed services for years through legal, adminis-

trative and traditional restrictions. At the same time this Nation has been cheated out of fine service by well qualified and highly motivated young women.

There are now bills in both Houses to remove some of the restrictions holding back women in the Armed Forces, and the Defense Department will send further legislation to the Congress later this year to repeal all legal restrictions.

I ask unanimous consent that the Los Angeles Times editorial be printed in the RECORD at this point.

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

NO PLACE FOR SEXUAL APARTHEID

It takes certain skills, both physical and mental, to pilot a jet fighter, serve aboard a destroyer or to drive an armored personnel carrier on the front lines of battle. Those who meet the demands of such jobs and are willing to serve in them, should have the opportunity to do so—regardless of whether they are men or women.

Such is the gist of a sensible Pentagon request to Congress to sweep away laws that prevent women from serving in combat aircraft and on fighting ships. Other combat assignments may be made administratively. The Pentagon wants a free hand in deciding when, where and how to deploy women personnel in military chores that they are now prevented from undertaking.

Its reasons are based on the best of all possible considerations affecting the armed forces—national security. While the opening of combat and combat-related jobs to women has profound nonmilitary implications, the Pentagon wants to expand the role of service women mainly because there simply will not be enough men available for military service in the next two decades if the nation is to maintain adequate force levels under the all-volunteer system.

The problem lies in the nation's declining birthrate, which, according to a Defense Department official, will result in a 15-percent decline in the number of 18-year-olds in the 1980s, and a 25-percent decline in the 1990s. Qualified women volunteers could fill the jobs, including those involving combat, that might otherwise have to remain vacant or be filled by men of lesser qualifications. To exclude women under such circumstances would result in an unnecessary risk to the national well-being.

The 108,000 women in the nation's 2.1 million-member armed forces are now making an important contribution to national defense. Through in-service administrative changes, they are already filling—in some cases more satisfactorily than are men—many jobs from which they had been excluded until recent years.

Their role can be expanded greatly, even if women continue to be barred from combat-type positions. A Rand Corp. study has found that by opening noncombat enlisted jobs that are now restricted to males, the proportion of women could be boosted from the present 5 percent to 33 percent of total strength, without affecting military performance.

And if women can fill noncombat jobs as well as or better than men, there is no reason why the women, if they can meet the demands, should not be allowed to serve in fighting units as well.

Many factors would have to be taken into account to sustain combat efficiency, and to make certain that women were subjected to no greater risks than those faced by their male comrades. But to continue to exclude women from serving in combat units, simply because they are not men, would be a form of sexual apartheid that has no place in modern American society.

GENOCIDE CONVENTION DOES NOT INTERFERE WITH FIRST AMENDMENT

Mr. PROXMIRE. Mr. President, in the 30 years since the drafting of the Genocide Convention, the opponents of this treaty have raised several arguments against its passage.

The Genocide Convention is a treaty which would make the commission of genocide an international crime. One of the provisions of the treaty is that "direct and public incitement to commit genocide" is a punishable offense. The opponents of the treaty say that if the United States were to become a ratifying member of the Convention, this language would be an infringement on the guarantees in the Constitution concerning freedom of the press and freedom of speech. They seem to be arguing that Congress cannot ratify the Genocide Convention with this language in it, because the Constitution specifically states that Congress shall make no law which interferes with the freedom of the press or freedom of speech.

Mr. President, this argument is tenuous at best. It has long been held by the Supreme Court that speech which poses a "clear and present danger" to other people does not enjoy the protection of the first amendment. The most famous example of this was given by Justice Holmes, who said that in no way did the first amendment guarantee a person's right to cry "fire" in a crowded theater.

The Frohwerk case also clarified the Court's stand on first amendment freedoms. The Court said:

The first amendment, while prohibiting legislation against free speech as such, cannot have been, and obviously was not intended to give immunity for every possible use of language (Robertson v. Baldwin). We venture to believe that neither Hamilton nor Madison nor any other competent person, then or later, ever supposed that to make criminal the counseling of a murder within the jurisdiction of Congress would be an unconstitutional interference with free speech.

Furthermore, the Supreme Court, in Brandenburg against Ohio, stated clearly that while the first amendment does indeed cover all forms of advocacy, it does not cover incitement. In the language of the Court:

The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

Clearly, incitement to commit genocide, which is incitement to commit mass murder, is not protected speech. We would in no way be interfering with the guarantees of the first amendment by adopting the Genocide Convention with the language prohibiting incitement to commit genocide. I urge the Senate to ratify the Genocide Convention as soon as possible.

Mr. PELL. Mr. President, I compliment the distinguished Senator from Wisconsin and support fully his efforts to achieve passage of the Genocide Convention. I think his efforts in this direction are great and I hope will be awarded with eventual success. I share every one of his thoughts in this regard.

ANN LANDERS: HAIR DYES DO NOT CAUSE CANCER

Mr. PROXMIRE. Mr. President, the Ann Landers newspaper column has millions of readers, and it is a good thing it does. The author—a bundle of vibrant dynamism and solid common sense named Eppie Lederer—gives out with more good advice on how to live a wholesome and happy life than anyone I know.

Recently she was asked a question that haunts Americans in every section of our country. It was this: Do hair dyes cause cancer?

Her answer was carefully researched, responsible and, as usual, on the button.

It was a resounding "No."

Mr. President, I ask unanimous consent that the column be printed at this point in the RECORD.

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

[From the Chicago Sun-Times, Mar. 13, 1978]

CANCER FROM HAIR DYES? IT ISN'T LIKELY

DEAR ANN LANDERS: I have been reading a lot in the newspapers lately about the possibility of getting cancer from hair dyes. It is very upsetting.

Premature graying runs in our family. My mother and her sisters had snow-white hair when they were in their 40s. Some people may think it's pretty, but I think it adds 15 years to any woman's age—no matter how young her face is. I started to dye my hair when I was 35 and have been doing it for 27 years.

I keep reading about the experiments being done with rats. Every report I've seen says the rats are drinking the dye—and in enormous quantities. I don't want to drink it, I just want to put it on my head.

The only person I've heard mention this subject on the news is Walter Cronkite. He is like a second God in our house.

Walter Cronkite says the studies are "inconclusive." Someone else on that same broadcast said a woman would have to drink 25 bottles of hair dye every day of her life in order to get as much as the rats got.

A lot of people in this country trust you, Ann. Your opinion would mean a great deal to us and millions of others. Will you please tell us what you think—or is this potato too hot for you to handle? Scared—like so many others.

Dear Scared: No potato is too hot for me to handle if I have the backing of blue-ribbon experts. I've done a lot of digging into this hair-dye controversy because a great number of women have written to express concern, just as you have.

Dr. Edmund Klein, a most distinguished and world-renowned skin cancer specialist at the Rosewell Park Memorial Institute (New York's State Center for Treatment, Control, and Research and Cancer), had this to say:

"Many of my patients, including those who have a tendency to develop skin cancers, as well as those who have already developed skin cancers, have been dyeing their hair for decades. To the best of my knowledge, not one cancer has occurred in these patients that could be traced to hair dyes.

"The majority of chemical agents which cause skin cancer produce it at the site where it makes its first contact with the body—usually the skin, because its impact is strongest at that particular place.

"In my opinion, if hair dyes were a serious cause of cancer they would have produced skin cancers on the scalps, since these women

have a predisposition toward developing the disease. It is even less likely that hair dyes would cause cancer in the average individual who is not prone to developing skin cancer. Almost any agent can, under very unusual circumstances, cause cancer, but fortunately, these circumstances apply to less than one in a million.

"Statements that create scare and panic should be based on something more than inconclusive and possibly irrelevant studies."

Dr. Klein is only one of several authorities with whom I consulted. A past president of the New York Academy of Sciences described the rat studies as "poorly designed" and said, "They may or may not prove anything—even about rats." Not one single authority with whom I checked believed the rat studies have any validity whatsoever. I have been using hair dyes for more than 30 years and will continue to do so.

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

MILITARY ASSISTANCE TO TURKEY

Mr. PELL. Mr. President, I am deeply disturbed by the administration's decision to recommend to the Congress that the arms embargo against Turkey be lifted and that the amount of military and economic assistance to Turkey be increased over what was originally requested for fiscal year 1979. Let me state my reasons for coming to the conclusion that the administration's proposals will postpone the settlement process in Cyprus, poison our relations with Greece, and encourage Turkey in its apparent belief that it has all the trump cards in our bilateral and NATO relations.

First and most important of all, Turkey continues to occupy 40 percent of Cyprus which was invaded with the use of American arms in violation of the bilateral agreement made in accordance with American law governing the use of U.S.-supplied arms. When the Congress instituted the embargo against Turkey, it said that the embargo would remain in force until the President certifies that "substantial progress toward agreement has been made regarding military forces in Cyprus." I find it hard to believe that the administration could contend that any progress, much less "substantial" progress has been made. If anything, there has been regression, as a result of the Turkish colonization of the Famagusta suburb of Varosha. Moreover, Turkey has failed to come up with its long-promised proposal on a Cyprus settlement.

Second, there appears to be no guarantee that the administration decision, if approved by Congress, will satisfy Turkey so that our intelligence installations in that country could be reopened. According to this morning's Washington Post, Turkish Prime Minister Ecevit said that President Carter's decision would not be enough to get American intelligence-gathering installations going again. According to the Post he only said that lifting the embargo would be "a clear step toward positive developments." If this report is correct, the administration's desire to separate the Cyprus and military issues only serves to insure that no early progress will be made on either front.

Third, it is both distressing and puzzling that the administration is proposing an increase in aid to Turkey while aid to Greece and Cyprus would be decreased in comparison with fiscal year 1978. What kind of signal is that to send to Greece and Cyprus? Specifically, in fiscal year 1978 the President was authorized to sell Turkey $175 million in arms under the Foreign Military Sales credit program. This was an exception to the embargo in the hope that Turkey would be more forthcoming on the Cyprus issue. The administration originally asked for authority for another $175 million in FMS credit sales for Turkey in fiscal year 1979, but now he wants to add $50 million for a Security Supporting Assistance loan to help Turkey with its economic problems. In comparison, Greece in fiscal year 1978 is scheduled to receive a total of $175 million in military aid—the same as Turkey—of which $140 million would be in FMS credits, $33 million in Military Assistance program grants, and $2 million in grant training aid. For fiscal year 1979, the administration originally requested $122 million in FMS credit sales with the understanding that if a Defense Cooperation Agreement with Greece entered into force in fiscal year 1979, an additional $53 million in MAP and training grant aid would be provided. As part of the decision on Turkey, the administration appears to have dropped the whole idea of Defense Cooperation Agreements with both Turkey and Greece; and in light of the revised request for Turkish aid, it increased the request for FMS credit sales to Greece to $140 million, the same as last year, but with no other aid requested.

Thus, in comparison with fiscal year 1978, the total package for Greece will go down from $175 million to $140 million, while the one for Turkey will go up from $175 million to $225 million. In addition, Cyprus received $15 million in fiscal year 1978 in Security Supporting Assistance for refugee aid, while the administration's request for fiscal year 1979 remains unchanged at $5 million. Thus Turkey is rewarded, while Greece and Cyprus are penalized. The people of these two countries can only conclude that the United States is tilting toward Turkey at their expense.

Mr. President, in conclusion I would like to register my firm opposition to ending the arms embargo against Turkey as long as the Turks are using American weapons in violation of our bilateral agreement made in accordance with American law. In my view, the United States must not reward Turkish obstinacy. To do so would be to give the impression that it has been Turkish, not U.S. pressure that in the end has prevailed.

Mr. President, I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I commend the very able Senator from Rhode Island for the statement which he has just made. He has been a leader on this issue in the Congress of the United States and in the Nation. He has had a longstanding commitment to the fostering of democracy in that area of the world and has carried that commitment forward in his actions here in the Senate of the United States.

The statement which he has just made reflects that continuing commitment and his sensitivity and extremely able leadership on this issue. It is a matter that may well be before the Congress in the not too distant future.

Earlier today, Senator EAGLETON and I joined with Congressman BRADEMAS and Congressman ROSENTHAL in a statement on this same issue.

Mr. President, I ask unanimous consent that that statement and the attachments thereto, which include statements by the President himself in 1976 on this very important issue, a statement by our present Secretary of State at an earlier time testifying on this matter, and an editorial which appeared in the New York Times on last Friday which discusses this issue in some detail, be printed at this point in the RECORD.

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

STATEMENT OF SENATORS THOMAS F. EAGLETON AND PAUL S. SARBANES, REPRESENTATIVES JOHN BRADEMAS AND BENJAMIN S. ROSENTHAL

Because we feel it our obligation to uphold certain basic principles in the conduct of American foreign policy, we must oppose the Administration's attempt to end the arms embargo on Turkey.

We take this position for several reasons:

1. Such a policy would, if enacted, undermine the rule of law in the execution of our foreign policy.

2. It would raise serious doubts about the credibility of America's commitment to human rights.

3. It would call into question our national commitment to the control of U.S. arms sales abroad.

4. It would make far more difficult the achievement of a Cyprus settlement and a just resolution of the refugee problem.

5. It would encourage the further growth of anti-American forces in Greece.

6. It would make virtually impossible the normalization of relationships among Turkey, Greece and Cyprus and between each of them and the United States.

7. The attempt to obtain complete resumption of U.S. arms sales to Turkey despite the lack of any substantive progress toward a settlement on Cyprus means that President Carter has turned his back on promises made to the American people and to their representatives in Congress both during his campaign for the Presidency and after taking office.

It should be recalled that the embargo on U.S. arms sales to Turkey was voted by Congress after Turkey, in clear violation of American laws and bilateral agreements already in effect, used American weapons for offensive purposes in its August, 1974 invasion and occupation of Cyprus.

Provisions of both these laws—the Foreign Assistance Act and the Foreign Military Sales Act—required that further military aid to Turkey be terminated. The embargo was voted, therefore, not to enact new law but rather to insure that existing laws were enforced. The continuing occupation by Turkish forces, equipped with U.S.-supplied arms, of forty percent of Cyprus is a continuing violation of these laws.

Mr. Carter pledged on several occasions during his Presidential campaign that any normalization of our arms relationship with

Turkey would be linked with a settlement of the Cyprus problem. [Attached are two major policy statements on this subject issued by Mr. Carter as compiled in Presidential Campaign 1976 (Volume One, Part Two: Jimmy Carter), U.S. Government Printing Office, 1978.]

Over the past year, the President and members of his Administration have confirmed their commitment to these principles. In light of such clear and continuing assurances, both public and private, on this matter, we were deeply dismayed to learn that although Turkey has done nothing to promote a Cyprus settlement and although Turkish troops armed with American weapons still—in violation of American law—occupy forty percent of Cyprus, Congress is being asked to re-establish a full arms relationship with Turkey. This we cannot support.

As Members of Congress who have for some time been involved in this issue, we believe that effective use of the arms embargo represents the path most likely to lead to a Cyprus settlement. The effectiveness of the embargo has been undermined, however, by certain actions of the Administration.

As long-time supporters of NATO, we know that the strength of our southeastern European flank requires both Turkey *and* Greece to play active roles in the alliance. An Administration policy which prevents the full participation of both nations threatens serious long-term damage to our national security interests in that vital region.

And as adherents of restraint in the use of U.S. arms throughout the world, we believe, as Cyrus Vance did when he testified before Congress in July 1975 against the partial lifting of the embargo, that "this so-called compromise would create a widespread impression that no nation that has acquired arms from the United States need any longer pay attention to the conditions on which those arms were made available but would be free to use them in pursuit of its own interests in local conflicts."

For all the reasons we have stated—reasons rooted in law and principle—we will work vigorously to prevent the Administration's retreat on this important issue.

We believe that a majority of our colleagues in Congress share our concerns and will act accordingly.

THE PRESIDENTIAL CAMPAIGN 1976

THE CYPRUS CONFLICT

For more than twenty years, Greece and Turkey together have held the southern flank of NATO and helped maintain the security of the Mediterranean. Both, as part of our joint alliance, have given base rights and other invaluable support to the United States. It is very much in our own national interest that our close relationship with both countries continue.

Unfortunately, their relations with each other have for many years been troubled by conflicts over Cyprus. Since the coup against Archbishop Makarios and the Turkish invasion of Cyprus over two years ago, these differences have become so serious as to threaten the security of NATO and the good relations of both countries with us.

It is a major U.S. interest that harmony in the alliance be restored. The Republican Administration has failed to deal with the situation in three respects: it has failed to exert its influence effectively to bring about a settlement in Cyprus during the five years before the Cyprus crisis; it failed, despite repeated warnings, to prevent the 1974 coup against Makarios engineered by the former military dictatorship in Athens; it failed to prevent of even to limit the Turkish invasion of Cyprus that followed. This administration therefore bears a large share of the responsibility for the dangerous deterioration in our relations with Greece and with Turkey.

We should now exert our influence in every feasible and constructive way to help Greece. Turkey and the Cypriots resolve their differences. Only if we are able to maintain the confidence of all three, however, can we hope to be listened to.

Any solution that is to endure must be a just one. It must protect the rights of both the Greek majority and the Turkish minority on the island, including the rights of those displaced from their homes by the Turkish invasion.

The United States cannot impose a solution. It can and must help; but only agreement among the three governments directly concerned can restore harmony and cooperation.

Secret and personal agreements are no substitute for a clear commitment to an early settlement which gives Cyprus its independence.

I feel most distressed that Mr. Kissinger's recent agreement with the Turkish government was not coupled with an agreement which promised more rapid progress toward a just solution for the Cyprus tragedy. In my judgment, we would be negligent of the moral issues and courting longer-range disaster if we fail to couple the improvement in relations with Turkey with increased fair progress on the Cyprus issue along the lines I have outlined above.

GREECE AND TURKEY

The continuing tensions between Greece and Turkey damage the NATO alliance and endanger stability in the eastern Mediterranean. If these two allies of the United States are to play a vigorous role in the alliance, there must be a just and rapid settlement of the tragic situation in Cyprus.

The policy of the Ford Administration of tilting away from Greece and Cyprus has proved a disaster for NATO and for American security interests in the eastern Mediterranean.

Despite repeated warnings, the administration failed to prevent the 1974 coup against President Makarios engineered by the former military dictatorship in Athens. The administration failed to prevent or even limit the Turkish invasion that followed. The administration failed to uphold either principle or the rule of law in the conduct of our foreign policy. American law requires that arms supplied by the United States be used solely for defensive purposes.

Today, more than two years later, no progress toward a negotiated solution of Cyprus has been made.

The lack of progress is disappointing and dangerous. Peace must be based upon the United Nations General Assembly Resolution 3212 of November 1, 1974, endorsed by Cyprus, Greece and Turkey, calling for among other things, the removal of all foreign military forces from Cyprus. The widely reported increase in colonization of Cyprus by Turkish military should cease. Greek-Cypriot refugees should be allowed to return to their homes. Both Greek and Turkish-Cypriots should be assured of their rights, both during and after the withdrawal of all foreign troops from Cyprus.

The impasse on Cyprus must be broken. The United States must be prepared to work with others, including the United Nations, to insure the independence, territorial integrity and sovereignty of Cyprus.

In addition, the dispute over rights in the Aegean must be resolved peacefully, under international law. Provocations must be avoided.

Greece and Turkey are and must remain our allies within NATO and neighbors at peace with each other within the community of nations.

The United States must pursue a foreign policy based on principle and in accord with the rule of law.

STATEMENTS BY CYRUS VANCE

CYPRUS AND THE TURKISH ARMS EMBARGO

July 10, 1975, From statement before the House International Relations Committee (made jointly with George Ball)

That Turkey used the arms we provided in violation of the relevant American laws and of the express language of the bilateral agreement that governed their transfer is not in dispute. That issue has been settled by an opinion of the Comptroller General in unequivocal language.

The question now is: Should the Congress wipe out the penalties of violation, which, in express terms, would render Turkey ineligible for further American weapons until the Turkish government takes steps to purge itself by some serious move to settle its dispute with Greece and to remove its troops from Cyprus? To do so might dangerously undercut the conditions we have imposed on the use of all the arms we have provided up to this point under our various military aid and military sales programs.

. . . There is, it seems to us, grave danger that, in the highly political atmosphere that now prevails in Ankara, the Turkish Government would regard this measure (a partial lifting of the embargo) as a vindication of its past actions and as removing any pressure to make significant concessions toward a Cyprus settlement . . .

Finally, and in many ways this is the most important point, we are seriously concerned that this so-called compromise would create a widespread impression that no nation that has acquired arms from the United States need any longer pay attention to the conditions on which those arms were made available but would be free to use them in pursuit of its own interests in local conflicts.

[From the New York Times, Mar. 31, 1978]

THE WAY BACK FROM CYPRUS

Since 1974, when Turkish troops, using American weapons, occupied two-fifths of the island of Cyprus, relations between Ankara and Washington have been sour. Congress has limited the flow of additional arms until Turkey pulled back its forces; successive Turkish Governments have refused to define their conditions for withdrawal under such pressure. Both the United States and Turkey will end up losers if no way can be found to break out of this bind. Turkey could point the way by revealing its proposals for a Cyprus settlement.

Turkey's invasion was scarcely unprovoked. The 18 percent Turkish minority on Cyprus had never been well treated by the Greek majority. And in July 1974, a coup brought to power a hard-line Greek-Cypriot faction that seemed likely to take even less account of Turkish-Cypriot rights. Although the insurgent regime lasted only a few days, that was long enough to precipitate Ankara's invasion.

Ankara has reacted to the limit on arms sales—$175 million this year—by sharply restricting American use of NATO facilities in Turkey. Under steady pressure from Greek-Americans, Congress has remained firm. But the Ford Administration strongly deplored the Congressional restrictions as harmful to NATO—and thus caused the Greek Government to curtail its military cooperation with NATO. The Carter Administration has tried to straddle the issue. It has continued discussions for a defense agreement that would substantially increase American military aid to Turkey. But it has implied that it would not conclude the agreement until there had been progress on Cyprus. Early this month, Secretary of State Vance was explicit: Washington would not move, he told Congress, until it had examined proposals for Cyprus

promised by Turkey's new Prime Minister Bulent Ecevit.

More intolerable "linkage," responded Mr. Ecevit—and this time from the Administration, not merely from Congress. He countered with reverse linkage: no Cyprus proposals until the heat is off. That message, and subsequent hints that Turkey might withdraw its half-million men from NATO's command and even sign a nonaggression pact with Moscow, caused a high-level American delegation to hurry to Ankara this week to attempt to set things right.

That won't be easy. Strong sentiment continues in Congress that Turkish concessions are necessary before normal military relations can resume. That sentiment is justified. Turkey broke United States law and violated the spirit of its alliance when it used American weapons to expel Greek Cypriots from their homes and farms. Having made its point, Ankara should now pull back. Greek Cypriots—and Greece—realize there can be no return to the old arrangements on Cyprus. They acknowledge that Turkish Cypriots should enjoy nearly complete autonomy, including a territorial zone of their own, but one proportionate to the size of the Turkish-Cypriot population.

There is every reason to believe that both Prime Minister Ecevit and the Turkish military leadership would like to pull back. Because the Turkish occupation force is the central issue in contention, the first moves must come from Ankara. Since the issue continues to be the most explosive one in Turkey's politics, such a move would be painful. But Mr. Ecevit is in a strong parliamentary position; unlike his predecessor, he does not depend upon ultranationalists for his majority.

Turkish dissociation from NATO would be costly to the United States. But it is the Turks who should calculate the benefits of full participation in NATO; it is they who face the risks of weakened ties to the West. Meanwhile, those who would support NATO by lifting the restrictions on arms to Turkey should remember that Cyprus is just as emotion-wrenching an issue in Greece. It would not strengthen the alliance to appease Turkey at the expense of turmoil in Greece.

Mr. SARBANES. Mr. President, as the Senator from Rhode Island has pointed out so ably, nothing has been done by Turkey, which currently occupies 40 percent of Cyprus as a result of its aggression in August of 1974, to remedy that situation.

That aggression was committed with the use of American weapons in contravention of American law and it was only because the Executive then failed to apply the existing law that the Congress was required to enact special legislation providing for an arms cutoff.

As the able Senator pointed out, that cutoff has not been a total one in recent years. In fact, last year Turkey received $175 million in FMS sales, an increase over the previous year of 40 percent.

Yet, despite this increase, Turkey has done nothing to remedy the tragic situation on Cyprus. They are in a position to remedy the situation, to correct an injustice, and bring back again a normal situation in that part of the Mediterranean. It is to that effort that the attention of the administration ought to be addressed and not to the Congress which is being called upon to lift completely the embargo and thus restore the military relationship with Turkey without a just resolution of the Cyprus conflict having been achieved.

Again, I want to thank the able Senator from Rhode Island and, in particular, to stress the leadership which he has exercised on this issue and many other issues of importance to our country.

He has been a very strong force in trying to bring about a principled American foreign policy consistent with the rule of law.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I thank my friend and colleague from Maryland.

I agree completely with his statement, which I had an opportunity to read, and I share the same thoughts with him on this subject.

I guess this is one of those cases where we can quote one good old Democrat, Al Smith, when he said, "Let's look at the record."

We can look at the record. We have a record of Turkish intransigence, a record of American law which would now be violated to reward this very same Turkish intransigence.

So I hope the administration will follow that old adage and look at its own record and American law and be guided accordingly.

COMMITTEE MEETINGS

(The following occurred earlier today:)

Mr. ROBERT C. BYRD. Madam President, I ask unanimous consent that the Social Security Subcommittee of the Finance Committee be authorized to meet until 1 p.m. during the session of the Senate today to consider the social security financing proposal.

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

Mr. ROBERT C. BYRD. Madam President, I ask unanimous consent that the Judiciary Committee be authorized to meet until 1 p.m. during the sessions of the Senate today, April 5, and tomorrow, April 6, to conduct hearings on the Justice Department authorization bill, which must be reported to the Senate by May 15 under the Budget Act, and for other committee business.

Mr. THURMOND. Madam President, reserving the right to object, and I do object, unless the words "and for other committee business" are stricken. If we confine it to the budget, the distinguished Senator from Massachusetts (Mr. KENNEDY) told me that would be satisfactory.

Mr. ROBERT C. BYRD. Very well.

Madam President, in light of that information, I so revise my request.

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

(Conclusion of proceedings which occurred earlier today.)

COMMUNIST EXPANSION IN AFRICA

Mr. THURMOND. Mr. President, the American people are viewing with alarm and concern the continued expansion of communism in Africa via military support from the Soviet Union and Cuba.

A succinct and hard-hitting editorial on this subject appeared in the March 28, 1978 issue of the Greenville News newspaper in Greenville, S.C.

Entitled the "'Dominoes' Are Falling in Africa" this editorial warns about the dangers of a weak and disjointed foreign policy.

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD at the conclusion of my remarks.

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

"DOMINOES" ARE FALLING IN AFRICA

Use of raw force in Africa by Communist Cuba with heavy material support from the Soviet Union is aggression on a grand scale, but is dismissed by the United Nations and virtually unopposed by the United States. It is a very dangerous development for two reasons:

Africa—especially the southern African nations—are important because of strategic location and vast natural resources. Africa is the key to vital waterways, as well as the source of rare minerals which developed countries must have.

A test of strength between the free world and Communist bloc countries in Africa has an important—probably decisive—bearing upon the worldwide ideological and economic struggle between them.

Unfortunately events in Africa in the past few years demonstrate the moral weakness of the United States to resist Red aggression in the wake of the Vietnam disaster. The "dominoes" are falling in Africa as well as in Asia.

Failures to stop armed Cuban intervention in Angola and the Horn of Africa are major defeats for the United States and the entire free world. They open the probability of similar aggression in Rhodesia and South Africa—and in Latin America.

Source of the trouble is—as it always has been—the Soviet Union. Clearly the USSR is using detente as one of several devices to keep the United States and other western nations in a state of paralysis while it pursues its end aggressively.

The counter from this country should be obvious by now: Call off all negotiations and trade relations with the Kremlin and its allies until aggression by subversion, infiltration and intervention comes to a halt.

Some argue that policy would be too tough. They are wrong. The soft policy is unworkable.

THE ADMINISTRATION'S 5-YEAR SHIPBUILDING PLAN

Mr. THURMOND. Mr. President, the weak and risky defense policies evolving over the past year are once again evidenced in the totally inadequate 5-year Navy shipbuilding plan announced recently by the Defense Department.

This plan, which covers fiscal years 1979 through 1983, calls for building 70 new ships and modernizing 13 others at a cost of about $31 billion. This is about half the number of ships the Navy has sought. It is a blueprint for disaster when weighed against the real needs of the U.S. Navy and the threat posed by the Soviet Navy.

It contrasts sharply with the 5-year plan of the previous Ford administration for fiscal years 1978 through 1982. That plan provided for 157 new ships and 21 conversions and modernizations at a cost of $49 billion.

Former Chief of Naval Operations, Adm. Elmo Zumwalt, now retired, said the newly proposed 5-year plan "belongs in the funny papers."

Just a few years ago Navy leaders told Congress an 800-ship Navy was needed to protect the sealanes over which vital U.S. trade moved and meet with other Navy missions. Budgetary pressure over the past few years, mainly resulting from the antimilitary attitudes of the Vietnam War period, caused the Navy to fall back to a 600-ship fleet.

The new Carter administration proposal plan will barely keep the Navy at the 500-ship level. It fails to provide for a nuclear aircraft carrier which should be built in the next few years. It is a weak plan typical of current Defense Department attitudes of "let's do just enough to get by." This plan makes clear we are no longer going to have a defense second to none, but rather second to one.

The approach evidenced by this plan will lead us rapidly to a second-rate Navy. It ignores the highly respected Navy study which found a $8.8 billion annual spending rate up to the year 2000 necessary if the future fleet is based on the minimum acceptable risk. In other words, this level of spending falls well below what the Navy considers to be a minimum high-risk program.

It is ominous that this 5-year plan takes us to the early 1980's, the very period that Chairman of the Joint Chiefs George S. Brown warned would be a dangerous period for U.S. military forces.

He was mainly addressing the fact that our Minuteman missiles would be vulnerable to a Soviet first strike in the early or mid-1980's. This new Navy plan will only serve to further weaken our defense posture during this time frame.

Defense officials, when called to Congress to justify this plan, will likely testify it is "adequate" and recognizes our budget constraints. I believe the American people will support a defense posture of clear strength, not one of weakness which invites trouble. It fails to recognize the risks the same administration is taking by giving up U.S. control of the Panama Canal. A smaller U.S. Navy will desperately need sure and safe passage of the canal. Such passage will be necessary to shuttle our inadequate fleet back and forth between the Atlantic and Pacific Oceans to meet various contingencies.

As one Member of Congress, I shall propose and actively pursue efforts to provide higher levels of new ship construction as well as modernizations and conversions. I predict the Congress will not shirk its responsibility but will provide funds for a more realistic shipbuilding program.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:21 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed Senate Joint Resolution 124, to authorize the President to issue a proclamation designating the week beginning on April 16 through April 22, 1978, as "National Oceans Week," without amendment.

The message also announced that, pursuant to Public Law 301 of the 78th Congress, the chairman of the Committee on Merchant Marine and Fisheries has appointed Mr. BIAGGI, Mr. ZEFERETTI, and Mr. MCCLOSKEY, Mr. MURPHY of New York, ex officio, to serve as members of the Board of Visitors to the U.S. Merchant Marine Academy, on the part of the House, for the year 1978.

The message further announced that the House has passed the bill (H.R. 6900) to amend the National Trails System Act of 1968 (82 Stat. 919), as amended, to designate the Oregon National Historic Trail and Travelway as a unit of the National Trails System, in which it requests the concurrence of the Senate.

At 3:15 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the bill (S. 938) for the relief of Ernesto Garcia, Jr., with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3996. An act for the relief of Mrs. Young Hee Kim Kang, Hee Jae Kang, Hee Jim Kang, and Hee Son Kang;

H.R. 8449. An act for the relief of Lourdes Marie Hudson;

H.R. 11232. An act to authorize appropriations to carry out the Standard Reference Data Act; and

H.R. 11567. An act to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979–81, and for other purposes.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 3996. An act for the relief of Mrs. Young Hee Kim Kang, Hee Jae Kang, Hee Jim Kang, and Hee Son Kang; to the Committee on the Judiciary;

H.R. 6900. An act to amend the National Trails System Act of 1978 (82 Stat. 919), as amended, to designate the Oregon National Historic Trail and Travelway as a unit of the National Trails System; to the Committee on Energy and Natural Resources;

H.R. 8449. An act for the relief of Lourdes Marie Hudson; to the Committee on the Judiciary;

H.R. 11232. An act to authorize appropriations to carry out the Standard Reference Data Act; to the Committee on Commerce, Science, and Transportation; and

H.R. 11567. An act to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979–81, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

COMMUNICATIONS

The PRESIDING OFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–3266. A communication from the Assistant Secretary of Defense, transmitting, pursuant to law, the fiscal year 1977 report of receipts and disbursements pertaining to the disposal of surplus military supplies, equipment, material, and for expenses involving the production of lumber and timber products; to the Committee on Appropriations.

EC–3267. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, three construction projects to be undertaken by the Naval and Marine Corps Reserve; to the Committee on Armed Services.

EC–3268. A communication from the Vice President, Government Affairs, Consolidated Rail Corporation, transmitting, pursuant to law, the annual report of ConRail for 1977; to the Committee on Commerce, Science, and Transportation.

EC–3269. A communication from the Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the semiannual report on the effectiveness of the Civil Aviation Security Program; to the Committee on Commerce, Science, and Transportation.

EC–3270. A communication from the Under Secretary, Department of Energy, transmitting, pursuant to law, the annual report on the progress of the Energy Conservation Program for Consumer Projects Other Than Automobiles; to the Committee on Energy and Natural Resources.

EC–3271. A communication from the Chairman and Directors of the Tennessee Valley Authority, transmitting, pursuant to law, its forty-fourth annual report, covering the activities of the TVA during the fiscal year beginning October 1, 1976, and ending September 30, 1977; to the Committee on Environment and Public Works.

EC–3272. A communication from the comptroller General of the United States, transmitting, pursuant to law, a report entitled "Report on the Administration of the Get Set Day Care Program in Philadelphia, Pennsylvania," March 1978; to the Committee on Finance.

EC–3273. A secret communication from the ACIS Chairman, Interagency Working Group, United States Arms Control and Disarmament Agency, transmitting errata sheets for FY '79 ACIS, Set II; to the Committee on Foreign Relations.

EC–3274. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on the development and utilization of light capital technology in the activities of the international financial institutions, April 3, 1978; to the Committee on Foreign Relations.

EC–3275. A communication from the Executive Secretary, National Mediation Board,

transmitting, pursuant to law, its annual report covering the period of March 12, 1977 through March 11, 1978; to the Committee on Governmental Affairs.

EC-3276. A communication from the Chair, Equal Employment Opportunity Commission, transmitting, pursuant to law, a report regarding its compliance requirements of the Sunshine Act; to the Committee on Governmental Affairs.

EC-3277. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, a report regarding its compliance requirements of the Sunshine Act; to the Committee on Governmental Affairs.

EC-3278. A communication from the Deputy Assistant Secretary of Defense, transmitting, pursuant to law, a proposed new system of records identification entitled "Personnel Exposed to Radiation From Atmospheric Nuclear Tests," dated March 21, 1978; to the Committee on Governmental Affairs.

EC-3279. A communication from the Chairman, Federal Communications Commission, transmitting, pursuant to law, a report regarding its compliance requirements Governmental Affairs.
of the Sunshine Act; to the Committee on

EC-3280. A communication from the Acting Chairman, the Renegotiation Board, transmitting, pursuant to law, a report regarding its compliance requirements of the Sunshine Act; to the Committee on Governmental Affairs.

EC-3281. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Municipal and Industrial Water Conservation—The Federal Government Could Do More," April 3, 1978; to the Committee on Governmental Affairs.

EC-3282. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Status of the Air Force's Missile X Program," March 31, 1978; to the Committee on Governmental Affairs.

EC-3283. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Naval Shipyards—Better Definition of Mobilization Requirements and Improved Peacetime Operations Are Needed," March 31, 1978; to the Committee on Governmental Affairs.

EC-3284. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Substandard Indian Housing Increases Despite Federal Efforts—A Change is Needed," March 31, 1978; to the Committee on Governmental Affairs.

EC-3285. A communication from the Inspector General, Department of Health, Education, and Welfare, transmitting, pursuant to law, a report summarizing the activities of the Office of the Inspector General during the preceding calendar year; to the Committee on Governmental Affairs.

EC-3286. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports of the General Accounting Office for the month of February 1978; to the Committee on Governmental Affairs.

EC-3287. A communication from the Executive Secretary to the Department of Health, Education, and Welfare, transmitting, pursuant to law, final regulations for Title I of the Elementary and Secondary Education Act for Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children; to the Committee on Human Resources.

EC-3288. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders suspending deportation, as well as a list of the persons involved; to the Committee on the Judiciary.

EC-3289. A communication from the President, Inter-American Foundation, transmitting, pursuant to law, a report on the foundation's activities under the Freedom of Information Act in calendar year 1977; to the Committee on the Judiciary.

EC-3290. A communication from the Deputy Director, Office of Public and Consumer Affairs, Department of Transportation, transmitting, pursuant to law, a report on its administration of the Freedom of Information Act for 1977; to the Committee on the Judiciary.

EC-3291. A communication from the Controller, Boys' Clubs of America, transmitting, pursuant to law, an audited financial report for the year ending December 31, 1977; to the Committee on the Judiciary.

EC-3292. A communication from the Deputy Under Secretary (Acquisition Policy), Department of Defense, transmitting, pursuant to law, a report on Extraordinary Contractual Actions to Facilitate the National Defense for calendar year 1977; to the Committee on the Judiciary.

EC-3293. A communication from the President and National Executive Director, Girl Scouts of the United States of America, transmitting, pursuant to law, the twenty-eighth annual report; to the Committee on the Judiciary.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions, which were referred as indicated:

POM-575. A joint resolution adopted by the Legislature of the State of Virginia; to the Committee on Finance:

"HOUSE JOINT RESOLUTION No. 61

"Whereas, the Special Joint Subcommittee of the House of Delegates and the Senate Finance Committees of the Virginia General Assembly has made a thorough study of all phases of the tobacco industry including bootlegging and the taxation of tobacco products; and

"Whereas, that Subcommittee concluded that the movement and sale of tobacco products from the low tax states of the south to the high tax states of the north has made the practice of bootlegging extremely profitable, and that organized crime has become rooted in this activity; and

"Whereas, it was also determined that such activity is the result of the large differential in cigarette taxes levied by the northern and southern states; and

"Whereas, the tobacco industry plays an important role in the economy of Virginia and many other southern states and such industry has little or no effect on the economy of northern states; and

"Whereas, it is within the best interests of the several states to tax this resource and commodity as each individual state deems reasonable and necessary; and

"Whereas, the states affected by the illegal movement of contraband cigarettes are initiating plans for greater cooperation to solve this problem collectively; now, therefore, be it

"*Resolved by the House of Delegates, the Senate concurring*, That the Congress of the United States is hereby memorialized to refrain from enacting legislation to increase the federal taxes on tobacco products and in no way to prohibit states and political subdivisions thereof from taxing this commodity as they deem proper, but instead Congress should encourage those states having exorbitantly high taxes to restructure their rates at more reasonable levels; and be it

"*Resolved further*, That the Clerk of the House of Delegates is directed to send copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate and the members of the Virginia delegation to the Congress of the United States in order that they may be apprised of the sense of this body."

POM-576. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on the Judiciary:

"RESOLUTION

"Whereas, Recent events such as the planned march in Skokie, Ill., by the so-called American Nazi party evidences a trend toward Nazism in America; and

"Whereas, Nazism is, by its nature, an evil concept and contrary to the American democratic ideal; and

"Whereas, Nazism constitutes a threat and a danger to all people of whatever creed, race or ethnic origin; and

"Whereas, History has demonstrated that apathy fosters the growth of such evils as Nazism; now therefore, be it

"Resolved, That the Massachusetts senate urges the President of the United States and all in public office to use the influence of their offices to prevent the resurgence, growth and activities of the Nazi party in America and throughout the world; and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the clerk of the senate to the President of the United States, to the presiding officer of each branch of the congress and to each member thereof from the commonwealth."

POM-577. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Finance:

"RESOLUTION

"Whereas, Medicaid fraud costs millions of dollars in state and local tax money of the people of Massachusetts; and

"Whereas, The loss of this money makes the Medicaid program unable to provide health care to all who need it; and

"Whereas, The Attorney General has established a special division to fight Medicaid fraud; and

"Whereas, Such agencies in other states have brought in several times their cost in recovered money; and

"Whereas, A special federal grant has been made to the state of New York to support the office of the Medicaid special prosecutor; and

"Whereas, Representative James Scheuer (Democrat-New York), has introduced a bill, H.R. 4771, to provide such support to offices in all states; therefore be it

"Resolved, That the General Court of the Commonwealth of Massachusetts supports the passage of H.R. 4771; and be it further

"Resolved, That copies of these resolutions be sent by the Clerk of the House of Representatives to the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-578. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on the Judiciary:

"RESOLUTION

"*Resolved*, That the General Court of the Commonwealth of Massachusetts pursuant to Article V of the Constitution of the United States, hereby makes application to the Congress of the United States to call a convention for proposing the following amendment to the Constitution of the United States:

"No student shall be assigned to nor compelled to attend any particular public school on account of race, religion, color or national origin; and be it further

"*Resolved*, That this application shall constitute a continuing application in accordance with Article V of the Constitution of

the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V. If Congress proposes an amendment to the Constitution identical with that contained in this resolution before January 1, 1974, this application for a state application shall no longer be of any force or effect; and be it further

"*Resolved*, That since this method of proposing amendments to the Constitution has never been completed to the point of calling a convention and no interpretation of the power of the states in the exercise of this right has ever been made by any court or any qualified tribunal, if there be such, and since the exercise of the power is a matter of basic sovereign rights and the interpretation thereof is primarily in the sovereign government making such exercise and since the power to use such right in full also carries the power to use such right in part, the General Court of the Commonwealth of Massachusetts interprets Article V to mean that if two-thirds of the states make application for a convention to propose an identical amendment to the Constitution for ratification with a limitation that such amendment be the only matter before it, that such convention would have power only to propose the specified amendment and would be limited to such proposal and would not have power to vary the text thereof nor would it have power to propose other amendments on the same or different propositions; and be it further

"*Resolved*, That copies of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-579. A joint memorial adopted by the Legislature of the State of Colorado; to the Committee on the Judiciary:

"SENATE JOINT MEMORIAL NO. 1

"Whereas, With each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues so that the public debt now exceeds hundreds of billions of dollars; and

"Whereas, The annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

"Whereas, Convinced that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is vital to bring the fiscal discipline needed to restore financial responsibility; and

"Whereas, under article V of the constitution of the United States, amendments to the federal constitution may be proposed by the congress whenever two-thirds of both houses deem it necessary or on the application of the legislatures of two-thirds of the several states that the congress shall call a constitutional convention for the purpose of proposing amendments which shall be valid to all intents and purposes when ratified by the legislatures of three-fourths of the several states; now, therefore,

"*Be It Resolved by the Senate of the Fifty-first General Assembly of the State of Colorado, the House of Representatives concurring herein:*

"That the Congress of the United States is hereby memorialized to call a constitutional convention pursuant to article V of the constitution of the United States for the specific and exclusive purpose of proposing an amendment to the federal constitution prohibiting deficit spending except under conditions specified in such amendment.

"*Be It Further Resolved*, That this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

"*Be It Further Resolved*, That copies of this memorial be sent to the secretary of state and presiding officers of both houses of the legislatures of each of the several states in the union, the clerk of the United States house of representatives, the secretary of the United States senate, and to each member of the Colorado congressional delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BAYH, from the Committee on the Judiciary:

Annual report of the Subcommittee on the Constitution, 1977 (Rept. No. 95-724).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. Res. 428. An original resolution to authorize reimbursement of U.S. Marshal Service for service of committee subpenas (Rept. No. 95-725).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Almeric L. Christian, of the Virgin Islands, to be a judge of the District Court of the Virgin Islands.

Paul A. Simmons, of Pennsylvania, to be U.S. district judge for the western district of Pennsylvania.

Joan F. Kessler, of Wisconsin, to U.S. attorney for the eastern district of Wisconsin.

(The nominations from the Committee on the Judiciary were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. JOHNSTON:

S. 2827. A bill for the relief of Mr. Bing Yu Cheng; to the Committee on the Judiciary.

By Mr. TALMADGE (by request):

S. 2828. A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for their surviving spouses and children; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. HATHAWAY:

S. 2829. A bill to establish a national system of regional development banks to provide loans to finance urgently needed public facilities for State and local governments, to help achieve a full-employment economy both in urban and rural America by providing loans for the establishment of small- and medium-size businesses and industries, and the expansion and improvement of such existing businesses and industries, and for the construction of low- and moderate-income housing projects, and to provide job training for unskilled and semiskilled unemployed and underemployed workers; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ABOUREZK:

S. 2830. A bill to provide for the protection of Government employees who disclose information of illegal or improper actions within the Government; to the Committee on Governmental Affairs.

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON) (by request):

S. 2831. A bill to authorize appropriations for fiscal years 1979 and 1980 to carry out the Marine Mammal Protection Act of 1972; to the Committee on Commerce, Science, and Transportation.

S. 2832. A bill to amend section 406 of the Fishery Conservation and Management Act of 1976 to extend the authorization for appropriations for fiscal years 1979 and 1980; to the Committee on Commerce, Science, and Transportation.

By Mr. ABOUREZK:

S. 2833. A bill to amend, improve, and clarify the Farmer-to-Consumer Direct Marketing Act of 1976; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. ANDERSON:

S. 2834. A bill for the relief of Kyung Hee Kim, Dong Choon Kim, and Dong Ho Kim; to the Committee on the Judiciary.

By Mr. PERCY:

S. 2835. A bill to amend the Export Import Bank Act of 1945 to provide an officer responsible for matters concerning or affecting manufacturers of solar technology equipment or other renewable energy technology equipment, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CRANSTON (by request):

S. 2836. A bill to amend the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, as amended, in order to extend the authority to enter into special pay agreements with physicians and dentists employed by the Department of Medicine and Surgery, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. DOLE:

S. 2837. A bill to amend the Internal Revenue Code of 1954 to provide a deduction from gross income for individuals of the amount of social security taxes paid during the tax year; to the Committee on Finance.

By Mr. PERCY (for himself and Mr. STEVENSON):

S. 2838. A bill to amend title 28, to change the judicial districts in the State of Illinois; to the Committee on the Judiciary.

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON) (by request):

S. 2839. A bill to authorize appropriations for the Coast Guard for fiscal years 1979 and 1980, and for other purposes; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TALMADGE (by request):

S. 2828. A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for their surviving spouses and children; and for other purposes; to the Committee on Veterans' Affairs.

VETERANS DISABILITY COMPENSATION AND SURVIVOR BENEFITS ACT OF 1978

● Mr. TALMADGE. Mr. President, I am introducing today, at the request of the administration, S. 2828, the proposed Veterans Disability Compensation and Survivor Benefits Act of 1978. I ask unanimous consent that the letter of transmittal and the text of the bill be printed in the RECORD at this point.

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

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR
OF VETERANS' AFFAIRS,
Washington, D.C., March 21, 1978.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft bill "To amend title 38, Unted States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for their surviving spouses and children; and for other purposes." It is respectfully requested that it be introduced and considered for enactment.

The measure to be cited as the "Veterans' Disability Compensation and Survivor Benefits Act of 1978," would accomplish the following purposes:

a. Increase the basic rates of monthly compensation payable to veterans for service-connected disabilities, as well as the additional amounts authorized for veterans with dependents;

b. Increase the monthly rates of dependency and indemnity compensation (DIC) payable to surviving spouses and children of veterans whose deaths were service connected;

c. Equalize the criteria for protecting disability ratings;

d. Create a new additional award for those surviving spouses entitled to DIC who are rendered housebound by reason of disabilities;

e. Reduce administrative costs associated with recomputations and collection of overpayments necessary when a child is retroactively added to a class of dependents entitled to survivors' benefits; and

f. Eliminate duplication of certain DIC payments.

The basic purpose of the disability compensation program (chapter 11, title 38, United States Code), throughout its history, has been to provide relief for the impaired earning capacity of veterans disabled as the result of their military service. The amount payable varies according to the degree of disability which, in turn, is required by the law (38 U.S.C. § 355) to represent, to the extent practicable, the average impairment in earning capacity resulting from such disability or combination of disabilities in civil occupations. Additional compensation for dependents is payable to any veteran entitled to basic compensation for disability rated at not less than 50 percent.

Under chapter 13 of title 38, DIC payments are made to surviving spouses and certain parents and children of veterans who die of a service-connected cause. For surviving spouses, the monthly rates are geared to the military pay grade of the deceased veteran, ranging from $277 for the surviving spouse of an E-1, to $708 for the surviving spouse of an O-10. The applicable surviving spouse's rate is increased by $33 for each child of the veteran under age 18. An additional amount of $83 is payable where the surviving spouse is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

For children, where no surviving spouse is entitled, the monthly rates range from $140 for one child to $259 for three children (plus $52 for each additional child). In the case of certain children specified under 38 U.S.C. § 414(a) who are permanently incapable of self-support, the applicable basic rate is increased by $83 for each child. Under 38 U.S.C. § 414 (b) and (c), in cases wherein a surviving spouse is receiving benefits, monthly amounts of $140 and $71 are respectively paid separately to certain children of the veteran who are (1) permanently incapable of self-support, or (2) attending school between 18 and 23 years of age.

Title I of the draft bill relates to compensation payable to veterans for service-connected disabilities. Section 101 provides increases in the basic compensation rates of 5.8 percent. The additional amounts for dependents provided by 38 U.S.C. § 315 in cases of veterans with service-connected disabilities of at least 50 percent would also be increased approximately by 5.8 percent by section 102 of the measure.

Title II of the draft bill is concerned with rates of dependency and indemnity compensation (DIC) payable to the survivors of deceased veterans. Section 201 provides increases of 5.8 percent in the monthly benefits payable to surviving spouses. The new basic rates would range from $293 to $749, according to the pay grade of the deceased veteran. The additional amount for each child under 18 would be raised from $33 to $35; and the special rate for aid and attendance for a qualified surviving spouse would go from $83 to $88. Sections 202 and 203 would also increase children's DIC rates by approximately 5.8 percent.

The needs of the disabled have been regularly recognized in the face of changing economic conditions. Since July 1952, there have been 13 compensation rate increases with the latest having become effective October 1, 1977. The surviving spouses and children of veterans who die of service-connected causes have also received similar increases. The rates of DIC payable to them were last increased effective October 1, 1977.

It has been the policy of the Government to recommend Veterans' Administration benefit increases for disability compensation and DIC programs periodically in order to insure that our programs remain responsive to changing economic conditions. The Veterans' Administration supports increases designed to offset the decline in purchasing power due to inflation which are based on changes in the Consumer Price Index (CPI). The 5.8 percent increase proposal contained in this draft bill is considered an accurate projection at this time of the increase in the cost of living between October 1, 1977, the date benefits were last increased, and October 1, 1978, the effective date of the provisions of this bill if enacted. The estimated 5-year costs of this proposal are as follows:

[In millions]

Fiscal year:	*Cost*
1979	$305.4
1980	305.9
1981	306.3
1982	306.4
1983	306.2

Title III contains miscellaneous proposals designed to improve the compensation and survivors' benefits programs. The first would equalize the currently different criteria which must be met before disability ratings become "protected," i.e., cannot be reduced. Section 110 of title 38 provides that a rating of total disability which has been "continuously in force" for at least 20 years shall not thereafter be reduced, unless found to be fraudulently obtained. The "continuously in force" requirement means that there must be an award of benefits based on the rating. However, the same section provides that a less than total disability need only be rated at or above a given level for 20 years before such evaluation becomes protected, absent a showing of fraud. Continuity of evaluation is the only requirement. It sometimes happens that a veteran with a less than total rating will elect not to receive Veterans' Administration compensation, as when a retired serviceman declines to waive a portion of retirement pay in order to receive compensation. In such cases, this agency does not further monitor the individual's disability during this period of waiver, and the disability may be subject to improvement. The mere lapse of time should not operate to protect ratings which were based upon possibly obsolete clinical data, and section 301 of the draft bill would require the criteria of having an award continuously in force for 20 years before less than total ratings would become protected. It is projected that this proposal would effect minimal savings.

Surviving spouses in receipt of DIC who are in need of the regular aid and attendance of another person by reason of disability are entitled to an additional award under subsection 411(c) of title 38. The Veterans' Administration recognizes, however, that certain of these survivors, while not so infirm as to need constant aid and attendance, may be sufficiently disabled so as to incur considerable expenses beyond those of the average DIC recipient. We therefore propose in section 302 of the bill an award for those surviving spouses receiving DIC who are rendered permanently housebound by reason of disabilities but who do not qualify for the aid and attendance award, at an intermediate rate of one-half that of the aid and attendance award. Assuming an increase of 5.8 percent in the current rates effective October 1, 1978 (as per section 201 of the draft bill), the estimated 5-year costs of this proposal are as follows:

Fiscal year:	*Cost*
1979	$500,000
1980	550,000
1981	580,000
1982	620,000
1983	660,000

Sections 303 and 304 of the draft bill are designed to alleviate administrative burdens which can result when additional dependents are added to the class to which survivors' benefits are being paid. Where there is no surviving spouse eligible to receive DIC or death pension benefits, such benefits are payable to a veteran's children. The amounts payable depend upon the number of children, although to an extent the amounts per child decrease for each additional one (for example, the rate of DIC for one child under current law is $140, for two children $201, etc.). It happens on occasion that eligibility for an additional child is established after a veteran's other children have already been awarded such benefits. The entitlement of the additional child is often effective retroactively. A complication arises in that, while the total amount payable for the retroactive period is increased by reason of the additional child, the individual shares of each become less.

In such situations, an overpayment for the retroactive period results which must be remedied either by collection or withholding from some of the children to pay the others. Because the amounts involved in these adjustments are usually small and all the children are usually in the same family unit, the considerable administrative work generated serves little purpose.

Sections 303 and 304 would amend the law to pay in such cases the difference between the newly established entitlement and the amount already paid, without disturbing the previously paid amounts. This would not af-

fect the total paid to the family unit. If all the children are not in the same family unit, the child or children added by the new award would receive a somewhat lesser amount for the past period for which the other children have already been paid. These proposals would eliminate the administrative detail required in establishing and liquidating pertinent overpayments of DIC and death pension. There would be no additional cost as a result of their enactment.

The final new proposal in the draft bill, section 305, is designed to eliminate certain duplications of DIC payments which can occur under present law. Additional amounts are payable to a surviving spouse for each child below age 18, and these payments are discontinued upon the child's 18th birthday. Under subsection 414(c) of title 38, DIC also becomes payable to the children in such families once they attain age 18 if they are attending school, and can continue until they reach age 23 while they continue to attend. This entitlement becomes effective the first day of the month of their 18th birthdays. Hence, for the period from the first of that month until the birthday of the child, a dual award is being paid. Section 305 would eliminate this duplicate payment by reducing the child's award for the month of his or her birthday by the amount of the surviving spouse's additional award for the same month attributable to the child.

It is estimated that the yearly savings to be effected by section 305 would be approximately $50,000.

Section 306 of the draft bill provides that its provisions would become effective October 1, 1978.

Advice has been received from the Office of Management and Budget that there is no objection to the submission of the draft legislation and that its enactment would be in accord with the program of the President.

Sincerely,

MAX CLELAND,
Administrator.

S. 2828

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Veterans Disability Compensation and Survivor Benefits Act of 1978".

TITLE I—VETERANS' DISABILITY COMPENSATION RATES

SEC. 101. (a) Section 314 of title 38, United States Code, is amended—

(1) by striking out in subsection (a) "$41" and inserting in lieu thereof "$43";

(2) by striking out in subsection (b) "$75" and inserting in lieu thereof "$79";

(3) by striking out in subsection (c) "$113" and inserting in lieu thereof "$120";

(4) by striking out in subsection (d) "$155" and inserting in lieu thereof "$164";

"(5) by striking out in subsection (e) "$216" and inserting in lieu thereof "$229";

(6) by striking out in subsection (f) "$272" and inserting in lieu thereof "$288";

(7) by striking out in subsection (g) "$322" and inserting in lieu thereof "$341";

(8) by striking out in subsection (h) "$373" and inserting in lieu thereof "$395";

(9) by striking out in subsection (i) "$419" and inserting in lieu thereof "$443";

(10) by striking out in subsection (j) "$754" and inserting in lieu thereof "798";

(11) by striking out in subsection (k) "$937" and "$1,312" each time they appear and inserting in lieu thereof "$991" and "$1,388", respectively;

(12) by striking out in subsection (l) "$937" and inserting in lieu thereof "$991";

(13) by striking out in subsection (m) "$1,032" and inserting in lieu thereof "$1,092";

(14) by striking out in subsection (n) "$1,172" and inserting in lieu thereof "$1,240";

(15) by striking out in subsections (o) and (p) "$1,312" each time it appears and inserting in lieu thereof "$1,388";

(16) by striking out in subsection (r) "$563" and inserting in lieu thereof "$596"; and

(17) by striking out in subsection (s) "$843" and inserting in lieu thereof "$892".

(b) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 102. Section 315(1) of title 38, United States Code, is amended—

(1) by striking out in subparagraph (A) "$46" and inserting in lieu thereof "$49";

(2) by striking out in subparagraph (B) "$77" and inserting in lieu thereof "$81";

(3) by striking out in subparagraph (C) "$98" and inserting in lieu thereof "$104";

(4) by striking out in subparagraph (D) "$120" and "$22" and inserting in lieu thereof "$127" and "$23", respectively;

(5) by striking out in subparagraph (E) "$30" and inserting in lieu thereof "$32";

(6) by striking out in subparagraph (F) "$52" and inserting in lieu thereof "$55";

(7) by striking out in subparagraph (G) "$77" and "$22" and inserting in lieu thereof "$81" and "$23", respectively;

(8) by striking out in subparagraph (H) "$37" and inserting in lieu thereof "$39";

(9) by striking out in subparagraph (I) "$83" and inserting in lieu thereof "$88"; and

(10) by striking out in subparagraph (J) "$70" and inserting in lieu thereof "$74".

TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION RATES

SEC. 201. Section 411 of title 38, United States Code, is amended to read as follows:

"§ 411. Dependency and indemnity compensation to a surviving spouse

"(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

"Pay grade:	*Monthly rate*
E-1	$293
E-2	303
E-3	310
E-4	329
E-5	339
E-6	346
E-7	363
E-8	383
E-9	[1] 400
W-1	370
W-2	385
W-3	397
W-4	420
O-1	370
O-2	383
O-3	411
O-4	433
O-5	477
O-6	536
O-7	582
O-8	637
O-9	685
O-10	[2] 749

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be $431.

"[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be $803.

"(b) If there is a surviving spouse with one or more children below the age of eighteen of a deceased veteran, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $35 for each such child.

"(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $88 if the spouse is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person."

SEC. 202. Section 413 of title 38, United States Code, is amended as follows:

(1) by striking out "$140" in subclause (1) and inserting "$148" in lieu thereof;

(2) by striking out "$201" in subclause (2) and inserting "$213" in lieu thereof;

(3) by striking out "$259" in subclause (3) and inserting "$274" in lieu thereof; and

(4) by striking out "$259" and "$52" in subclause (4) and inserting in lieu thereof "$274" and "$55", respectively.

SEC. 203. Section 414 of title 38, United States Code, is amended—

(1) by striking out in subsection (a) "$83" and inserting in lieu thereof "$88";

(2) by striking out in subsection (b) "$140" and inserting in lieu thereof "$148"; and

(3) by striking out in subsection (c) "$71" and inserting in lieu thereof "$75".

TITLE III—MISCELLANEOUS AND EFFECTIVE DATE PROVISIONS

SEC. 301. Section 110 of title 38, United States Code, is amended to read as follows:

"§ 110. Preservation of Disability Ratings

"A rating of total disability or permanent total disability which has been made for compensation, pension or insurance purposes under laws administered by the Veterans Administration, and which has been continuously in force for twenty or more years, shall not be reduced thereafter except upon a showing that such rating was based on fraud. A disability rating for compensation purposes under such laws which has been continuously in force at or above any evaluation for twenty or more years shall not thereafter be reduced below such evaluation, except upon a showing that such rating was based on fraud. The mentioned period shall be computed from the date determined by the Administrator as the date on which the status commenced for rating purposes."

SEC. 302. Section 411 of title 38, United States Code, is amended by adding at the end thereof the following new subsection (d):

"(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $44 if the spouse is, by reason of disability, permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For purposes of this subsection, the requirement of "permanently housebound" will be met when the individual is substantially confined to his or her house (ward or clinical areas, if institutionalized) or immediate premises due to a disability or disabilities which it is reason-

ably certain will remain throughout the individual's lifetime."

SEC. 303. Section 413 of title 38, United States Code, is amended by inserting "(a)" immediately before "Whenever", and by adding the following new subsection (b):

"(b) If dependency and indemnity compensation has been awarded to a veteran's child or children under this section, and the entitlement of an additional child is later established effective retroactively, the retroactive award payable to the additional child shall equal the difference between the total of the increased award for the retroactive period and the prior total award for that period."

SEC. 304. (a) Subchapter III of chapter 15, title 38, United States Code, is amended by adding the following new section 531 immediately before the subtitle "WARS BEFORE WORLD WAR I":

"§ 531. Retroactive entitlements of children of veterans of all periods of war

"For purposes of this subchapter and for purposes of the prior pension law in effect June 30, 1960, if pension has been awarded to a veteran's surviving child or children, and the entitlement of an additional child is later established effective retroactively, the retroactive award payable to the additional child shall equal the difference between the total of the increased award for the retroactive period and the prior total award for the same period."

(b) The table of sections at the beginning of such chapter 15 is amended by inserting the following after the title for subchapter III and before the subtitle "Wars Before World War I":

"531. Retroactive Entitlements of Children of Veterans of all Periods of War."

SEC. 305. Subsection 414(c) of title 38, United States Code, is amended by adding the following at the end thereof:

"However, if during the month in which such child reaches age 18 he or she is also being considered a child below age 18 for purposes of additional dependency and indemnity compensation for a surviving spouse under subsection 411(b) of this chapter, the amount of the child's award for that month will be reduced by an amount equal to the surviving spouse's additional award, for the same month, attributable to the child."

SEC. 306. The provisions of this Act shall become effective on October 1, 1978.●

By Mr. HATHAWAY:

S. 2829. A bill to establish a national system of regional development banks to provide loans to finance urgently needed public facilities for State and local governments, to help achieve a full employment economy both in urban and rural America by providing loans for the establishment of small- and medium-size businesses and industries, and the expansion and improvement of such existing businesses and industries, and for the construction of low- and moderate-income housing projects, and to provide job training for unskilled and semiskilled unemployed and underemployed workers; to the Committee on Banking, Housing, and Urban Affairs.

REGIONAL DEVELOPMENT ACT OF 1978

● Mr. HATHAWAY. Mr. President, the concept of a development bank to serve as a Federal lending institution of last resort has been embodied in bills introduced in Congress since the mid-1960's. The idea itself is in part a descendant of the Reconstruction Finance Corporation. The RFC was created in 1932 and, up until its abolition in the early 1950's, provided capital to the Federal agencies and State and local governments throughout the country and assisted financial institutions, business, and agricultural organizations.

Today's economic conditions are very different from those of 1932. Unemployment, although a problem in many areas, including Maine, is much less severe. Its effects are tempered by unemployment insurance and other social welfare programs. Business and bank failures are not a major problem affecting the economy. Economic growth has been upward for 2 years with total employment and income rising. A few areas of the country, some rural, some urban, are still distressed with high unemployment, stagnant income, and declining business activity. Inflation is also a problem which causes consumer uncertainty and business indecision. The capital markets are functioning to allocate large volumes of capital but with high interest rates and, at the moment, relatively low demand. Capital is available to enterprises, individuals, and governments who can afford the current level of interest and who have the necessary credentials of credit worthiness.

Despite these different circumstances, however, the concept of a development has remained alive, because the need is still there. Although the capital markets have not collapsed as they did during the Depression, the markets do not work well enough and leave many worthy borrowers without access to credit. Small communities, some large, older cities, and businesses in inner cities and rural areas are unable to obtain conventional financing at a reasonable price because of their size, lack of credit credentials, the condition of their physical plant, or their location. Unless something is done, many of the distressed areas of the country will face increasingly severe economic and social problems. The high rates of unemployment and physical decay in inner cities, the loss of sources of employment, and the lack of community facilities in many rural areas are conditions that a development bank could help remedy. A development bank would fulfill the capital needs of this group of borrowers.

Because of this need, there have been a number of bills to establish a development bank. In the 94th Congress, I introduced such a bill, S. 2938, the National Development Act of 1975, a bill to establish a National Development Bank to serve as a Federal lending institution of last resort.

I was pleased to see that President Carter has included such a proposal as part of his urban policy announced last week.

The bill I am introducing today, the Regional Development Act of 1978, is based substantially on the bill I sponsored in the last Congress, but with one major change. Instead of a single National Development Bank, this bill envisions an independent development bank in each of the 10 standard Federal administrative regions. Since such a bank would be dealing with State and local governments and with small businesses, a regional bank, with personnel who know the people and the problems of the varied areas of this country, would be much more sensitive to the varied needs than would a single bank headquartered in Washington.

The bill authorizes the creation of one independent capital development bank in each of the 10 standard Federal administrative regions. Each bank is governed by an unsalaried Board of Directors of 15 members, 11 appointed by the Governors of the States in the region and apportioned according to the relative population of the States (each State having at least one representative on the Board) and 4 appointed by the President of the United States with the advice and consent of the Senate. The Board will hire a president who will in turn hire and manage a professional staff of sufficient size to perform adequately all the functions of the Bank. The president, officers, and staff salaries will be competitive with those of private industry. The duties of the Board include the setting of general policies for the investments of the Bank and the selection of the president of the Bank.

Each Bank will be capitalized entirely by nonvoting stock purchased by the Secretary of the Treasury on application by the Board of Directors of the respective Banks. The amount of capitalization will be determined by a formula that takes into account the level of unemployment, the gross product per capita, and the capital situation of the region. In no case will any one Bank have a total capitalization in excess of $2 billion, nor will the Secretary subscribe more than $635 million to any one Bank in any single year. Each Bank is required to buy back the Secretary's stock at face value by the end of the 75th year of operation.

The Banks will have all the customary powers of private banks and corporations, as well as the authority to make direct loans, purchase capital stock in corporations, enter into grant-royalty agreements, and issue notes of indebtedness up to 20 times their paid-in capital. Each Bank is also authorized and directed to provide financial, legal and technical assistance to eligible applicants at reasonable rates and to undertake research and information gathering related to capital financing, economic development, and fiscal management.

The banks could issue direct loans on terms that reflect market conditions or provide loans at below market rates when the feasibility of the priority projects requires it. The banks, as a condition of financial assistance, could require that business and industrial borrowers provide a prescribed number of new job and job training opportunities in depressed urban and rural areas. In all cases of financial assistance, the banks could require that prevailing wage levels, particularly as these levels are established

by labor-management collective-bargaining agreements, apply to those employed in projects receiving financial assistance. In no case would the use of financial assistance by the banks be provided to runaway companies for the purpose of relocating business and industries to seek cheap labor in one area at the cost of lost job opportunities in another.

Provisions establishing the banks would include prohibitions against the bailout of companies, whether large or small, whose financial problems primarily stem from poor management. The bank would be required to give preference to small- and medium-size businesses and industrial borrowers in situations which require that a choice be made between such applicants and a large company. Additionally, when the bank receives a priority purpose financial assistance application from a large company, it can, if it deems it advisable, solicit applications from small- and medium-size borrowers, hold public hearings on the project, or take other steps designed to give small- and medium-size business and industry an opportunity to benefit from the resources of the bank to improve competition.

In addition to making direct loans to State and local governments to finance construction of public works and facilities, the bank would be empowered to fully guarantee obligations issued for this purpose by such borrowers. The bank's ability to provide guarantees would enable State and local governments, no matter how small, to obtain the equivalent of an AAA market rating resulting in the lowest borrowing cost possible under prevailing economic conditions.

All projects financed with its assistance comply as far as possible with existing district or regional economic development plans to assure that maximum benefits are derived from its investments. Projects financed by the bank could be required to conform to district development plans established under the auspices of the Economic Development Agency of the Department of Commerce or to similar plans produced by other groups. In addition, the staff of the banks would include experts in the field of development planning to coordinate the activities of the bank with local and regional planning groups and to provide assistance to areas lacking development plans. In this way, safeguards can be established and maintained against investments in projects which are contrary to the aims of development plans or against investments in business and industries which provide obsolete or low-market demand goods and services. By the same token, maximum utilization of area human and material resources will be assured.

Financial assistance for low- and moderate-family housing projects would be made available to public agencies and nonprofit and profitmaking groups. Organizations in any of the three categories could receive bank loans to finance the construction of such projects. Permanent mortgage lending to low- and moderate-income families for the purchase of such housing would be administered through local public or nonprofit agencies or groups established for this purpose. At the banks' option servicing of such loans could be undertaken by private residential mortgage lenders.

For the sake of achieving maximum efficiencies in housing produced with bank assistance and to allow it to provide housing at the lowest possible cost, the banks would be authorized to require that the most modern materials and construction techniques be utilized in such projects, regardless of the restrictions in local building codes, except as such restrictions apply to safety. This authorization would also apply to other types of construction financed with bank assistance. Moreover, the availability of financial assistance for housing from the banks would be predicated, when the banks deem it necessary, in construction of comprehensive housing projects which would include retail outlets and other commercial retail conveniences as well as community activity facilities such as day-care centers and recreational areas.

The banks would also require that such housing projects shelter a mix of moderate- as well as low-income families and that the families be permitted to retain their residences in rental dwellings when their income exceeds the levels which earlier had qualified them to have access to housing in these projects. In this way, the mistakes of the past which resulted in creation of new ghettos for the poor in areas isolated from communities amenities, can be avoided. To spur upward mobility and to give them a voice in the control of their neighborhoods, residents would be allowed full participation in the management of these housing projects.

The banks would be required to submit to annual audits by the General Accounting Office and to make annual reports of their financial conditions.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2829

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regional Development Act of 1978".

FINDINGS AND DECLARATION OF PURPOSE

SECTION 1. (1) Tax and other financial sources currently available to State and local government are strained beyond their capacity to achieve sound and orderly development of the Nation's communities to accommodate our growing population. Adequate fundings at reasonable cost must be provided as soon as possible for a wide variety of public works and facilities, such as streets, water, sewers, schools, hospitals, airports, and recreation facilities together with facilities to reduce and eliminate air and water pollution in order that required social services and safeguards for the health and welfare of the population be made available.

(2) It is imperative that effective action be taken to combat alarming nationwide unemployment, particularly in those depressed urban and rural areas where the loss of industry and business has produced an unemployment crisis. This can best be done by helping to provide adequate loan funds at reasonable interest rates to finance public works and facilities, to establish small and medium size businesses and industries, and to provide such existing businesses and industries with loans necessary to expand or otherwise remain competitive and prosperous, so that employment opportunities providing adequate wages can be created and sustained.

(3) Every effort must be made to eliminate the Nation's housing crisis and achieve the National Housing Goal established by Congress, particularly as that goal applies to low- and moderate-income families who are most in need. Meeting this goal will constitute a major achievement, not only in terms of providing housing but in providing employment opportunities for a large segment of the population.

DEFINITIONS AND RULES OF CONSTRUCTION

SEC. 2. (1) The definitions and rules of construction set forth in this section apply for the purpose of this Act.

(2) The term "public facility" means the structures and equipment owned and operated by State and local governments to provide medical, social, educational, transportation, pollution control, and recreation services.

(3) The term "low- and moderate-income family housing" shall have the meaning given it under definitions made by the Secretary of Housing and Urban Development in establishing criteria by which families qualify for occupancy of dwellings supplied under the low- and moderate-income rental and homeownership programs of the National Housing Act.

(4) The term "depressed urban and rural areas" means those areas which may be designated without regard to political boundaries by the Secretary of Labor, the Secretary of Commerce, and the Director of the Office of Economic Opportunity, on the basis of the most recent appropriate annual statistics for the most recent available calendar year, as having a rate of unemployment of at least 6 per centum for the preceding calendar year, or a high rate of underemployed persons whose income does not exceed the level of poverty as that level has been established by the Department of Health, Education, and Welfare, or where pending loss of business or industry is expected to produce such conditions, or those areas characterized by substantial outmigration resulting from the lack of job opportunities, or those areas suffering from either conditions which in the judgment of the Board of Directors of the Bank qualify them for assistance under the provisions of this Act.

(5) The term "adequate wage" means a wage which shall not be lower than the highest of (A) the minimum wage under the Fair Labor Standards Act of 1939, (B) the minimum wage set by State and local governments, and (C) the prevailing rate of wages in the area for comparable work.

(6) The term "bank" means a Regional Development Bank established under section 3(a).

ESTABLISHMENT OF THE BANKS

SEC. 3. (a) There are created ten bodies corporate to be known as Regional Development Banks, which shall have succession until dissolved by Act of Congress. Each bank, which shall be instrumentalities of the United States Government, and which shall maintain such offices as may be neces-

sary and appropriate to conduct their business. Each bank will make and guarantee long-term loans at reasonable interest rates to State and local governments for public works and facilities, to individuals and corporations to establish new businesses and industries and to expand or otherwise improve existing businesses and industries, and to public agencies and private nonprofit and limited dividend corporations for the construction of low- and moderate-income housing, in order that vital public services may be provided, the health and welfare of our people will be safeguarded, and a full employment economy will be achieved. For the purposes of jurisdiction and venue, each bank shall be deemed a resident of any State in which it does business.

(b) No individual association, partnership, or corporation, except any of the banks, shall hereafter use the words "Regional Development Bank" as the name or part thereof under which it does business.

(c) One of the ten banks shall be located in and serve exclusively each of the ten standard Federal administrative regions as officially designated by the United States Office of Management and Budget (Circular Numbered A-46, Transmittal Memorandum Numbered 16, August 1976).

(d) The ten banks shall be denominated respectively as:

(1) the New England Regional Development Bank;

(2) the Middle Atlantic Regional Development Bank;

(3) the Central Regional Development Bank;

(4) the Southeast Regional Development Bank;

(5) the Midwest Regional Development Bank;

(6) the Southwest Regional Development Bank;

(7) the Plains Regional Development Bank;

(8) the Mountain Regional Development Bank;

(9) the Western Regional Development Bank; and

(10) the Northwest Regional Development Bank.

BOARD OF DIRECTORS AND MANAGEMENT

SEC. 4. (a) Each bank shall have a board of directors which shall consist of fifteen members to be appointed as follows:

(1) The Governor of each State in a region served by a bank shall appoint a number of board members to be determined by each State's proportion of the region's population, but in no case fewer than one appointment, such that the total of State appointments is eleven.

(2) The President of the United States, with the advice and consent of the Senate, shall appoint four directors to each bank.

(3) One director initially appointed pursuant to paragraph (2) shall be designated to serve until the end of the second year of the bank's operation, one director appointed pursuant to such paragraph shall be designated to serve until the end of the fourth year of the bank's operation, and two directors appointed to such paragraph shall be designated to serve until the end of the sixth year of the bank's operation. Vacancies occurring pursuant to this paragraph shall be filled by the President of the United States, with the advice and consent of the Senate, for terms of six years.

(4) Three directors initially appointed pursuant to paragraph (1) shall be designated to serve until the end of the second year of the bank's operation, four directors appointed pursuant to such paragraph shall be designated to serve until the end of the fourth year of the bank's operation, and four directors appointed pursuant to such paragraph shall be designated to serve until the end of the sixth year of the bank's operation. Vacancies occurring pursuant to this paragraph shall be filled by the Governor responsible for the appointment of the directorship so vacated, for terms of six years.

(5) Vacancies occurring as a result of illness, death, resignation, or otherwise shall be filled by the officer making the appointment of the directorship so vacated.

(b) Each board shall hold regular bimeetings at the call of the chairman. A majority of the members of each board shall constitute a quorum for the purpose of transacting business. Any vacancy or vacancies on the respective boards shall not affect their powers or duties.

(c) Each director shall be entitled to reimbursement for his or her actual and necessary expenses incurred in the performance of official duties. Each director shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which he or she is engaged in the actual performance of duties vested in the board.

(d) Any director who is an officer or employee of the United States shall serve without additional compensation for services as a director.

(e) The management of each bank shall be vested in the president of the bank, who shall be a nonvoting member of the board of directors. The president of the bank shall be subject to such policies as the board of directors shall from time to time prescribe. Except as otherwise provided by law, the board may delegate any of its functions to such officers and employees of the bank as it may designate, and may authorize such successive redelegations of such functions as it may deem necessary or appropriate.

INITIAL EXPENSES

SEC. 5. In order to facilitate the formation of the banks, the Secretary of the Treasury is authorized and directed to pay initial organizing and operating expenses of the banks. There is hereby authorized to be appropriated a sum not to exceed $3,000,000 for this purpose, no more than $500,000 of which is to be made available to any one bank.

CAPITALIZATION OF THE BANKS

SEC. 6. The Secretary of the Treasury is authorized to, and upon request of the respective boards may, purchase stock in amounts to be designated by the board up to a total of $2,000,000,000 for each bank, but in no event shall the Secretary of the Treasury purchase more than $650,000,000 of such stock for each bank in any single fiscal year.

CONFLICT OF INTEREST

SEC. 7. (1) No idrector, officer, attorney, agent, or employee of a bank shall in any manner, directly or indirectly, participate in the deliberations upon or the determination of any question affecting his personal interests, or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

(2) A bank shall not engage in political activities nor provide financing for or assist in any manner any project or facility involving political parties, nor shall the directors, officers, employees, or agents of a bank in any way use their connection with a bank for the purpose of influencing the outcome of any election.

BORROWING AUTHORITY

SEC. 8. (1) Each bank may issue notes, debentures, bonds, and other evidences of indebtedness in such amounts and on such terms and conditions as its Board of Directors may determine subject to the limitations prescribed in this Act.

(2) The aggregate outstanding indebtedness of each bank under this section at any time may not exceed twenty times the paid-in capital stock of the bank at that time.

(3) The obligations of a bank under this section shall be fully and unconditionally guaranteed both as to interest and principal by the United States and such guarantee shall be expressed on the face thereof.

(4) In the event that a bank is unable to pay upon demand, when due, any obligation under this section, the Secretary of the Treasury shall pay the amount thereof and thereupon to the extent of the amount so paid by the Secretary of the Treasury shall succeed to all the rights of the holder of the obligations.

PURCHASE OF ASSETS BY TREASURY

SEC. 9. The Secretary of the Treasury is authorized to purchase from a bank any asset of the bank at such price as may be agreed upon between the Secretary and the bank.

DISCOUNT BY FEDERAL RESERVE BANK

SEC. 10. (1) The several Federal Reserve banks are authorized to purchase or discount any note, debenture, bond or other obligation, secured or unsecured, held by a bank.

(2) Obligations of a bank are eligible for purchase by the Federal Reserve Open Market Committee.

(3) Obligations of a bank are eligible for purchase by any federally chartered or regulated commercial bank, savings and loan association, or mutual savings bank.

INVESTMENT STATUS OF OBLIGATION OF THE BANK

SEC. 11. All obligations issued by a bank shall be lawful investments for, and may be accepted as security for, all fiduciary, trust, and public funds the investment or deposit of which is under the authority or control of the United States or of any officer or officers thereof.

LOANS TO COMMERCE AND INDUSTRY

SEC. 12. Each bank may make or guarantee loans or purchase obligations to provide funds for the purchase of real and personal property and for working capital necessary for the location of new business and industry or the improvement of existing business and industry in depressed urban and rural areas as defined by section 3(4) of this Act: *Provided*, That—

(1) the borrowers agree to fill a specified number of job openings to be determined by the bank with people who, prior to such employment, were unemployed or underemployed;

(2) the borrowers agree to conduct training courses for a specified number of unemployed and underemployed persons to be determined by the bank with the result that these persons will, within a period of time to be determined by the bank, be employed full time by the borrower and receive adequate wages; or

(3) the borrowers agree to other requirements laid down by the bank to carry out the purposes of this Act.

LOANS FOR COMMUNITY DEVELOPMENT

SEC. 13. Each bank may make or guarantee loans or purchase obligations or guarantee the payment of principal and interest on obligations to finance capital expenditures for public works and community facilities, including facilities for education, health, social welfare, recreation, sewer and water systems, land for housing development, public transportation, and utilities, providing

that such facilities and projects extend direct and substantial benefits to urban slum and depressed rural areas, or provide other benefits specified by the bank to carry out the purposes of this Act.

LOANS FOR LOW- AND MODERATE-INCOME HOUSING PROJECTS

SEC. 14. Each bank may make or guarantee loans to appropriate public agencies, nonprofit cooperatives and corporations, limited dividend corporations, developers, contractors, subcontractors, and other persons to provide construction loans for housing projects designed to provide dwellings under the insured and guaranteed low- and moderate-income housing loan programs of the Department of Housing and Urban Development, the Veterans' Administration, and the Farmers Home Administration of the Department of Agriculture.

TECHNICAL AND OTHER ASSISTANCE

SEC. 15. (1) Each bank may provide to borrowers whatever assistance, technical or otherwise, it considers necessary to protect its investment and to carry out the purposes of this Act.

(2) To assure fulfilling the purposes of this Act, each bank shall direct an adequate number of staff members to seek out and confer with representatives of State and local governments, public agencies, nonprofit private organizations, companies, corporations, partnerships, and individuals, in order to provide information about the services furnished by the bank, to provide whatever assistance is necessary for utilization of such services, and to assist the recipients of such services in meeting other requirements laid down by the bank to carry out the purposes of this Act.

SECURITY REQUIRED

SEC. 16. The Board of Directors of each bank shall make whatever arrangement it considers adequate to secure loans made by the bank.

MATURITY OF LOANS

SEC. 17. Loans made by each bank to any State and local government, private corporation, company, or individual shall be for periods determined by the Board of Directors of the bank, bearing in mind that the maturity of such loans should, whenever possible coincide with the projected useful life of the facilities financed with such loans. However, the outstanding balance due on bank loans shall be refinanced through another lender whenever, in the judgement of the Board of Directors of the Bank, such refinancing is feasible on terms and conditions which the Board of Directors of the bank considers to be reasonable for the borrowers.

GUARANTEED LOANS

SEC. 18. Each bank may fully guarantee the entire interest and principal of any loan made by any bank, savings bank, trust company, building and loan or savings and loan association, insurance company, mortgage loan company, or credit union, provided that such loans are made to carry out the purposes of this Act and the effective interest rate for such loans is not more than 1½ per centum above the Federal Reserve discount rate.

DIRECT LOANS

SEC. 19. To carry out the purposes of this Act, each bank may make direct loans to State and local governments, public agencies, nonprofit private organizations, corporations, companies, partnerships, and individuals providing that the effective interest rate does not exceed 6 per centum per annum or the Federal Reserve discount rate, whichever is lower, or a lesser rate established by the Board of Directors of the Bank, provided that borrowers have presented evidence they are unable to obtain funds on reasonable terms from any other source to carry out the purposes of this Act.

TAXABLE STATUS

SEC. 20. Each bank, its property, its franchise, capital reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (1) any real property and any tangible personal property of the Bank shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (2) any and all obligations issued by the Bank shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.

AUDIT BY GENERAL ACCOUNTING OFFICE

SEC. 21. The General Accounting Office shall audit the financial transactions of each bank, and for this purpose shall have access to all its books, records, and accounts.

By Mr. ABOUREZK:

S. 2830. A bill to provide for the protection of Government employees who disclose information of illegal or improper actions within the Government; to the Committee on Governmental Affairs.

FEDERAL EMPLOYEE PROTECTION ACT OF 1978

● Mr. ABOUREZK. Mr. President, today I am introducing a bill which will insure that a small but much abused group in American society will be able to exercise its first amendment right to speak the truth without fear of reprisal. I am, of course, referring to whistleblowers. That term has been used to describe employees who disclose acts of governmental waste, abuse and corruption. Frustrated at every turn within the agency, ignored by peers and superiors, the whistleblower is driven to the Congress and the public with information revealing malfeasances, great or small, within the bureaucracy. These courageous employees provide invaluable assistance to both Congress and the public. For it is essential, in a democracy, that a free flow of ideas exist throughout all levels of society, in order to reach the chambers of those to whom the people have delegated the responsibility to make decisions—the consequences of which affect us all—the lawmakers.

In his famous essay "On Liberty," John Stuart Mill said that—

> [To] discover to the World something about which it has been previously ignorant; to prove to it that it has been mistaken on some vital point of temporal or spiritual interest, is as important a service as a human being can render to his fellow creatures . . .

Whistleblowers render such service.

And they do so because they put their loyalty to their country and its people above loyalty to their agency.

Unfortunately, the reward for a whistleblower's adherance to high moral and ethical principles is often intense and traumatic harrassment by the employee's supervisors with the blessing of the agency. It should hardly be surprising that the bureaucracy metes out punishment for those who dare oppose it.

By acting alone, on the basis of their conscience, whistleblowers engage in a struggle against the basic tenets of life in the bureaucracy. They refuse to "go along with the team"; they "rock the boat"; and they firmly reject the philosophy that "to get along, you go along."

Many years ago Thoreau noted that—

> The mass of men serve the state . . . not as men mainly, but as machines . . . There is no free exercise whatever of the judgment or of the senses . . . Others . . . rarely make any moral distinctions . . . A very few, as heroes, patriots, martyrs, reformers in the great sense, and men, serve the state with their consciences also, and so necessarily resist it for the most part; and they are commonly treated as enemies by it.

The same observation about society is apt today. Most people are indifferent to, or do not see the necessity for individual action which can create waves within the cozy and well-defined boundaries of their particular jobs in their bureaucracy.

Modern day society seems to be moving farther away from the notion that the value of the individual's contribution to the society is what makes the society as a collective, valuable. When an individual absolves himself of responsibility for his professional integrity there is not only a loss of the individual's self-esteem and self respect, but there is also encouragement for the bureaucracy to step into the vacuum and define individual values thereby exerting unacceptable control over the social order. Are we not more and more coming to accept a view of people not as individuals, but as fungible entities ready to be folded, spindled, and mutilated into appropriate slots?

For those who refuse to acquiesce to the ostrich head-in-the-sand posture, the consequences are swift and clear.

As in the case of Ernest Fitzgerald, the whistleblower who revealed the $2.5 billion cost overrun on the C-5A transport plane, they are summarily rejected and treated as pariahs. Commenting on the reasons why agency supervisors treat whistleblowers the way they do, Fitzgerald said:

> What they did in punishing me was good, sound management practice. They were offering an object lesson to everyone else. They've got to make an example of people who get out of line. They teach it in business schools—communicating by deeds. They can say whistleblowing is wonderful as long as they show what happens to people who try it.

It is this method of publicly communicating the wrath of the bureaucracy which has also been applied to try to silence Frank Snepp and other potential dissenters. A former CIA analyst, Snepp spent months trying to go through "channels" within the Agency to express a dissenting point of view regarding the Agency's public pronouncements about the evacuation of Vietnam. The Agency channels led to blank walls. Doors were literally shut in his face. People refused to speak to him, and those who

did, lied to him. Yet he refused to be intimidated by these actions. He broke from the group, eschewed the boys-in-the locker room attitudes of the Agency and told the truth no one in the Agency wanted to hear, directly to the people.

As Fitzgerald and Snepp have learned firsthand, the person who stands apart from his bureaucratic colleagues and dares to tell the truth about governmental impropriety, faces a loss of livelihood, a smear of both personal and professional reputation, the economic hardship of expending hundreds of dollars to defend himself—to say nothing of the intense psychological pressures brought to bear in these situations.

In Fitzgerald's now classic case he simply told the truth at a congressional hearing when asked. The Department of Defense responded to this rather startling occurrence by publicly attacking his personal life, his mental and professional competence—attacks calculatedly designed to render him vulnerable and in great psychic pain. This formidable bureaucracy marshaled all its resources in attempting to snuff out the continuing criticisms of one man who told the truth.

Whistleblowing is not a new phenomenon. Martin Luther "blew the whistle" on the Catholic Church for its selling of indulgences and other actions which broke the Christian world apart during the late middle ages. In more recent times, William Jennings Bryan resigned in protest from his position as Secretary of State in Wilson's Cabinet when he found that Wilson's policies were leading the country into a war he felt was morally reprehensible. There have been scores of other less visible whistleblowers throughout history. What has happened to Fitzgerald and Snepp has happened to them all—they are deserted by the very people who in the end, gain from their acts of assertion and resistance to the yoke of unjust authority.

For, as Carl Jung writes:

> [T]he larger a community is and the more the sum total of collective factors peculiar to every large community rests on conservative prejudicies detrimental to individuality, the more will the individual be morally and spiritually crushed, and, as a result, the one source of moral and spiritual progress for society is choked up . . .

He goes on to say that the repression of individuality eventually destroys morality: "The more the individual factors are blotted out, and with them morality, which rests entirely on the moral sense of the individual and the freedom necessary for this."

He finishes his analysis by concluding that "Without freedom there can be no morality."

It is for this very reason I am introducing this legislation today. All the talk about "post-Watergate morality" notwithstanding, I have not seen any concrete manifestations that individual rights are any more revered today institutionally than they were during the darkest of the Nixon days. There is no more freedom now to express dissent than there was then.

And despite President Carter's campaign rhetoric the Government is not yet treating whistleblowers with any more concern and sensitivity than prior administrations. Ernest Fitzgerald has had no relief from the Carter administration despite the President's having made his situation an issue prior to his election.

And is the Justice Department's prosecution of Frank Snepp a calculated effort to make him the example of what happens to someone who goes public in order to frighten the intelligence community into cowed silence?

The cumulative effect of the Government's continued persecution of whistleblowers is to chill, perhaps freeze the exercise of a Federal employee's first amendment rights. The spectacle of a colleague's career going down the drain, seeing him isolated, then finally watching his reputation being destroyed hardly encourages the free flow of dissenting ideas within an institution.

As a nation—as a government—we must reassert the importance of the rights of the individual in a real and tangible way. We must create procedures and practices within institutions through which dissent and free speech can be reaffirmed as principles basic to democratic government. We must reestablish the firm principle that the best government is one which encourages the free flow of ideas and treats dissenting views as an integral part of its deliberative process.

We in Congress have an affirmative duty to insure that whistle-blowers have a governmentwide uniform procedure through which they can express their dissent, and one through which they are protected and sheltered while doing so.

In fashioning such channels and remedies, we must be aware of the balancing process that goes on between Congress and the public's right to information and the need for agencies to make decisions in an orderly fashion. But order and efficiency in and of themselves must never become the basic values to which we look for guidance in fashioning such procedures.

The most important principle that these procedures be designed to uphold is that of freedom of expression—the exercise of the individual's first amendment rights within the bureaucracy. It is essential that the varieties of truth reach the marketplace where every person may have access to them. And the exercise of free speech is especially important for Federal employees who are in particularly knowledgeable positions with respect to issues which directly affect both the substance and procedures of governmental actions, and to which the populace as a whole is not privy.

And though the Supreme Court has adopted a balancing test with respect to public employee protections, it is not enough. It is unconscionable that when a Federal employee walks into a Government building and takes his place at a desk, he loses basic rights guaranteed him under the Constitution, and must go to court to reaffirm them in each particular case.

The bill I am introducing today is also an affirmative expression of the philosophy that the individual in government service has a unique responsibility: he is accountable to the people he serves—not to the bureaucracy. He may be misguided—he even may be wrong—but his good faith efforts to bring truth to the people must not be repressed by a hostile institutional environment.

In order to accomplish this, I have structured the bill to include as one of its focal points, an ombudsman structure for receiving complaints from both employees who are being retaliated against, and those employees who discover acts of illegality or impropriety within their particular agency. In either of these situations, the Office of Special Counsel is the first forum in which the dispute is aired if the situation cannot be resolved within an agency. The aggrieved party makes a complaint under oath at this office. The Special Counsel then has the authority and responsibility to make an investigation of the potential whistleblower situation described in the complaint. If, after a stated period of time (15 days), the Special Counsel concludes that there is no evidence to support the complaint, he advises the complainant of his determination. At this point, the complainant can appeal to the Merit Systems Protection Board for a hearing on the basis of the complaint.

If the Special Counsel finds evidence of a problem, he has another limited period of time in which to make a further investigation (30 days). At the time he begins either investigation, the Special Counsel is empowered to grant such relief as to assure that no action is taken against the complainant pending the outcome of the investigation. The Special Counsel may, at any time, change the relief as he sees fit.

The final determination of the Special Counsel is appealable to the Merit Systems Protection Board by either party, and from there to the appropriate Federal court.

Every Federal employee is covered. Unlike the administration's bill this one does not ignore the intelligence or security agency employees.

Mr. President, I ask unanimous consent that the text of the bill and an excellent article by Richard Reeves that appeared in the March 1, 1978 issue of Esquire magazine be printed in the RECORD.

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

S. 2830

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employee Protection Act of 1978".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress hereby finds and declares that:

(a) American citizens have a right to know how their government works in order to

understand and consider public issues in an enlightened manner, in order to be able to ascertain how Federal moneys are spent and in order to insure that the Federal bureaucracy, accountable to the citizenry, does not act in an illegal or improper fashion.

(b) Employees of the Government of the United States risk substantial damage to their careers, possible loss of their livelihoods, and other severe forms of reprisal if such employees disclose information to the Congress and the public about improper or illegal action within Federal agencies by employees of such agencies.

(c) Existing laws, rules, and regulations, and practices relating thereto, do not adequately define and protect the right of Federal employees to provide information to Congress, Federal agencies and the public and have detrimental effects on the employees, the Federal agencies, the Congressional oversight process, the public's right to know, and public policy as a whole.

(d) It is necessary that a program be established to inform and educate employees to impress upon each employee the responsibility to tell and act upon the truth and to exercise, without fear of reprisal, all rights guaranteed under the Constitution.

(e) It is necessary that Congress establish protections of such employee rights and establish effective remedies and sanctions to be applied in cases of denial or abuse of such rights.

SEC. 3. (a) Title 5, United States Code, is amended by adding after chapter 77 the following new chapter:

Chapter 78—PROTECTION OF EMPLOYEE RIGHTS

"Subchapter I—POLICY AND COVERAGE

"Sec.
"7801. Policy.
"7802. Definitions.

"Subchapter II—MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

"7811. Merit Systems Protection Board; appointment of members.
"7812. Terms of office; filling vacancies; removal.
"7813. Powers and functions; authority of office.
"7814. Special Counsel; appointment and removal; responsibilities and authority.

Subchapter III—PROCEDURES INVOLVING PROHIBITED DISCIPLINARY ACTIONS

"7821. Prohibition of certain disciplinary action; exceptions.
"7822. Procedure upon complaint; investigation; powers of Special Counsel.

"Subchapter IV—APPEALS

"7831. Appeals to Merit Systems Protection Board.
"7832. Judicial review.

"Subchapter V—CLASSIFIED AND OTHER INFORMATION

"7841. Classified and other information, procedures.
"7842. Penalties.

"Subchapter VI—RELATED PROVISIONS

"7851. Participation in hearings.
"7852. Attorneys fees; costs; court appointment of attorneys.
"7853. Collection of amounts paid by United States.
"7854. Authority of law enforcement agencies.

"Subchapter I—POLICY AND COVERAGE

"§ 7801. Policy

"It is the policy of Congress that Federal employees should be encouraged to disclose, to the extent not expressly prohibited by statute, illegal or improper government actions.

"§ 7802. Definitions

"For the purpose of this chapter—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) a military department;

"(C) the Executive Office of the President of the United States; and

"(D) the United States Postal Service and the Postal Rate Commission.

"(2) 'disciplinary action' means any direct or indirect form of discipline, penalty or threat including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction-in-force, reduction-in-rank, fitness for duty examination, or withholding of work;

"(3) 'Board' means the Merit Systems Protection Board;

"(4) 'Special Counsel' means the head of the Office of Special Counsel of the Merit Systems Protection Board; and

"(5) 'employee' means an individual employed or holding office in any agency.

"Subchapter II—MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

"§ 7811. Merit Systems Protection Board; appointment of members

"There is established, as an independent establishment of the executive branch of the Government of the United States, a Merit Systems Protection Board to be composed of 5 members appointed by the President, by and with the advice and consent of the Senate, not more than 3 of whom may be adherents of the same political party and none of whom may hold another office or position in any branch or authority of the Government of the United States. No individual shall be appointed as a member who is not qualified to review information described in section 7821(b)(4) of this title. The President shall from time to time designate one of the members as the Chair of the Board. The Chair shall be the chief executive and administrative officer of the Board. The members shall from time to time appoint a Vice Chair.

"§ 7812. Term of office; filling vacancies; removal

"(a)(1) The term of office of each member of the Board is 5 years. A member may not be reappointed to any following term but may serve until the earlier of the thirtieth day following the expiration of such term or the day on which a successor has been appointed and qualified.

"(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The appointment is subject to subsection (a) of this section and section 7811 of this title, except that if less than one-half of the term for which the member was appointed is remaining at the time of the appointment, the member may be reappointed to a following term.

"(b) A member may be removed by the President, upon notice and hearing, only for misconduct, neglect of duty, or malfeasance in office.

"§ 7813. Powers and functions; authority of office

"(a) The Board shall, through the Office of Special Counsel, receive and investigate complaints made under oath from any person claiming that—

"(1) an employee is subject to a disciplinary action prohibited by section 7821 of this title: or

"(2) any employee or agency is engaged in any illegal or improper action.

"(b) The Board may—

"(1) appoint and fix the compensation of its officers and employees, and make such expenditures, as may be necessary to carry out its functions under this chapter;

"(2) prepare and publish in the Federal Register written rules for the conduct of its activities;

"(3) have an official seal which shall be judicially noticed; and

"(4) have its principal office in or near the District of Columbia and field offices in any other appropriate location.

"(c) All decisions of the Board with respect to the exercise of its duties and powers under the provisions of this chapter shall be made by a majority vote of the members of the Board present and voting. Three members shall constitute a quorum for the transaction of business under this chapter.

"(d) The Board shall establish and maintain a program to disseminate information to agencies and employees explaining the rights of employees to speak out without fear of harassment and educating such employees about the provisions of this chapter.

"(e) The Board shall establish an office for the counseling of any employee who questions the propriety or legality of any agency or employee action. No person shall disclose the identity of any employee who seeks such counseling. Any violation of the prohibition against such disclosure shall be punishable by a fine of not more than $5,000, or not more than one year in jail, or both.

"(f) The Board shall submit, not later than March 1 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this chapter during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of employees with respect to whom any penalties have been imposed under this chapter.

"(g) Any member of the Board, the Special Counsel, a hearing examiner appointed under section 3105 of this title, or any employee of the Board authorized by the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place, administer oaths, take or order the taking of depositions, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the Special Counsel may petition any United States District Court for an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof. Witnesses shall be paid the same fee and mileage expenses that are paid witnesses in the courts of the United States.

"§ 7814. Special Counsel; appointment and removal; responsibilities and authority

"(a) There is in the Board the Office of Special Counsel. The Special Counsel shall be an attorney and individual qualified to review information described in section 7821(b)(4) of this title appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel may be removed by the President, upon notice and hearing, only for misconduct, neglect of duty, or malfeasance in office. The Special Counsel may not be reappointed to a following term but may continue to serve until the earlier of the thirtieth day following the expiration of such term or the day on which a successor is appointed and has qualified. Any individual appointed to fill a vacancy shall serve the

remainder of the term of the predecessor, except that if less than one-half of the term for which the individual was appointed is remaining at the time of the appointment, the individual may be reappointed to a following term.

"(b) The Special Counsel shall be the independent investigatory arm of the Board. The Special Counsel may take such actions as may be necessary to carry out the functions of the Special Counsel under this chapter including appointing, and fixing the compensation of, employees within the Office, and making expenditures, as may be necessary to carry out the functions of the Office.

"Subchapter III—PROCEDURES INVOLVING PROHIBITED DISCIPLINARY ACTIONS

"§ 7821. Prohibition of certain disciplinary action; exceptions

"(a) Disciplinary action shall not be taken against any employee for providing information to Congress, to any agency, or to the public concerning an action of any agency or any other employee which the employee reasonably believes to be illegal or improper.

"(b) Except as provided in subsection (c), subsection (a) shall not apply to the release of any information—

"(1) that is knowingly false or made with a reckless disregard for its truth or falsity;

"(2) from any personnel, medical, or similar files which, if disclosed, would constitute a clearly unwarranted invasion of privacy;

"(3) described in section 552b(c)(7) of this title;

"(4) specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs and in fact properly classified pursuant to such Executive Order; or

"(5) which is extremely prohibited by statute from being released.

"(c) Subsection (a) shall apply to an employee who provides information described in subsection (b) to—

"(1) the Congress, or

"(2) the Board, the Special Counsel, or any court of the United States under the procedures established under subchapter V of this chapter.

"§ 7822. Procedure upon complaint; investigation; powers of Special Counsel

"(a) If the Special Counsel receives a complaint under oath, or has reason to believe, that an employee—

"(1) has taken, or is about to take, any disciplinary action prohibited under section 7821 of this title, or

"(2) has engaged in, or is about to engage in, any illegal or improper action,

the Special Counsel shall within 15 days conduct such preliminary investigation of the matter as is appropriate. In conducting such investigation the Special Counsel shall not disclose the identity of the person filing the complaint.

"(b) (1) If, after a preliminary investigation under subsection (a), the Special Counsel determines that no further investigation, prosecution, or administrative action is warranted, the Special Counsel shall so notify, in writing, the complainant (and any employee, other than the complainant, who is subject to such prohibited disciplinary action) and the head of each agency involved of all information received, the results of the preliminary investigation with regard to each allegation of a prohibited disciplinary action under section 7821 of this title, or of illegal and improper activity, and the determination made by the Special Counsel under this paragraph.

"(2) If, after such preliminary investigation, the Special Counsel determines that further investigation is warranted, the Special Counsel shall so notify the complainant (and any employee, other than the complainant, who is subject to such prohibited disciplinary action) and the head of each agency involved and conduct such further investigation within 30 days.

"(c) If the Special Counsel determines after the completion of an investigation under subsection (b)(2) that an employee—

"(1) has taken, or attempted to take, any disciplinary action prohibited under section 8721 of this title, the Special Counsel may—

"(A) order restoration of an aggrieved employee to the status existing prior to such disciplinary action;

"(B) order the payment to the aggrieved employee of any actual damages caused by such disciplinary action;

"(C) take such actions as are provided under subsections (d) and (e); or

"(D) order any other remedy the Special Counsel determines appropriate to compensate fully the aggrieved employee, or

"(2) has engaged in, or attempted to engage in, any illegal or improper action, the Special Counsel—

"(A) shall refer any apparent criminal violation to the Attorney General,

"(B) may order such corrective actions and remedies as are appropriate, or

"(C) may take such actions as are provided under subsection (d) or (e).

The Special Counsel shall notify the head of each agency involved of any order issued or action taken under this subsection.

"(d) The head of the agency shall take the corrective action ordered by the Special Counsel under this section within 30 days after such order is issued. If the head of the agency fails to comply with the order of the Special Counsel, the Special Counsel shall certify such failure to the Comptroller General of the United States and no payment shall be made from the Treasury of the United States for services rendered by the head of the agency during the period beginning on the day after such 30-day period and ending on the day such action is taken.

"(e)(1) The Special Counsel may file with the Board disciplinary charges against any employee who has taken, or attempted to take, a disciplinary action prohibited under section 7821 of this title, or who engaged in, or attempted to engage in, any illegal or improper action.

"(2) Any employee with respect to whom a disciplinary charge has been filed under paragraph (1) shall be entitled to a hearing on the record before the Board or a hearing examiner appointed under section 3105 of this title. The final decision shall be made by the Board which may impose disciplinary action including removal, demotion, debarment from Federal employment for a period not exceeding five years, suspension, reprimand, or a civil penalty not to exceed $25,000.

"(f)(1) Upon a preliminary showing under subsection (a) that a disciplinary action prohibited under section 7821 of this title has been, or is about to be, taken, the Special Counsel may—

"(A) stay in whole or in part such disciplinary action, or

"(B) grant such other temporary relief as may be appropriate.

"(2) The Special Counsel may continue any stay or temporary relief granted under paragraph (1) during the period an investigation is being conducted under subsection (b)(2) and during the period an appeal is pending under section 7831 or 7832 of this title.

"(g) The Special Counsel shall maintain records of any investigation conducted under this section.

"(h) The Board and the Special Counsel may prescribe such regulations as may be necessary to carry out the purposes of this section.

"Subchapter IV—APPEALS

"§ 7831. Appeals to Merit Systems Protection Board

"(a) Any employee or agency aggrieved by—

"(1) any determination of the Special Counsel under section 7822(b)(1) of this title that further investigation is not warranted, or

"(2) any determination, order, or action of the Special Counsel under section 7822 (c) of this title (other than any action which results in the nonpayment of any compensation to the head of the agency for failure to comply with an order of the Special Counsel),

is entitled to appeal to the Board if such appeal is filed, in writing, within 15 days of the notice of the Special Counsel's action.

"(b) Within 30 days of the filing of the appeal under subsection (a), there shall be a hearing—

"(1) which shall be open to the public, unless the employee whose conduct is the subject of the hearing requests that it be closed,

"(2) which shall be conducted before one or more hearing examiners appointed under section 3105 of this title, and

"(3) at which each party shall be allowed to be represented by counsel, present evidence, and cross-examine witnesses.

"(c) Each party shall be entitled to a verbatim transcript of the hearing.

"(d) Within 30 days of the hearing, the hearing examiner or examiners shall issue a written decision stating the findings of fact and conclusions of law upon which each decision is based, and if more than one examiner conducts such hearing, a record of the votes of each. The hearing examiner or examiners may reverse, modify, or affirm a decision by the Special Counsel in accordance with the provisions of section 7822. Each decision by the hearing examiner or examiners shall be subject to review by the Board which shall make a final decision based on the record before the hearing examiner.

"§ 7832. Judicial review

"(a) Any party aggrieved by any final determination or order of the Board under section 7822(e) or 7831(d) of this title may institute, in the district court of the United States for the judicial district wherein such party resides, or such disciplinary action or illegal or improper activity occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under such sections. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

"Subchapter V—CLASSIFIED AND OTHER INFORMATION

"§ 7841. Classified and other information; procedures

"(a) Notwithstanding any other provision of any law, rule, or regulation, any person

may disclose to the Special Counsel, the Board, or any court of the United States information described in section 7821(b) of this title for use in any investigation, hearing, or proceeding conducted under the authority of this chapter.

"(b)(1) Any portion of any hearing or proceeding during which any information described in paragraph (1) is to be discussed or presented shall be closed to the public.

"(2) Any party directly involved in the hearing or proceeding, and the representatives of the party, may examine such information under the supervision of the Special Counsel, the Board, or the court and be present at the hearing or proceeding at which such information is presented and discussed.

"(3) A transcript of the hearing or proceeding shall be made but shall not be made available to the public.

"(c) The Special Counsel, the Board, and any court of the United States may designate employees qualified to review such information to examine the information and to be present at the hearing or proceeding.

"§ 7842. Penalties

"(a) No person shall disclose information described in section 7821(b) of this title in connection with any investigation, hearing, or proceeding conducted under the authority of this chapter to any person except as provided in section 7841 of this title.

"(b) Any violation of subsection (a) shall be punishable by a fine of $5,000, or not to exceed 5 years in jail or both.

"Subchapter VI—RELATED PROVISIONS

"§ 7851. Participation in hearings

"(a) The complainant, officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this subchapter occurred or is threatened, or any person who has reasonable interest in the outcome of the complaint, may participate in any hearing conducted under section 7822 or 7831 of this title through submission of written data, views, or arguments and through oral presentation. Cross-examination is permitted both in writing and orally.

"(b) Employees called upon by any part of any Federal employee organization to participate in any phase of any administrative or judicial proceeding under section 7822, 7831, or 7832 of this title shall not suffer loss in leave or pay and shall be free from restraint, coercion, interference, intimidation or reprisal in or because of such participation. Any periods of time spent by employees participating in such preceedings shall be held and considered to be Federal employment for all purposes. Any employee participating in any administrative proceeding under section 7822 or 7831 of this title shall be reimbursed for travel expenses by the agency.

"§ 7852. Attorney fees; costs; court appointment of attorney

"(a) In any proceeding under section 7822, 7831, or 7832 of this title, any prevailing party (other than the Government of the United States or agency thereof) is entitled to recover costs reasonably incurred in connection with such proceeding, including attorneys fees, as determined by the Court, the Board, or the Special Counsel without regard to the nature of the remedy.

"(b) Upon application by a person filing a complaint under section 7822 with respect to a disciplinary action prohibited by section 7821, the Board shall furnish representation for such person regardless of financial need. Such representation shall be provided in a manner similar to the manner in which representation is provided under section 3006A of title 18, United States Code, and shall be acceptable to such person. Such representation shall be provided until the Special Counsel has completed the preliminary investigation under section 7822(a) of this title. If the Special Counsel makes a determination under section 7822(b)(2) of this title that further investigation is warranted, such legal counsel shall continue to represent the person throughout any administrative or judicial proceeding in connection with such complaint.

"§ 7853. Collection of amounts paid by the United States

"If the United States is held liable for monetary damages, or ordered to pay attorneys fees or litigation costs, as a result of an action under section 7822, 7831, or 7832 of this title, the United States shall have the right to recover the amount it paid in such damages, fees, and costs from any employee who has committed a willful and knowing violation of section 7821 in connection with which such damages, fees, and costs arose. The United States may institute an action in the district court of the United States in the judicial district in which such employee resides to recover such damages, fees, and costs resulting from such violation.

"§ 7854. Authority of law enforcement agencies

"This chapter shall not limit any authority conferred upon the Attorney General, the Comptroller General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.".

(b) Notwithstanding the provisions of sections 7811 and 7812 of title 5, United States Code, as added by subsection (a), of the members of the Merit Systems Protection Board first appointed, one shall be appointed for a term of 1 year, one for 2 years, one for 3 years, one for 4 years, and one for 5 years.

(c) The table of sections for part III of title 5, United States Code, is amended by adding after the item relating to chapter 77 the following new item:

"78. Protection of Employee Rights. 7801.".

(d)(1) Section 7501(c) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or a suspension or removal which is ordered by or applicable to the Merit Systems Protection Board under chapter 78 of this title".

(2) Section 7511(2) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: ", but does not include any action ordered by or appealable to the Merit Systems Protection Board under chapter 78 of this title".

(e)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(67) Members, Merit Systems Protection Board.".

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Special Counsel of the Merit Systems Protection Board.".

SEC. 4. Section 7521 of title 5, United States Code, is amended to read as follows:

"§ 7521. Removal

"(a) A hearing examiner appointed under section 3105 of this title may be removed by the agency for which he is employed only for good cause established and determined by the Merit Systems Protection Board under the procedure prescribed in subchapter I of this chapter.

"(b) A bearing examiner removed under subsection (a) shall be entitled to judicial review of such determination under section 7512 of this title.".

SEC. 5. The amendments made by this Act shall take effect 60 days after the date of the enactment of this Act.

[From Esquire, Mar. 1, 1978]

THE LAST ANGRY MEN

(By Richard Reeves)

(NOTE.—I began a search for heroes—for men who stood up to the system. I wanted to find out why they did it, what they accomplished.)

"Hey, Dick," I asked my friend Richard Cohen, "whatever happened to that guy Hanrahan?"

"I don't know," he said.

"Did he go back to the *Post*?"

"No."

Cohen obviously did not want to talk about John Hanrahan. They had been friends, pretty close for a couple of years when they were ambitious young reporters covering Maryland politics together for *The Washington Post*. Cohen had gone on to become a cityside reporter and columnist. Hanrahan became assistant Maryland editor. They parted ways on October 1, 1975, when the Post's pressmen vandalized the paper's pressroom and went on strike. Cohen crossed the picket line and went to work. Hanrahan did not.

Nobody I knew at the Post seemed to want to talk about the strike in general or Hanrahan in particular. I began asking out of vague curiosity; I had never met the man. Friends just changed the subject, usually shifting their gaze to something on my left shoulder. What was going on? All I knew was that he was one of the reporters who had said that they could not stand by if management brought in strikebreakers to replace the pressmen—but a lot of reporters, some of whom worked at the beginning of the strike and some of whom didn't, had said the same thing. What I didn't find out until later was that Hanrahan was the only one who meant it. "Everyone here on both sides has something to be ashamed of," one friend said. "Everyone except Hanrahan." The strikebreakers came and he was the only reporter who gave up that kind of career because . . .

Because . . . why? Because of a principle? A thousand men and women can live with crossing a line—in this case a picket line—but one will not, no matter what the price. Maybe he was just a nut—before my friends at the Post turned away from the subject of Hanrahan, a couple mumbled something about his being "a little crazy." Maybe they all were, the angry ones: Curt Flood suing baseball; Ernest Fitzgerald blowing the whistle at the Pentagon; Frank Johnson taking on the whole state of Alabama for more than twenty years. There must be others, but the list is short—there are not many that brave in the land of the free.

The price, I thought, must be very high. It turned out to be higher than I had imagined. While I was looking for Flood, the little St. Louis outfielder who sued professional baseball over the reserve clause in 1969, a friend of his said: "Maybe you should leave him alone. Look, he took on something very big and it broke him." Being curious about John Hanrahan became a search for heroes—for men who stood up to the system. I wanted to find out why they did it, what happened to them, what they accomplished. What I found out seemed crushing at first; if you buck the system, you are almost inevitably going to be destroyed. The men I searched out lost jobs and friends, endured a frightening loneliness punctuated by death threats and bombings, three of their children ended up deeply disturbed and one a suicide. All of that came to seem almost, predestined; to keep the rest of us in line, established power had to make brutal examples of those who dared to challenge the order of things. In the end, though, it wasn't sad. Because some of us would not bend, the rest of us had the

small measure of freedom that came with the tiny chance that we might be the next to stand up.

John Hanrahan hardly looked like the one guy who would stand up. But he didn't look crazy, either. He was just a slight, bearded thirty-nine-year-old man who gave up a $30,000-a-year job near the top of his profession because he believed in something: unions. "No matter how imperfect they are," he said when we met, "unions are the only existing means workers have to get a fair shake from management. If I crossed that picket line, I would have tilted the balance slightly more in favor of management, and I couldn't do that."

It cost him. Hanrahan lives only a few blocks from me in Washington, but it's a different kind of neighborhood. His house cost him $17,500 four years ago in one of the most inflated real-estate markets in the country. Still, the mortgage, taxes and utilities cost $750 a month. He made less than $15,000 in 1977—half his 1975 earnings—from some free-lance writing and study projects for a union and a citizens' group auditing the military budget. There's no money now for the renovation he and his wife, Debby, began when he was at the *Post*. The walls and ceilings are exposed and blankets cover doorways and windows to keep in the heat.

"The money part is tough, but you just cut back," A. Ernest Fitzgerald told me. When the Air Force eliminated his job as deputy for management systems in 1969, he was making $31,000 a year. He made about $20,000 a year for the next four years while he sued to get his job back, essentially arguing that his dismissal was * * * testifying before Congress that cost overruns might reach $2 billion on Lockheed's C–5A transport aircraft. He simply believed in the first principle: telling the truth.

He proved that point in court and the Air Force was forced to give him back an office and a salary, but no work. They try to ignore him, but that's not always easy because Fitzgerald is a gregarious man who loves to play Alabama country boy. "Hi, Whitey," he called to a barely nodding man as we walked into one of the Pentagon's generals' messes. Who's that? "Hans Driessnack," Fitzgerald said. "He used to be my military assistant; he was also 'T–1,' one of the informants listed in the Office of Special Investigations reports when they were after me trying to prove I had a conflict of interest or was a homosexual or something." Driessnack was a colonel then. He is a major general now and budget director of the Air Force. Like almost everyone else involved in destroying Fitzgerald's career—including Defense Secretary Harold Brown, who was then the Secretary of the Air Force—Driessnack has since done very well for himself.

"I didn't get it at first," Fitzgerald said. "I had made more than thirty thousand dollars a year as a consultant before coming to the Air Force in 1965. My old clients wouldn't talk to me in 1970. Somebody finally told me that I was blacklisted in the defense business. They told me I should open a gas station if I wanted to work."

Blacklisting is in the frequent nightmares of Curt Flood. Money is, too, even though he insists that he put some away in his $100,000-a-year days as one of the finest center fielders in the recent history of the business that calls itself the Great American Pastime. He's forty now and he has not really worked for the past two years, not since spending $100,000 in legal fees and returning home from five tortured years in Europe. What he wants to work in is baseball—"C'mon, I'm just a jock"—but he is convinced that he is the last man baseball will ever touch. He was—and is reminded of it every day—the black man who sued professional baseball over its legalized slavery, the reserve clause. When his suit was filed in 1969, the clause totally bound each player to one team—the athlete could take what they offered him or leave the game.

Flood did leave in 1970, refusing a trade from the St. Louis Cardinals to the Philadelphia Phillies. He stated a rather basic principle then, one with more than a few echoes in American history: "I am a man, not a consignment of goods to be bought and sold."

The United States Supreme Court ruled two years later that that was true, unless you were a baseball player. He lost, but the Flood case did help set in motion a series of events that won those rights for other men, people like Reggie Jackson, who was able to sell his talents to the New York Yankees for $600,000 a year. But by that time Curt Flood was home, alone, in Alameda, California.

"Please, please, don't come out here," he said when I reached him by telephone. "Don't bring it all up again. Please. Do you know what I've been through? Do you know what it means to go against the grain in this country? Your neighbors hate you. Do you know what it's like to be called the little black son of a bitch who tried to destroy baseball, the American Pastime?'

We talked, and finally he agreed to meet me at a junior high school in Sacramento. A friend had asked him to speak at a Martin Luther King Day assembly. Most of the kids did not know who he was and asked the questions you'd expect: How many years did you play with the Cardinals? What was your lifetime batting average? How many homers did you it? How many World Series did you play in? What was the most money you made? Twelve. .293. Not many. Three, against Boston, New York and Detroit. A hundred and ten thousand dollars the last year. But a fourteen-year-old named Eddie Mejorado did know what Curt Flood had done. "What did the free agents give you? Do they write you to thank you, or call?"

"No," Flood said. "No one has called."

At that moment, he looked very alone and small. He is only five feet nine and his athletic stardom must have been classic overachievement. And he must often feel that way. When he talked about the owners of baseball, Flood said, "I suddenly realized that it was just me against nineteen multimillionaires." For a long time he looked into the straight vodka he was drinking, then said, "The first trial in New York lasted six weeks. No one showed up. Not one ballplayer came. My roommate didn't come. I roomed with Bob Gibson for ten years. Maybe I wouldn't have showed up either. I would have been afraid, too."

That isolation is a more fearsome price than the money. The Amish know exactly what they are doing when they "shun" a brother; so do the Russians when they make a comrade a "nonperson." Fitzgerald remembered the moment he returned to his office after testifying about the Lockheed cover-up. There were the beginnings of a small pile of call messages on his secretary's desk—each one a canceled invitation to a meeting, party or dinner. Hanrahan looked down at his shoes when he talked about one old friend, Carl Bernstein, turning and walking into a parking garage rather than bump into him on a street near the Post. Hanrahan had asked him for help during the strike, believing, like many reporters, that the Guild had saved Bernstein's job before Watergate and before he was a star. It works both ways, though—Debby Hanrahan carries sunglasses everywhere and puts them on when she sees acquaintances from the old days. "It triggers too many memories to see an old friend," her husband said. "It just hurts too much."

The lasting image of federal judge Frank Johnson that comes from the manuscript pages of the book Robert F. Kennedy, Jr. is writing about him is not one of a stern jurist ordering Montgomery, Alabama, to integrate or the police of Selma to allow a civil-rights march. It is one of Johnson, with armed U.S. marshals watching, playing golf at Maxwell Air Force Base, walking on the green, alone. Marshals have been guarding the fifty-nine-year-old judge for twenty-two years, since he gave Martin Luther King Jr. his first victory, ruling that a black woman named Rosa Parks could sit anywhere she wanted to on a Montgomery bus. That and a hundred locally unpopular decisions like it did not cost Frank Johnson any money. But it twice may have cost him appointment to the United States Supreme Court because of the livid opposition of the Alabama congressional delegation, and it may have cost him much more. His only son, Johnny, who was harassed in classrooms and on the street all through school, once said: "You have no idea what it's been like being Frank Johnson's son. . . . There has always been something to keep us on edge." A year after he said that, Johnny Johnson committed suicide in his father's guarded home.

Johnson does not like to talk about himself, but his friends explain him by pointing to a three-word answer he once gave when asked about principle: "Follow the law." He is a Republican and had never been involved in civil rights or anything like it when he was appointed a federal district court judge by President Eisenhower in 1955. He dealt with the cases that inevitably filled his docket in troubled times—eliminating the Alabama poll tax, abolishing the red-neck power of justices of the peace, reapportioning the state legislature, integrating the state police. And they hated him for it.

The troubles—and heroism, if it is that—come gradually, incrementally. Ernest Fitzgerald says that the people who think he is a hero, and the people who hate him, have forgotten that he did not exactly roar into a hearing room in the New Senate Office Building demanding that the government clean up waste in defense spending. He was asked directly, by Senator William Proxmire, about the accuracy of congressional reports that the C–5A was running $2 billion over Air Force cost estimates. Others lied; Fitzgerald waffled bureaucratically for a few sentences and concluded, "Your figure could be approximately right."

Hanrahan sure as hell never intended to take on The Washington Post all by himself. He was just another guy, a member of the Newspaper Guild who avoided the union's boring, internally politicized meetings, when the tangled history of confrontation between management and Local 6 of the Newspaper and Graphic Communications Union came to violence in 1975. After busting up the pressroom, more or less depending on which side's damage estimates one chose to believe, and beating up a foreman, the pressmen threw their picket line around the Post building. Almost in tears, Hanrahan called his boss and said, "I can't cross a picket line."

There was no easy decision for reporters, many of whom had always been pretty articulate in arguing cases for the downtrodden against capitalist oppressors. The Washington-Baltimore local of the Guild voted to honor the picket line along with fifteen hundred members of craft unions, while the Post unit voted to cross the line. More than five hundred Guild members went in and about three hundred stayed out, including fifty reporters and editors. Like most reporters, the ones who stayed out probably

had no great love for the Guild but were grateful for the wages and working conditions it had won in an industry where company benevolence was increasingly tested by the number of young people who wanted reporting jobs and were willing to do them for less than the people who had them, particularly at a glamour paper like the Post. Joseph Mastrangelo, a fifty-four-year-old writer in the paper's Style section, was haunted by scenes of soldiers tear-gassing strikers that he had seen as a child outside Boston. "I had to decide," Mastrangelo said, "between pulling my kids out of college and kicking myself the rest of my life." He did walk through the pickets, then ran—ran into a men's room and threw up.

Inside the building, Katharine Graham, the publisher, her executives and the approximately five hundred Guild members made their own intrepid, and successful, effort to get the newspaper out without the craft unions. There were, it turned out, at least a dozen nonunion pressmen in the building and a hundred executives secretly trained to run machinery over three years at Southern Production Program Inc. in Oklahoma City, a facility famous or notorious, in the newspaper business as Strikebreaker University. Ten weeks after the strike began, the *Post* announced its intention to hire permanent nonunion pressmen at less than six dollars an hour and assign them to nine-man crews, compared to the nine-dollar-an-hour and twelve-man crews of the union. The *Post*, in its own statements, was regaining control of its own property from thugs; in the language of organized labor, it was busting a union. For John Hanrahan, it was only a matter of time before he had to decide whether to keep his job or his resolve.

Fitzgerald knew that much on November 25, 1968, twelve days after he testified before Congress' Joint Economic Committee. He received a "notification of personnel action" that day stating that the earlier notification that he held Civil Service tenure was "a computer error"—the first and only error of its kind in Air Force history, according to later court testimony. What he did not know yet was that memoranda were already being prepared for Secretary Harold Brown on how to get rid of him. Or that a memo in the Secretary's office on the day of his truth telling was headed "Re: Fitzgerald spilling his guts" and included these recommendations: "Prepare bland responses . . . muzzling."

Fitzgerald, who was then forty-two years old, had struck deeper than he knew into the inner life of the fabled military-industrial complex. By exposing cost overruns, he was attacking the spectacularly high overhead charged by defense contractors. What that meant was angrily explained to him once by an Air Force general: "Look, Fitzgerald. I'm going to retire in a year or two and I'll become part of some contractor's overhead. If I cut overhead allowances, I'll be cutting my own throat."

He was going to be hit hard and the people doing it were going to laugh at newspaper puzzlement over why the Pentagon would make a martyr of him. "What they did was good, sound management practice," Fitzgerald told me nine years later in his impotent office. "They were offering an object lesson to everyone else. They've got to make an example of people who get out of line. They teach it in business schools—communicating by deeds. They can say whistle blowing is wonderful as long as they show what happens to people who try it.

Management called Curt Flood on October 8, 1969. The man on the phone was Jim Toomey, assistant to the general manager of the St. Louis Cardinals of the National League. "Curt, you've been traded to Philadelphia," he said. "You, McCarver, Hoerner and Byron Browne. For Richie Allen, Cookie Rojas and Jerry Johnson. Good luck, Curt." First he thought he would just retire—he was thirty-two and might have only two or three good years left—but on December 24, he decided to sue, sending a letter to baseball commissioner Bowie Kuhn that said: "I do not feel that I am a piece of property to be bought and sold irrespective of my wishes. . . ." Kuhn answered: "I certainly agree with you, that you, as a human being, are not a piece of property to be bought and sold. . . . However, I cannot see its application to the situation at hand."

He spent the summer of 1970, in his words, "bedding and boozing"—and watching his case and his career booted through the federal judiciary to the Supreme Court. It was destined to end up there because what Flood was challenging was baseball's unique exemption from U.S. antitrust laws, an exemption sanctioned in 1922 by the Supreme Court because baseball was, after all, America. In 1971, he made a sad thirteen-game comeback with the Washington Senators, but it was gone—he couldn't hit the high fast ball. Already starting each day with a beer and ending with vodka martinis, pained that people were watching him play badly, Flood disappeared; he fled to Majorca and bought part of a small bar and restaurant that he called the Rustic Inn. He was there on June 23, 1972—four days after it happened—when he read in The International Herald Tribune that he had lost in the Supreme Court; the score was 5–3. The bitterness sank in deeper: even the justices who voted against him attacked the reserve clause, but they said that Congress, not the Court, was responsible for remedying such an obvious injustice.

In Sacramento, after Flood talked to the students, the past seven years of his life were replayed. There were two television sportscasters waiting for him. Creighton Sanders of KXTV was first, repeating the old questions: "Aren't these big salaries ruining baseball? Aren't ballplayers really overpayed?" Aren't you trying to destroy the American way of life, you black son of a bitch?" Flood was polite, pointing out that baseball is making more money than ever and asking how much a Reggie Jackson or a Tom Seaver is worth when all those people are willing to pay to watch them. The second questioner was Bill Madlock, a twenty-seven-year-old black man who works for KCRA when he isn't hitting .302 and earning $200,000 a year with the San Francisco Giants. "Would you do it again?" "Are you blackballed from baseball?" "Would you like to get back in?" Yes. Yes. Yes.

Madlock, who is one of the beneficiaries of the reserve-clause modifications the Major League Baseball Players Association won in arbitration in the years after the Flood case, was almost in awe of Flood when we talked about him later: "You know, if it weren't for Curt Flood I wouldn't be living in that big house and getting a couple of thousand dollars for going to a banquet. . . . I grew up in Decatur, Illinois. I saw him play a lot. He was good. It's like a war. You send your best soldier out to scout and he doesn't come back. He's not there to celebrate the victory.

"He says he's doing fine. That's not true, is it?"

Something like that. Flood and I talked for a long day in the comfortable little town house he shares with an impressive woman and her two teen-age sons in Alameda, just across the Oakland line. Nice people. There is not too much of him there—a plaque of the 1968 All-Star team, one of five with C. Flood in CF; two very good portraits he painted, one of Lou Brock when they were young Cardinal teammates, the other of one of his five children, now with their mother, the woman he married twice. He said again that he was fine, that he owned a little property, that he'd like to get back to painting. He came home because it was home—his ninety-two-year-old mother lives nearby, his children are in Los Angeles, and in the local bars he frequents he is still treated, loved a little, as the hometown boy who made good. "What can you do?" he said. "You sit in Alameda and think about all the things you should have done."

"He's the most sensitive man you'll ever meet, he's like an exposed nerve," said Richard Carter, who helped Flood write a book in 1971. And the monolith that runs baseball had an unerring instinct for how to hurt Curt Flood. The owners and all their tame sportswriters said over and over again that it was Flood who was trying to hurt people, that this greedy little guy was trying to take baseball away from children of all ages. That got him—he is by nature almost embarrassingly anxious to make other people comfortable, to make sure the people with him aren't upset. When I asked him about being black, about whether that had anything to do with what he did, he thought awhile and said, "Being black is always having people being cautious about what they call you"—the thing about being black, he was saying, was that it made other people uncomfortable.

Institutions with interests to protect or secrets to keep are very good at whipping up pressures or building up public opinion against the individual by questioning his motives, credibility, sanity or sexual preferences. The isolation is usually enough, and if not, violence comes next: Frank Johnson's mother's house was bombed in 1967, and like a couple of the others, he receives death threats that come like Christmas cards. When Ernest Fitzgerald's C–5A testimony was publicly supported by a production controller named Henry Durham in the Marietta, Georgia, plant where Lockheed was constructing the big planes, signs began to appear around the town with two words: KILL DURHAM. Durham's job was eliminated and the mood got so rough in Marietta—the local paper began calling him a Public Enemy, an ignorant nod to Henrik Ibsen—that federal marshals were called into guard the former executive before he left town. The telephoned threat that finally did it was a promise to throw acid in his young daughter's face. Mrs. Durham, a religious woman, was removed as a Sunday-school teacher—a Christian penance that had been applied to Frank Johnson years earlier in Montgomery. When Nan Durham wrote about that to Billy Graham, asking for help and guidance, the evangelist's office sent her an envelope full of Bible pamphlets.

When I told that story to Gail Sheehy, the author of *Passengers*, she said, "Do you know why they really crucified Christ?" Why? "Because he was such an embarrassment to other men. They had to get him out of their sight, like the people you're writing about."

Henry Durham's sin was the same as the transgression of Ibsen's Dr. Thomas Stockmann, the public enemy who warned that the town baths were polluted. In American terms, Durham was not a team player. That was the charge jabbed at Fitzgerald when the new Nixon Administration decided to keep up the pressure first applied on the Air Force bureaucrat in the Johnson years. A confidential memo to Nixon's chief of staff, H. R. Haldeman, spelled out the reasoning:

"Fitzgerald is no doubt a top-notch cost expert, but he must be given very low marks in loyalty; and after all, loyalty is the name of the game. Only a basic no-goodnik would take his official business grievances so far from normal channels. We should let him bleed for a while at least. . . ."

That memo was written on January 20, 1970, by a Haldeman assistant named Alexander Butterfield. Within four years he was bleeding for disloyalty, having trouble getting work after he testified that President

Nixon was tape-recording Oval Office conversations.

There is a poster, the gift of a friend four years ago, in the bathroom of John Hanrahan's house. It's from Jamaica and states part of the lore of the Rastafari Brethren: "If every man, black and white, yellow and red, does not make significant steps in their personal lives toward the Freedom of Man, then they shall all suffer at the hands of their own reluctance."

Reluctance seems to be the code of the land. Newsmagazines trumpet a new individualism in the land, but it emerges as a very old egocentricity, a self-centeredness. When my father told me to be an individual, to "act like a man," he didn't mean going along, covering my ass. There are so few men, so many asses. Why?

One of the people with whom I wanted to talk about that was Charles Peters, the publisher and editor of the feisty little Washington Monthly. He's not the last one, and he has not faced crushing opposition, but he is unbending, an angry man. He has a message much like my father's, and if he did not have a magazine to spread the word, Peters would go door to door saying: "We need risk takers. . . . We need people who are willing to shed their institutional cocoons and stand or fall on the basis of their actual performance. . . . What we have is everybody protecting everybody else's feather bed. You do it because you want yours protected in return. That's why they had to protect the Lockheed secret and go after poor Ernie Fitzgerald."

Peters walked out of his feather bed in 1968, leaving a protected $25,800-a-year GS-18 job as director of evaluation of the Peace Corps to start his little magazine to slash at feather beds, usually with thoughtful exposés of the doings of the federal bureaucracy. Since then he has been paying himself $20,000 a year, keeping the magazine going by mortgaging and remortgaging his home. The rising Washington real-estate market has been his biggest backer and currently he's into the banks for $43,000.

Charlie Peters sees the energy of a nation going down the drain as people become more mobile and have to identify one another with badges—badges that are usually flashed in answer to the second question, "Who are you with?" "That's what's most depressing of all," he said, "the compulsion of men to seek their identities in the gaudier identity of someone or something they perceive to be greater than they are. . . . The classic example is the beautiful-girl problem at a New York cocktail party. If you want to get anything going, when she says hello you've got ten seconds to make your move before her eyes start wandering. You can hold her if you say you're with The New York Times, or Jimmy Carter, or Hitler."

If anyone is searching for other reasons to stick with the team, there's always "the wife and kids." That was laughed at by most of the people I found. John Hanrahan, who has four-year-old twins said he and his wife never even talked about giving in to the Post: "We know each other too well for that." Ernest Fitzgerald said: "I found out that families are the easy excuse. Families are usually stronger than the men."

There were a thousand reasons not to stand alone at The Washington Post, and I think I heard most of them: "It was very complicated" . . . "You don't understand—you have to put things in perspective" . . . "We have nothing in common with those cretins in the shop, and they make a good buck already" . . . "Because I knew that anyone who bucked management was never going anywhere around here" . . . "They're not so bad here. They're very good on the little things—Katharine Graham says hello on the elevator, she knows your name."

On February 15, 1976, the mailers' union accepted the Post's "final" offer—a "bad" offer, union leaders said, but the alternative was probably losing their jobs to strikebreakers—then the pressman and a few supporters like Hanrahan were left outside the building. There was a real attempt to persuade the assistant Maryland editor to come back. Some of it was infuriating: editors calling Debby Hanrahan and saying, "Look, tell John we'll forgive him." Some of it was tempting: Hanrahan's onetime boss, Barry Sussman, called and said, "John, you were right. But don't make a mistake now. Come back." In April, Donald Graham, the publisher's thirty-one-year-old son and the paper's assistant general manager, took Hanrahan to dinner, but they had trouble understanding each other. They shook hands and Donnie Graham said, "Good luck, John. I mean it." The termination letter came on June 20, 1976.

"Part of me said, 'Yeah, go back,' " Hanrahan said. "But I kept thinking that if this had happened someplace else, the Post would be denouncing it. They'd be saying, 'Okay, the union made a mistake, but there are principles involved here.' In my whole life I'd never been tested. I was a reporter, I could sit back in judgment of other people. Now there was a principle involved. . . . What happened seemed unfair to me. . . . I knew one person wasn't going to make a difference. But he can try. I tried."

Why? Why John Hanrahan? Or Fitzgerald or Flood? Frank Johnson? Their backgrounds were quite different and only Johnson's suggested that he was born and raised to be what he is today. The judge is a true son of "The Free State of Winston," Winston County, Alabama—stunningly rugged northern Alabama hill country that hid the fiercely independent mountain men who fought with the Union in the Civil War. Winston has not changed that much since a local named Curtis spent the ten years after the war tracking down the Confederate soldiers involved in the torturous deaths of his three brothers—he killed each of the surviving rebels. Beneath the robes he wears only occasionally on the bench. Judge Johnson is that kind of man even if his vision of justice is more modern. His wife stopped going to church with him because he would snarl "Bullshit" when the preacher went too piously far. He is rigid, certain in his convictions, among them that real men always drink their coffee black, smoke unfiltered cigarettes, chew good-tasting Red Man and stick with Schlitz, "the only decent beer for a man to drink."

John Hanrahan is from Fort Dodge, Iowa. He always wanted to be a newspaperman and began working for the local paper when he was a teenager. That work took him into the back shop and he put in time around presses and linotype machines—an experience, he found, that gave him a somewhat different attitude toward blue-collar workers than that of his colleagues at the Post. After earning a journalism degree at the University of Iowa, he went to the Davenport Daily Times as a sportswriter, eventually took off for Washington and worked his way up from The Montgomery County (Maryland) Sentinel to The Washington Star and, finally, the Post in 1968. The Davenport paper was nonunion, so he knew what it was to work for $90 a week when Guild papers were paying in the $150-to-$200 range. The people he worked with tended to describe him in the same way: solid, unusually diligent. He was no star and probably never would be, but a Post editor offered him the chance to carve out his own investigative beat on the metropolitan staff a couple of months before the strike began.

"Diligent" was a word I also heard a few times about Fitzgerald and Johnson—sometimes "too diligent" was used for both. The same could once have been said about Flood, who went a long way with what he jokingly calls "just this little body."

But "simple" was the word that fascinated me. It was as close as I could come to figuring them out, to understanding why they are heroes—and to me they are the real heroes of my time. They were not crusaders—Fitzgerald has become one, a frustrated one—they did not go forth looking for a battle, for dragons, arenas and crowds. They are different from Ralph Nader and Daniel Ellsberg, who are not simple men. I don't think Frank Johnson would have taken on the whole South unless the civil-rights cases were brought to his court, his home. Curt Flood may have wanted nothing more than to stay out of Philadelphia—he would not have been the first to feel that way. John Hanrahan never intended to give up a good job for a principle he had barely thought of over the years.

"John's everything he seems to be," said Elizabeth Becker, a *Post* reporter who worked with Hanrahan during the strike and then went back. "How many people can you say that of in a lifetime? John is a simple man, and I mean that in the best sense of the word. He is a clear man. He sees clearly."

In Ernest Fitzgerald's case, the Air Force's special investigation cleared him of conflicts of interest and interesting sexual behavior, but it did quote one informant as having said: "Mr. Fitzgerald was sincere and dedicated but things were either 'black or white,' 'right or wrong,' and usually his own ideas were the ones he considered right." Fitzgerald doesn't argue with that: "I didn't do anything I didn't do my whole life, only it was in public this time." And this time Fitzgerald's ideas were the ones that were right.

So what? So, as John Hanrahan said, they tried. Frank Johnson made a big difference in this country. The others doubt that they have. "Most people think I'm an ———," said Fitzgerald, who now owes $400,000 in the legal fees it took to get his job back with no work to do in it. "The main frustration is that it doesn't seem to do that much good. . . . Maybe there's a cumulative public impact. People may be getting an idea of how the defense industry really works."

Maybe. Maybe he's just one angry man—alone. Like Samuel Abelman, M.D. Dr. Abelman, the hero of Gerald Green's 1957 novel, *The Last Angry Man*. The foulmouthed old nut who was stuck in a Brooklyn slum cursing and curing a humanity he was sure wasn't worth the effort. I loved that book, loved Dr. Abelman. How did the young television hotshot from Greenwich describe the old doctor . . .

"The disappointments had been many, the moments of triumph too few, and his sixty-eight years had been, to a great extent, a succession of losing battles. Yet he was not a man to pity, or to shed tears over, or to offer charity. Far from having been beaten, he was ascendant . . . he was still in the race, conceding nothing, compromising nothing, challenging everything . . . cursing the crap artists who knew the arts of control.

"There aren't enough people left who get mad, plain mad. Not mad for a cause or a purpose, but generally mad at all the bitchery and fraud. We take fraud for granted. We accept it. We like it. We want to be had. That's where he was different. He knew he was being cheated and he didn't like it one tiny bit. . . . He was the last angry man."

No. Abelman was not the last. Neither is Fitzgerald. If he was, then who are the people who keep slipping Defense Department documents under his door? At home and in his Pentagon office Fitzgerald finds unmarked envelopes containing memoranda and calculations documenting big and small outrages in defense spending. As soon as he gets those papers and figures them out, they find their way into print—in Jack Anderson's column, in Charlie Peters' magazine. Part of

the cumulative effect. Some people in there care enough to get those things to Fitzgerald, and someday more people out there may care enough to do something about it all. That would be only fair, because men like Ernest Fitzgerald have done a lot for the rest of us. Power—the crap artists who know the arts of control—does have to take into account that anyone could be the next angry man. They can stomp on Ernie Fitzgerald, but because of him Henry Durham pops up to plague them. They can beat Curt Flood, but because of him they have to live with Reggie Jackson and a lot of talented kids they haven't heard of yet. Men like Flood and Fitzgerald did it for all for us and we scorn them, maybe because we're ashamed of ourselves. Maybe because we're too embarrassed to admit that they're what keep us going.

"Please," Debby Hanrahan said, "don't say that this is sad, that we're sad. John has never been happier. I've never been happier. He's a free man."

Yes, he is. After the last pickets from the pressmen's union finally gave up in March 1977, John Hanrahan walked into the Post Pub, the Washington Post's drinking place. A woman at the bar, a woman he did not know who took classified ads on the telephone, got up and hugged him. She began to cry and said: "John, someday you'll be able to tell your kids what you did. I don't know what the rest of us are going to say."●

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON) (by request):

S. 2831. A bill to authorize appropriations for fiscal years 1979 and 1980 to carry out the Marine Mammal Protection Act of 1972; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, I introduce today, at the request of the Department of Commerce, and on behalf of myself and my colleagues, Mr. MAGNUSON and Mr. PEARSON, a bill to authorize appropriations for fiscal years 1979 and 1980 to carry out the Marine Mammal Protection Act of 1972.

I ask unanimous consent that the text of the bill and the letter of transmittal be printed in the RECORD.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 114(a) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1384(a)), is amended by inserting immediately following the date "1978", the following language: $6,517,000 for the fiscal year ending September 30, 1979, and such sums as may be necessary for the fiscal year ending September 30, 1980,".

THE SECRETARY OF COMMERCE,
Washington, D.C., March 2, 1978.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed are six copies of a draft bill, "To authorize appropriations for fiscal year 1979 and 1980 to carry out the Marine Mammal Protection Act of 1972." together with a statement of purpose and need in support thereof.

The Department has determined that this proposed legislation does not constitute a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949, and OMB Circular A-107.

We have been advised by the Office of Management and Budget that there would be no objection from the standpoint of the Administration's program to the submission of this legislation to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

JUANITA M. KREPS.

STATEMENT OF PURPOSE AND NEED

Section 114(a) of the Marine Mammal Protection Act is the general authorization for appropriations to carry out the functions assigned to the Department of Commerce to implement the Act. Funds for grants to the states and special research activities concerning commercial fishing methods and gear are separate authorizations.

Extension of section 114(a) is necessary in order for the Department to continue the vitally important marine mammal program currently underway. This program has resulted in a number of significant research and management accomplishments involving the complicated relationships of marine mammals and the other living resources of the oceans. Additionally, with legal challenges involving the implementation of the Act and the relationship between the harvest of tuna and the protection of porpoise, it is imperative that the Department continue its activities which are designed to seek a point of accommodation among all the competing interests.

This legislation would extend the authorization for fiscal year 1979 at the level included in the President's program of $6.517 million and for fiscal year 1980 for such sums as may be necessary to carry out the program.●

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON) (by request):

S. 2832. A bill to amend section 406 of the Fishery Conservation and Management Act of 1976 to extend the authorization for appropriations for fiscal years 1979 and 1980; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, I introduce today, at the request of the Department of Commerce, and on behalf of myself, Mr. MAGNUSON, and Mr. PEARSON, a bill to amend section 406 of the Fishery Conservation and Management Act of 1976 to extend the authorization for appropriations for fiscal years 1979 and 1980.

I ask unanimous consent that the text of the bill and the letter of transmittal be printed in the RECORD.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 406 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1882) is amended by adding the following: "(5) $20,102,000 for the fiscal year ending September 30, 1979. (6) Such sums as may be necessary for the fiscal year ending September 30, 1980."

THE SECRETARY OF COMMERCE,
Washington, D.C., March 17, 1978.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed are six copies of a draft bill "To amend section 406 of the Fishery Conservation and Management Act of 1976 to extend the authorization for appropriations for fiscal years 1979 and 1980." together with a statement of purpose and need in support thereof.

The Department has determined that this proposed legislation does not constitute a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949, and OMB Circular A-107.

We have been advised by the Office of Management and Budget that there would be no objection from the standpoint of the Administration's program to the submission of this legislation to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

C. L. HASLOM,
Acting Secretary of Commerce.

STATEMENT OF PURPOSE AND NEED

The Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801–1882) was enacted in April 1976. Primary responsibility for this legislation was placed with the Department of Commerce.

The authorization for appropriations to the Secretary under Section 406 of the Act expires September 30, 1978.

This draft legislation would extend the authorization for appropriations for fiscal year 1979 at the level included in the President's program of $20,102,000 and for fiscal year 1980 for such sums as may be necessary.●

By Mr. ABOUREZK:

S. 2833. A bill to amend, improve, and clarify the Farmer-to-Consumer Direct Marketing Act of 1976; to the Committee on Agriculture, Nutrition, and Forestry.

FARMER-TO-CONSUMER DIRECT MARKETING ACT OF 1978

● Mr. ABOUREZK. Mr. President, there has been considerable debate in the Congress in recent weeks about the nature and extent of the farm problem, its impact on the other sectors of the economy, and the proper measures that should be taken to solve it. The economic crisis confronting the farm sector is the result of deep-rooted and complex factors and, to be satisfactorily dealt with, must ultimately be treated with a comprehensive, as opposed to an ad hoc program. This does not mean, however, that there is not a need for measures that are less ambitious in scope. Anything that can be done to improve the cash flow problems of our farmers and ranchers should be pursued.

That is why Senator MCGOVERN and I are introducing the following bill to extend and broaden the Farmer-to-Consumer Direct Marketing Act of 1976. The authorization for this worthwhile and potentially significant program expires at the end of this fiscal year. The program's performance the past 2 years warrants its continuation and improvement, especially when one considers the contribution such a program can make to the improvement of the health of the agricultural economy.

The bill would essentially do two things: First, it would extend the Farmer-to-Consumer Direct Marketing Act for 3 years; second, it would authorize $3 million annually instead of the current $1.5 million. Additionally, there

is some minor clarifying language, the basic thrust of which is to clear up any confusion that may have previously existed as to the types of commodities that are to be covered by the act's provisions (all types) and the criteria to be used in allocating funds to the States.

The benefits that accrue from an efficient marketing structure which allows agricultural producers to sell their commodities directly to individual consumers (or groups that may "represent" them) are many and varied. A quick glance at the statistics reveals a trend of steadily rising food prices while, at the same time share of the American food dollar that goes to the farmer continues to shrink. One need go no further to establish the need for an effective direct marketing program. Last year, the farmer received less than 40 cents from every dollar spent on food in retail stores in this country. The farm/retail spread is widening, a development which benefits neither the farmer nor the consumer.

The original act stipulated that the program be implemented in a "manner calculated to lower the cost and increase the quality of food too . . . consumers while providing increased financial returns to the farmers." Mr. President, Senator MCGOVERN and I believe that this is precisely the sort of thing that a sound national food and fiber policy ought to strive for and we are confident that our colleagues will agree. The costs of this direct marketing program are miniscule when compared to the returns that can be expected from it, making it very worthy of support.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2833

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 30001) is amended by striking out "Sec. 2. It is the" and inserting in lieu thereof "(b) It is, therefore, the"; and by striking out the section heading and inserting in lieu thereof the following:

"FINDING AND PURPOSE

"SEC. 2. (a) The Congress hereby finds that—

"(1) the present state of the farm economy of the United States is such that the family farmer is facing virtual economic extinction;

"(2) the current economic plight of the family farmer is the direct result of market and institutional forces which have combined to depress financial returns of the family farmer far below his costs of production;

"(3) the farm income situation is doubly serious for the family farmer inasmuch as the farmer's share of the consumer's food dollar has declined at the same time that food prices have been steadily increasing; and

"(4) it is essential to the best interest of American agriculture and the American economy in general to increase the farmer's share of the consumer's food dollar.".

SEC. 2. Section 3 of such Act (7 U.S.C. 30002) is amended by adding at the end thereof a new sentence as follows: "Such term shall be construed to apply to all types of agricultural commodities including livestock (whether on hoof or butchered).".

SEC. 3. Section 4 of such Act (7 U.S.C. 30003) is amended by striking out in the second sentence ", which shall be completed no later than one year following the date of enactment of this Act," and adding at the end of such section a new sentence as follows: "The initial survey shall cover a period which began no later than October 1, 1977; and an updated revision of the survey shall be published by the Secretary at least annually.".

SEC. 4. The second sentence of section 5 of such Act (7 U.S.C. 30004) is amended by striking out "as compared to other States" and inserting in lieu thereof a comma and the following: "the relative importance of agricultural production to that State, and the economic state of the farmers of that State as compared with other States".

SEC. 5. Section 7(b) of such Act (7 U.S.C. 30006 (b)) is amended by striking out the period at the end of such section and inserting in lieu thereof a comma and the following: "and $3,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.".

Mr. ABOUREZK. Mr. President, for purposes of illustration of the changes that this bill would have on existing law, I ask unanimous consent to have printed in the RECORD a sample "Cordon Rule." Language to be deleted is shown in brackets [], and new matter to be inserted is shown in italics.

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

[Public Law 94-463—Oct. 8, 1976]

PUBLIC LAW 94-463—94TH CONGRESS

An act to encourage the direct marketing of agricultural commodities from farmers to consumers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farmer-to-Consumer Direct Marketing Act of 1976".

[PURPOSE]

FINDINGS AND PURPOSE

Sec. 2. (a) The Congress hereby finds that—

(1) the present state of the farm economy of the United States is such that the family farmer is facing virtual economic extinction;

(2) the current economic plight of the family farmer is a direct result of market and institutional forces which have combined to depress financial returns of the family farmer far below his costs of production;

(3) the farm income situation is doubly serious for the family farmer inasmuch as the farmer's share of the consumer's food dollar has declined at the same time that food prices have been steadily increasing; and

(4) it is essential to the best interest of American agriculture and the American economy in general to increase the farmer's share of the consumer's food dollar.

[SEC. 2. It is the] *(b) It is, therefore, the* purpose of this Act to promote, through appropriate means and on an economically sustainable basis, the development and expansion of direct marketing of agricultural commodities from farmers to consumers. To accomplish this objective, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall initiate and coordinate a program designed to facilitate direct marketing from farmers to consumers for the mutual benefit of consumers and farmers.

DEFINITION

SEC. 3. For purposes of this Act, the term "direct marketing from farmers to consumers" shall mean the marketing of agricultural commodities at any marketplace (including, but not limited to, roadside stands, city markets, and vehicles used for house-to-house marketing of agricultural commodities) established and maintained for the purpose of enabling farmers to sell (either individually or through a farmers' organization directly representing the farmers who produced the commodities being sold) their agricultural commodities directly to individual consumers, or organizations representing consumers, in a manner calculated to lower the cost and increase the quality of food to such consumers while providing increased financial returns to the farmers. Such term shall be construed to *apply to all types of agricultural commodities including livestock (whether on hoof or butchered).*

SURVEY

SEC. 4. The Secretary shall provide, through the Economic Research Service of the United States Department of Agriculture, or whatever agency or agencies the Secretary considers appropriate, a continuing survey of existing methods of direct marketing from farmers to consumers in each State. The initial survey [, which shall be completed no later than one year following the date of enactment of this Act,] shall include the number of types of such marketing methods in existence, the volume of business conducted through each such marketing method, and the impact of such marketing methods upon financial returns to farmers (including their impact upon improving the economic viability of small farmers) and food quality and costs to consumers. *The initial survey shall cover a period which began no later than October 1, 1977; and an updated revision of the survey shall be published by the Secretary at least annually.*

DIRECT MARKETING ASSISTANCE WITHIN THE STATES

SEC. 5. (a) In order to promote the establishment and operation of direct marketing from farmers to consumers, the Secretary shall provide that funds appropriated to carry out this section be utilized by State departments of agriculture and the Extension Service of the United States Department of Agriculture for the purpose of conducting or facilitating activities which will initiate, encourage, develop, or coordinate methods of direct marketing from farmers to consumers within or among the States. Such funds shall be allocated to a State on the basis of the feasibility of direct marketing from farmers to consumers within that State [as compared to other States], *the relative importance of agricultural production to that State, and the economic state of the farmers of that State as compared with other States* and shall be allocated within a State to the State department of agriculture and to the Extension Service on the basis of the types of activities which are needed in the State and on the basis of which of these two agencies, or combination thereof, can best perform these activities. The activities shall include, but shall not be limited to—

(1) sponsoring conferences which are designed to facilitate the sharing of information (among farm producers, consumers, and other interested persons or groups) concerning the establishment and operation of direct marketing from farmers to consumers;

(2) compiling laws and regulations

relevant to the conduct of the various methods of such direct marketing within the State, formulating drafts of enabling legislation needed to facilitate such direct marketing, determining feasible locations for additional facilities for such direct marketing, and preparing and disseminating practical information on the establishment and operation of such direct marketing; and

(3) providing technical assistance for the purpose of aiding interested individuals or groups in the establishment of arrangements for direct marketing from farmers to consumers.

(b) In the implementation of this section, the Secretary shall take into account consumer preferences and needs which may bear upon the establishment and operation of arrangements for direct marketing from farmers to consumers.

ANNUAL REPORT

SEC. 6. The Secretary shall periodically review the activities carried out under this Act and shall report to the Committee on Agriculture, United States House of Representatives, and the Committee on Agriculture and Forestry, United States Senate, within one year of the date of enactment of this Act, and annually thereafter, with respect to the effectiveness of this Act. The Secretary shall include in such report a State-by-State summary of the results of the survey conducted under this Act, and a summary of the activities and accomplishments of the Extension Service and the State departments of agriculture in the development of direct marketing from farmers to consumers during the previous year.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. (a) For purposes of carrying out the provisions of sections 4 and 6, there are authorized to be appropriated such sums as are necessary.

(b) For purposes of carrying out the provisions of section 5, there is authorized to be appropriated $1,500,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978[.] *and $3,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.*

EMERGENCY HAY PROGRAM

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977, and shall become effective October 1, 1976, or on the date of enactment of this Act, whichever is later.●

By Mr. PERCY:

S. 2835. A bill to amend the Export-Import Bank Act of 1945 to provide an officer responsible for matters concerning or affecting manufacturers of solar technology equipment or other renewable energy technology equipment, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT-IMPORT BANK ACT AMENDMENT

● Mr. PERCY. Mr. President, I am introducing today a bill which would amend the Export-Import Bank Act of 1945. This legislation directs the Board of Directors of the Export-Import Bank to employ an officer to promote the export of U.S., non-nuclear, renewable energy technology, consistent with the policies articulated in Section 501 of the Nuclear Non-Proliferation Act and Section 119 of the Foreign Assistance Act.

The officer's duties would include advising the President of the Bank on ways in which solar and other renewable energy technology can be exported using the Bank's facilities; disseminating information to appropriate manufacturers concerning the various export programs within the Bank; and acting as a liaison for these manufacturers between the Bank and the relevant departments and agencies in the government.

To assure the impact of the officer's work, the legislation would require that the Eximbank include his or her views in all statements to Congress required prior to finalizing agreements to finance the export of nuclear power plants. Furthermore, the Bank would be required to include a section in its semi-annual report detailing the Bank's performance in promoting exports of renewable energy technology equipment. Finally, the Board of Directors of the Bank would be obliged to consider the feasibility of renewable energy alternatives and views of the officer in any decision involving energy-related exports. I am very pleased that Congressman Long from Maryland is introducing this same legislation in the House today.

Promoting the use of solar technology in less developed countries and expanding its use at home have become major components of this nation's energy and foreign policies. Just 3 weeks ago, President Carter signed into law the Nuclear Non-Proliferation Act. It includes a section (501) detailing our intent to promote the development and application of nonnuclear renewable energy technologies in the Third World. In 1977, the Congress added Section 119 to the Foreign Assistance Act which spelled out our desire to help developing Nation's use small scale energy technology in rural areas. Assigning a special officer to the Export-Import Bank whose primary task would be to promote the export of these technologies is not only entirely consistent with the intention expressed in section 501 and section 119, but would also be an effective means of implementing these policy goals.

The Bank is a particularly important source of financing for nuclear technology exports. Since 1959, when the Bank first became involved with the exports of nuclear plants, it has underwritten, to some degree, all but two such plants around the world.

The Bank does not, however, have an equally impressive record in financing solar technology exports. To the contrary, there has been virtually no utilization of the Bank's resources to aid this growing and vital industry. In view of our national policy to promote renewable energy technology, it is appropriate that the Bank demonstrate an equal willingness to finance solar as well as nuclear exports.

A visible commitment by Eximbank to promote exports of renewable energy technologies could help our economy. As the industry expands to meet foreign demand, the unit cost of the technology should fall, making it a more attractive alternative for U.S. consumers. Furthermore, a growing export industry, supported by the Bank, could help reduce our high balance of trade deficit.

The creation of a special Eximbank officer to promote the export of renewable energy technology equipment is not unprecedented. The Bank's charter now includes a clause directing the Board of Directors to designate a Small Business officer of the Bank. Since the survival and economic health of our small businesses ranks among the top priorities of the Nation, Congress rightly concluded that it is appropriate that they be allotted a special champion in the Export-Import Bank. Solar industries also merit special consideration.

In order to make the transition to the post-petroleum age as smoothly and painlessly as possible, these industries should be given official encouragement to assure that they grow and prosper. Eximbank can play an important role in nurturing this growth by helping these industries to export. Moreover, the creation of this officer would not entail any significant increase in the Federal bureaucracy or any great expenditure.

Mr. President, now is the perfect time to adjust the energy exporting policies of the Eximbank and bring these policies more in line with stated national goals. The Bank charter expires on September 1, 1978, and must be renewed prior to then. This presents us with an excellent opportunity to assist U.S. industries to begin exporting to other nations through the creation of this officer. I urge my colleagues to join with me in support of this bill and assure its expeditious passage.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.●

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

S. 2835

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) section 2(b)(1) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following:

"(C) Consistent with the policy of section 501 of the Nuclear Non-Proliferation Act of 1978 and section 119 of the 1961 Foreign Assistance Act as amended, the Board of Directors shall employ an officer of the Bank whose only duties shall be to advise the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of non-nuclear renewable energy resources, to disseminate information concerning export opportunities and the availability of Bank support for such activities, and to act as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies. The Bank shall include the views of such officer in any detailed statement to the Congress required by paragraph (3)(iii) of this subsection. The Board of Directors shall consider the feasibility of renewable energy al-

ternatives and the views of such officer in any decision involving energy-related exports."

(b) section 2(b)(1)(A) of such Act is amended by adding at the end thereof the following: "In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 501 of the Nuclear Non-Proliferation Act of 1978 and section 119 of the 1961 Foreign Assistance Act, as required by subparagraph (C) of this paragraph."

By Mr. CRANSTON (by request):

S. 2836. A bill to amend the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, as amended, in order to extend the authority to enter into special pay agreements with physicians and dentists employed by the Department of Medicine and Surgery, and for other purposes; to the Committee on Veterans' Affairs.

● Mr. CRANSTON. Mr. President, I am introducing today, at the request of the administration, S. 2836, a bill to amend the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, as amended. I ask unanimous consent that the letter of transmittal, the text of the bill, and the section-by-section analysis be printed in the RECORD.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(a)(2) of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 (Public Law 94-123; 89 Stat. 669), as amended, is further amended by striking out "September 30, 1978" and inserting in lieu thereof "September 30, 1979".

VETERANS ADMINISTRATION,
Washington, D.C., March 27, 1978.

Hon. WALTER MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft bill "To amend the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, as amended, in order to extend the authority to enter into special pay agreements with physicians and dentists employed by the Department of Medicine and Surgery, and for other purposes.", with the request that it be introduced in order that it may be considered for enactment.

On October 22, 1975, the "Veterans' Administration Physician and Dentist Pay Comparability Act of 1975" was enacted. This authorized the Veterans Administration to enter into special pay agreements with eligible physicians and dentists. Under the terms of these agreements, the physician or dentist would agree to serve in the Department of Medicine and Surgery for a specific number of years, in return for which he or she would receive additional salary. This legislation was considered necessary because the Department of Medicine and Surgery was unable to recruit and retain certain categories of physicians and dentists because of the disparity in pay between that authorized under title 38, United States Code, and that which the physician or dentist could earn in private practice or elsewhere in the U.S. Government. The authority of the Veterans Administration to enter into special pay agreements was limited to one year by P.L. 94-123. The "Veterans' Administration Physician and Dentist Pay Comparability Act of 1977" (P.L. 95-201) extended the authority to enter into special pay agreements through September 30, 1978.

The draft bill transmitted herewith will extend the authority of the Veterans Administration to enter into special pay agreements through September 30, 1979.

As previously mentioned, the purpose of the special pay legislation is to assist the VA Department of Medicine and Surgery in the recruitment and retention of qualified physicians and dentists. Since enactment of P.L. 94-123, the Department of Medicine and Surgery has been collecting data on the effectiveness of the special pay provisions. The data that has been collected to date indicates that the special pay legislation has had a positive impact. Because the recruitment and retention problems are somewhat alleviated by our ability to enter into special pay agreements, and pay additional remuneration, we believe it essential that the special authority be continued until an overall solution can be found for the problem of recruitment and retention of physicians and dentists in the Federal sector.

It is estimated that extension of the special pay authority from September 30, 1978, to September 30, 1979, would result in the following cost to the VA:

Fiscal year:	
1979	$3,942,000
1980	7,451,000
1981	6,631,000

Enactment of this bill would result in cost to the VA for only three years because P.L. 95-201 established a common cut-off date of September 30, 1981, after which special pay under title 38 is no longer authorized.

We were advised by the Office of Management and Budget that there is no objection to the submission of this draft legislation to the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

MAX CLELAND,
Administrator.

SECTION-BY-SECTION ANALYSIS OF BILL

A bill to amend the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, as amended, in order to extend the authority to enter into special pay agreements with physicians and dentists employed by the Department of Medicine and Surgery, and for other purposes.

This bill amends section 6(a)(2) of Public Law 94-123, as amended. Public Law 94-123 authorizes the Veterans Administration to enter into special pay agreements with certain physicians and dentists under which the physician or dentist agrees to serve in the Department of Medicine and Surgery for a specified number of years in return for additional remuneration. As enacted on October 22, 1975, the authority (contained in section 6(a)(2)) to enter into such special pay agreements terminated on October 11, 1976. Public Law 95-201 extended the authority to enter into the agreements until September 30, 1978. This draft bill further amends section 6(a)(2) by extending the authority to enter into the agreements until September 30, 1979.

This authority is necessary in order to recruit and retain qualified physicians and dentists in the Department of Medicine and Surgery.●

By Mr. DOLE:

S. 2837. A bill to amend the Internal Revenue Code of 1954 to provide a deduction from gross income for individuals of the amount of social security taxes paid during the tax year; to the Committee on Finance.

SOCIAL SECURITY TAX DEDUCTIONS

● Mr. DOLE. Mr. President, I am introducing today further legislation to provide tax relief from the ever mounting social security tax increases.

GENERAL REVENUE FINANCING

Last week, I introduced S. 2808, a bill which would grant a refundable 20 percent tax credit on the amount of social security taxes paid during the tax year. My proposal today would grant a deduction in lieu of a credit. This initiative, like S. 2808, avoids direct "general revenue" financing. It preserves the integrity of the social security trust fund system.

Mr. President, it is important that Congress have all the alternatives presented to it in arriving at the proper structure of a tax cut this year. Reducing every taxpayers gross income by the amount of his social security contribution proportionately grants tax relief based on the tax increases enacted.

The Senator from Kansas knows that public outrage over the social security tax increase has been tremendous. Many of the supporters of the social security tax increases in 1977 have become the loudest advocates of a tax rollback. It seems inconsistent that the concern over the soundness of the social security trust fund has so quickly dissipated.

COST

An across the board income reduction based on the amount of social security taxes paid would cost $13.3 billion in calendar year 1979. More than 78 percent of the relief would go to American families earning less than $30,000. It is important to remember that the social security taxes for an individual earning $10,000 will rise only $20 in 1980 over 1977. But for a individual earning $25,000 the social security taxes will rise $623 over the same period.

Mr. President, I did not support the Social Security Financing Amendments of 1977. However I support tax relief based on the social security tax liability. This proposal provides the sensible alternative to general revenue financing.

I ask unanimous consent that the accompanying chart and text of my bill be printed in the RECORD.

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

S. 2837

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOWANCE OF DEDUCTION FOR PAYMENT OF SOCIAL SECURITY TAXES.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as 222 and by inserting after section 220 the following new section:

"SEC. 221. SOCIAL SECURITY TAXES.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there is allowed as a deduction the social security taxes paid with respect to the individual's wages and self-employment income for the taxable year.

"(b) SOCIAL SECURITY TAXES.—For purposes of this section—

"(1) IN GENERAL.—The term 'social security taxes' means taxes imposed by sections 1401, 3101, 3201, or 3211 (but only to the extent attributable to the taxes imposed by section 3101).

"(2) SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT EMPLOYEES.—Any amount deducted from the wages of an employee of any State or political subdivision thereof—

"(A) which is paid by the State to the Federal government under an agreement under section 218 of the Social Security Act, and

"(B) which, under such agreement, is equivalent to the tax imposed by section 3101,

shall be treated as a tax imposed by section 3101 and paid by the employee.".

(b) DEDUCTION FROM GROSS INCOME.—Section 62 of such Code (relating to definition of adjusted gross income) is amended by adding at the end thereof the following new paragraph:

"(14) SOCIAL SECURITY TAXES.—the deduction allowed by section 221.".

(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(d) CLERICAL AMENDMENT.—The table of sections for such part VII is amended by striking out the item relating to section 221 and inserting in lieu thereof the following:

"Sec. 221. Social security taxes.
"Sec. 222. Cross references.".

SECTION 2. EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1979.

A DEDUCTION OF SOCIAL SECURITY TAXES FOR CALENDAR YEAR 1979

[In billions, returns in millions]

1977 Income Level

	Returns	Reduction	Percentage distribution
Adjusted gross income:			
Less than $5,000	$4.1	$0.2	1.2
$5,000 to $10,000	14.0	1.1	8.3
$10,000 to $25,000	13.7	2.0	15.4
$15,000 to $20,000	11.3	3.1	23.6
$20,000 to $30,000	11.3	3.8	28.4
$30,000 to $50,000	3.9	2.3	17.0
$50,000 to $100,000	.9	.6	4.8
$100,000 and over	.2	.2	1.4
Total	59.4	13.3	100.0

Note: Details may not add to totals because of rounding. ●

By Mr. PERCY (for himself and Mr. STEVENSON):

S. 2838. A bill to amend title 28, to change the judicial districts in the State of Illinois; to the Committee on the Judiciary.

(The remarks of Mr. PERCY when he introduced the bill appear elsewhere in today's proceedings.)

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON) (by request):

S. 2839. A bill to authorize appropriations for the Coast Guard for fiscal years 1979 and 1980, and for other purposes; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, I introduce today, at the request of the Department of Transportation, and on behalf of myself and my colleagues, Mr. MAGNUSON and Mr. PEARSON, a bill to authorize appropriations for the Coast Guard for fiscal years 1979 and 1980 and for other purposes.

I ask unanimous consent that the text of the bill and the letter of transmittal be printed in the RECORD.

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

S. 2839

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are authorized to be appropriated for the United States Coast Guard for the fiscal years 1979 and 1980:

(1) For necessary expenses for the operation and maintenance of the Coast Guard including those relating to the Capehart housing debt reduction—for fiscal year 1979—$944,800,000 for fiscal year 1980—$962,000,000.

(2) For acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore establishments, vessels, aircraft, and pollution abatement including equipment and necessary administrative expenses relating thereto:

AIRCRAFT

for fiscal year 1979—$115,086,000
for fiscal year 1980—$115,086,000

VESSELS

for fiscal year 1979—$129,223,000
for fiscal year 1980—$129,223,000

SHORE AND OFFSHORE ESTABLISHMENTS, AIDS TO NAVIGATION, POLLUTION ABATEMENT, AND ADMINISTRATIVE EXPENSES

for fiscal year 1979—$34,899,000
for fiscal year 1980—$34,899,000

(3) For alteration or removal of railroad and highway bridges in order to eliminate obstructions of the navigation in the navigable waters of the United States:

for fiscal year 1979—$34,603,000
for fiscal year 1980—$22,600,000

(4) For necessary expenses for basic and applied scientific research, development, testing, or evaluation of programs and activities of the Coast Guard:

for fiscal year 1979—$20,000,000
for fiscal year 1980—$20,000,000

SEC. 2. The Coast Guard is authorized an end strength for active duty personnel of 38,420, for fiscal year 1979 and for fiscal year 1980, except that the ceiling shall not include members of the ready reserve called to active duty under the authority of section 764 of title 14, United States Code.

SEC. 3. Average military training student loads for the Coast Guard are authorized as follows:

(1) recruit and special training: Students = Student years
for fiscal year 1979—3862 students
for fiscal year 1980—3812 students
(2) flight training:
for fiscal year 1979—95 students
for fiscal year 1980—95 students
(3) professional training in military and civilian institutions:
for fiscal year 1979—436 students
for fiscal year 1980—452 students
(4) officer acquisition:
for fiscal year 1979—952 students
for fiscal year 1980—939 students.

SEC. 4. Section 30 of the Federal Boat Safety Act of 1971, as amended (46 U.S.C. 1479) is further amended by deleting all after the phrase "authorized to be appropriated" and inserting "$3,000,000 for fiscal year 1979."

SEC. 5. The Coast Guard is authorized to enter into long-term lease in excess of one fiscal year for the purpose of acquiring land on the Quillayute Indian Reservation in the State of Washington so that the Quillayute River Coast Guard Station may be relocated. The Coast Guard is also authorized to expand appropriated funds for the construction of fixed facilities and improvements on such land leased from the Quillayute Indians.

SEC. 6. The Coast Guard is authorized to enter into a long-term lease in excess of one fiscal year for its Aviation Training Center at Bates Field Mobile, Alabama and is authorized to expend appropriated funds on such land leased from the City of Mobile, Alabama for the purpose of constructing an addition to an existing fixed facility to house an aircraft training simulator and of making improvements to a sewage effluent system.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., Feb. 27, 1978.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: This letter transmits proposed legislation, "To authorize appropriations for the Coast Guard for fiscal years 1979 and 1980 and for other purposes".

The proposed bill contains the Coast Guard's request for authorization of appropriations, "end strength", and "student loads" for fiscal years 1979 and 1980 (sections 1–3). It also amends the Federal Boat Safety Act of 1971 to extend authorization for financial assistance to state boating programs (section 4). Finally, it provides authorization for the Coast Guard to enter into two specific long-term leases and to construct permanent facilities on the leased properties (sections 5 and 6).

In compliance with Congressional Budget and Impoundment Control Act of 1974 (P.L. 93–944, a request for authorization of appropriations for FY–1979 was submitted to Congress on March 25, 1977, as part of a legislative proposal which also requested authorization of appropriations for FY–1978. When the FY–1978 authorization bill was introduced and eventually enacted there were no references to the 1979 fiscal year requests. Since the FY–1979 request has not been acted upon, we are resubmitting it as part of the attached legislative proposal.

Section 1 through 4 of the legislative proposal are responsive to section 5 of P.L. 94–406 which requires authorization before funds may be appropriated to or for the use of the Coast Guard for operational expenditures, capital acquisition and construction, bridge alterations, or research and development.

For reasons of simplicity, individual items within each of the above categories have not been listed. However, the appropriate committees will be furnished detailed information identifying each item for which authorization of appropriations is requested. Furthermore, the Department will be prepared to supply any other information requested by the Congress.

Sections 2 and 3 of the bill respond to section 6(a) and 6(b) of P.L. 94–406 which require authorization of the Coast Guard's "end strength" and "average military training load" respectively.

Section 4 of the proposed legislation amends section 30 of the Federal Boat Safety

Act of 1971, as amended, to extend authorization of appropriations to be used for financial assistance to state boating programs in the form of matching grants. Federal grants under FBSA have been instrumental in encouraging states to adopt and expand safety programs for recreational vessels which have helped reduce the fatality rate in recreational boating activities. The objective of the grant program to provide seed money to encourage state action in boating safety has been generally successful. A phase-down of the grant authorization to $3,000,000 in FY-1979 and elimination of the grant program in FY-1980 is requested.

Section 5 of the bill authorizes the Coast Guard to enter into a long-term lease for land on the Quillayute Indian Reservation so that it may relocate and reconstruct the Coast Guard Quillayute River Station. The present Coast Guard Station, also on the Reservation, was built in 1931 and has so deteriorated that it must be replaced. Reconstruction on the present site is not acceptable to the Quillayute Indians, and since the continuing validity of the land use permit issued by the Department of the Interior in 1930 is subject to question, reconstruction on another site is the preferable alternative. The only other location which will meet operational requirements is also on the Quillayute Reservation, and the Quillayute Indians have tentatively agreed to lease it to the Coast Guard. Legislation is necessary to enable the Coast Guard to enter into a long-term lease and to build permanent facilities on the leased property.

Section 6 of the proposed bill authorizes the Coast Guard to enter into a long-term lease for a specific facility near Mobile, Alabama. The Coast Guard presently operates its Aviation Training Center on 232 acres of land at Bates Field, Mobile, Alabama. The land is leased to the Coast Guard for $1 per year. The current lease, negotiated in October 1966, expires on 30 June 1991 and carries an option for an additional twenty-five years renewal by the government upon the same terms and conditions, in short $25 for 25 years. Provisions of the Economy Act of June 30, 1932 (47 Stat. 412, as amended, 40 U.S.C. 278(a)) require specific legislation for permanent improvements to leased property. This legislation will authorize the construction of a flight simulator addition and improvements to a sewage effluent system on the leased property.

It would be appreciated if you would lay this proposal before the Senate. A similar proposal has been submitted to the Speaker of the House of Representatives.

The Office of Management and Budget has advised that enactment of this proposed legislation is in accord with the President's program.

Sincerely,

BROCK ADAMS.●

ADDITIONAL COSPONSORS

S. 551

At the request of Mrs. HUMPHREY, her name was added as a cosponsor of S. 551, a bill to provide grants to States for the payment of compensation to victims of crime.

S. 784

At the request of Mr. SCHWEIKER, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 784, a bill to provide for the unbiased consideration of applicants to medical schools.

S. 1168

At the request of Mr. ABOUREZK, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 1168, a bill to amend the Payments in Lieu of Taxes Act.

S. 1697

At the request of Mr. ANDERSON, the Senator from Minnesota (Mrs. HUMPHREY) was added as a cosponsor of S. 1697, a bill to amend the Wild and Scenic Rivers Act by designating portions of the Upper Mississippi River in Minnesota as a component of the National Wild and Scenic Rivers System and for other purposes.

S. 2151

At the request of Mr. WILLIAMS, the Senator from New York (Mr. CASE) was added as a cosponsor of S. 2151, a bill to authorize loans for the establishment of local, public, low-cost, nonprofit clinics for the spaying and neutering of dogs and cats, and for other purposes.

S. 2219

At the request of Mr. HATHAWAY, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 2219, a bill to monitor the allocation of insulation.

S. 2369

At the request of Mr. ANDERSON, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of S. 2369, a bill to provide Federal assistance for the control of Dutch elm disease.

S. 2487

At the request of Mr. CLARK, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 2487, a bill to amend the Public Health Service Act to provide for greater emphasis on rural health care needs in health planning.

S. 2507

At the request of Mr. ANDERSON, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 2507, a bill to authorize the Smithsonian to acquire the Museum of African Art, and for other purposes.

S. 2605

At the request of Mrs. HUMPHREY, the Senator from Washington (Mr. MAGNUSON) was added as a cosponsor of S. 2605, the National Infant Screening Act of 1978.

S. 2645

At the request of Mr. WILLIAMS, the Senator from Washington (Mr. MAGNUSON) and the Senator from Michigan (Mr. RIEGLE) were added as cosponsors of S. 2645, a bill to establish an Art Bank.

S. 2691

At the request of Mr. WILLIAMS, the Senator from Rhode Island (Mr. PELL), the Senator from Maine (Mr. HATHAWAY), the Senator from New York (Mr. JAVITS), the Senator from Florida (Mr. STONE), and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 2691, a bill to provide for the furnishing of congregate housing services under the United States Housing Act of 1937.

S. 2730

At the request of Mr. WILLIAMS, the Senator from Iowa (Mr. CLARK), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Jersey (Mr. CASE), the Senator from Alaska (Mr. GRAVEL), the Senator from Illinois (Mr. STEVENSON), and the Senator from New Hampshire (Mr. DURKIN) were added as cosponsors of S. 2730, a bill to establish a Hubert H. Humphrey Fellowship in Social and Political Thought at the Woodrow Wilson International Center for Scholars at the Smithsonian Institution and to establish a trust fund to provide a stipend for such fellowships.

S. 2731

At the request of Mr. PERCY, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 2731, the Solar Global Market Survey Act.

S. 2733

At the request of Mr. MCINTYRE, the Senator from Michigan (Mr. GRIFFIN), the Senator from Nevada (Mr. LAXALT), and the Senator from Hawaii (Mr. MATSUNAGA) were added as cosponsors of S. 2733, the Small Business Energy Loan Act.

S. 2734

At the request of Mr. MCINTYRE, the Senator from Hawaii (Mr. MATSUNAGA), was added as a cosponsor of S. 2734, the Solar Energy Bank Act.

S. 2798

At the request of Mr. BROOKE, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 2798, the Homeowners Rehabilitation Assistance Act of 1978.

S. 2799

At the request of Mr. BROOKE, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 2799, the Public Housing Security Demonstration Act of 1978.

S. 2800

At the request of Mr. BROOKE, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 2800, the Housing Act of 1978.

SENATE JOINT RESOLUTION 111

At the request of Mr. GLENN, the Senator from Georgia (Mr. NUNN) was added as a cosponsor of Senate Joint Resolution 111, to authorize participation by the United States in parliamentary conferences with Japan.

SENATE JOINT RESOLUTION 118

At the request of Mr. JOHNSTON, the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Alaska (Mr. GRAVEL), the Senator from Arkansas (Mr. HODGES), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Rhode Island (Mr. PELL), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Maryland (Mr. SARBANES), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) were

added as cosponsors of Senate Joint Resolution 118, to declare an Emergency Medical Services Week.

SENATE RESOLUTION 414

At the request of Mr. PERCY, the Senator from Massachusetts (Mr. KENNEDY) and the Senator from New York (Mr. JAVITS) were added as cosponsors of Senate Resolution 414, requesting the Architect of the Capitol to study the feasibility of installing a solar energy system in the new Hart Office Building.

SENATE CONCURRENT RESOLUTION 66

At the request of Mr. GLENN, the Senator from Texas (Mr. TOWER) was added as a cosponsor of Senate Concurrent Resolution 66, relating to disapproval of import relief to domestic producers of nuts, bolts, and large screws.

SENATE CONCURRENT RESOLUTION 73

At the request of Mr. DOLE, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of Senate Concurrent Resolution 73, regarding the imposition of import fees on crude oil.

SENATE CONCURRENT RESOLUTION 72

At the request of Mr. CASE, the Senator from Rhode Island (Mr. PELL) and the Senator from Michigan (Mr. RIEGLE) were added as cosponsors of Senate Concurrent Resolution 72, regarding efforts to counter international terrorism.

SENATE RESOLUTION 428—ORIGINAL RESOLUTION REPORTED TO AUTHORIZE REIMBURSEMENT OF U.S. MARSHAL SERVICE

Mr. EASTLAND, from the Committee on the Judiciary, reported the following original resolution, which was placed on the calendar:

S. RES. 428

Resolved, That the Secretary of the Senate is authorized to pay out of funds appropriated to the Committee on the Judiciary, the sum of $1,777.00 to the United States Marshal for the District of Columbia as reimbursement for the mileage, witness fees and expenses of five (5) persons subpoenaed by the Committee, to testify at a hearing held by the Committee on the nomination of Robert F. Collins to be a United States District Court judge for the Eastern District of Louisiana.

AMENDMENTS SUBMITTED FOR PRINTING

ELEMENTARY AND SECONDARY EDUCATION EXTENSION—S. 1753

AMENDMENT NO. 1761

(Ordered to be printed and referred to the Committee on Human Resources.)

Mr. STAFFORD submitted an amendment intended to be proposed by him to the bill (S. 1753) to extend the Elementary and Secondary Education Act of 1965, and for other purposes.

(The remarks of Mr. STAFFORD when he submitted the amendment appear elsewhere in today's proceedings.)

DEPARTMENT OF STATE AUTHORIZATIONS—S. 2496

AMENDMENT NO. 1762

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. HATHAWAY submitted an amendment intended to be proposed by him to the bill (S. 2496) to authorize appropriations for the Department of State for fiscal years 1979, 1980, and for other purposes.

● Mr. HATHAWAY. Mr. President, the United States and Canada share the world's longest unprotected boundary—4,800 miles. Approximately 611 miles of this boundary are shared with the State of Maine.

In 1909, in an effort to deal with all the problems associated with a common border and to settle the use of boundary waters, the U.S. and Canada entered into the Boundary Water Treaty.

This treaty established a permanent binational body, the International Joint Commission, composed of six members—three Americans and three Canadians.

The Commission is responsible for: First, the approval of applications to use boundary waters; second, the investigation and study of border problems; and third, the implementation, when requested, of Commission orders and recommendations. It is not responsible for ocean boundaries.

Since 1912, when the first application was received for review, the Commission has developed a reputation as being one of the primary means for identifying solutions to difficult boundary problems. This reputation is based on a solid foundation of law and precedent and the Commission's successful record. Over the years, the Commission has received 61 applications and has had 45 problems referred to it by the two governments. The problems have become more varied and complex as the two governments have developed confidence in the Commission. In recent years, the Commission has been increasingly active in dealing with the growing problems of transboundary air and water pollution.

Under the treaty, the governments are required to pay all reasonable and necessary expenses of the Commission. The U.S. Secretariat receives funds through the Department of State budget to cover the cost of its activities. These activities include providing technical and administrative support to the U.S. commissioners and providing staff and administrative support through the Windsor regional office to implement the Great Lakes Water Quality Agreement. Also, funds are provided to the U.S. Geological Survey, Department of the Interior, to cover the cost of special and technical investigations principally for the maintenance of river gaging stations performed for the Commission. Since the regional office's opening in 1973, the cost of these activities has increased from $517,200 annually to an estimated $1.7 million in fiscal year 1978.

To cover the cost of its board activities, the Commission relies on each government to provide support. In the United States, the board chairman must obtain funds from his Federal agency to pay for the U.S. portion of the costs. In fiscal year 1976, these costs amounted to approximately $5 million. Since 1971, the Commission has been involved in 13 major studies. When completed they will cost the United States about $17 million.

On February 8, 1978, the General Accounting Office issued a report critical of the method the U.S. utilizes to fund the Commission's activities. To correct the problems which the United States now has in providing funds for the Joint Commission, the GAO specifically recommended that—

. . . the Secretary of State, with the concurrence of the Director of the Office of Management and Budget, should

Establish a separate fund to ensure that funds are readily available to promptly begin needed studies that had not yet been requested at the time the budget was prepared; and

Include direct funding of Commission board activities in the State Department budget submission to the Congress. In this regard, other agency budgets should no longer include separate funds for Commission studies.

Officials of all the agencies involved with the Joint Commission have agreed that a separate fund should be established to ensure that money is readily available to promptly begin work on necessary studies. However, most of the agencies do not agree that the activities of the commission's board should be directly funded through the State Department's budget.

Therefore, in response to the problems, pointed out by the GAO report, I am submitting an amendment to the State Department authorization bill (S. 2496) which will:

Create a separate fund within the State Department to finance the studies of the Joint Commission. Funds up to $800,000 would be annually authorized to be appropriated to carry out these investigations. These amounts shall remain available until expended.

Require the Secretary of State to submit a study to Congress by January 1, 1979 with respect to the desirability and feasibility of including all funds required for U.S. support of the Joint Commission in the budget of the Department of State.

I ask unanimous consent that this amendment and the Digest of the GAO report be printed in the RECORD at this point.

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

AMENDMENT NO. 1762

On page 6, line 10, insert the following new section:

IMPROVED FUNDING OF THE U.S.-CANADIAN INTERNATIONAL JOINT COMMISSION

Sec. 10. (a) There are authorized to be appropriated to the Department of State such sums as may be required annually, not to exceed $800,000 per fiscal year, for the purpose of enabling the International Joint Commission, United States and Canada, to promptly initiate investigations requested by the Government of the United States pursuant to Article IX of the treaty entitled the "Treaty between the United States and Great Britain relating to boundary waters between the United States and Canada", signed at Washington on January 11, 1909, for which funds have not otherwise been appropriated. Such funds may be made available by the Secretary of State to meet expenses, other than salaries, incurred by the United States section of the International Joint Commission, any United States agency, or any agency of any State of the United States, in connection with such investigations. Amounts ap-

propriated under this section are authorized to remain available until expended.

(b) The Secretary of State shall conduct a study of possible measures to improve the budgetary procedures of the United States with respect to support for the activities of the International Joint Commission of the United States and Canada. Such study shall consider, in particular, the desirability and feasibility of including all funds required for United States support of the Commission and its activities in the budget of the Department of State. Such study shall take into consideration the importance of the work of the International Joint Commission to United States-Canadian relations; the increasing responsibilities conferred upon the Commission by the Governments of the United States and Canada; the need for timely action by the Commission in response to the requirements of the two Governments; and the possible impacts on domestic programs of United States agencies of changes in procedures for the funding of activities performed by those agencies for or on behalf of the Commission.

(c) The Secretary shall transmit the study to the Congress, together with any recommendations which he may deem appropriate by January 1, 1979.

HOW THE UNITED STATES CAN AND SHOULD IMPROVE ITS FUNDING OF INTERNATIONAL JOINT COMMISSION ACTIVITIES

The International Joint Commission assists the United States and Canada in solving water use problems along their common border. Since 1912 the Commission has reviewed over 60 applications and made over 40 studies. As the two governments have developed confidence in the Commission, they have asked it to consider more complex problems. However, the Commission's ability to respond to these requests has been hampered because the United States lacks an effective method of funding the Commission's studies.

U.S. FUNDING PROBLEMS LESSEN COMMISSION'S ABILITY TO RESPOND TO REQUESTS AND DISPUTES AGENCY PROGRAMS

In one instance, the United States was unable to meet the requirements of the Boundary Waters Treaty and in other instances Commission studies were delayed and other agency programs were disrupted because of the U.S. mechanism to fund its portion.

The Boundary Waters Treaty requires that the United States and Canada provide enough financial support and resources for the Commission to perform any study requested by the two governments. The majority of U.S. funding, however, does not go directly to the Commission. Instead, the Commission performs its studies through specially created international boards which are usually composed equally of Canadian and U.S. members with cochairmen usually appointed from a Federal agency in each Government. These board cochairmen are then expected to find sufficient funds within their agencies to carry out the Commission studies.

In the United States, board chairmen frequently must fund Commission studies from money originally programmed for other related projects, or use funds from projects only indirectly related to the Commission studies. In other instances, U.S. board chairmen have delayed Commission studies until the Congress approved their agencies' supplemental appropriations. Here are some examples:

The United States could not meet its commitment under Boundary Waters Treaty to provide $25,000 for a study by the Commission's Air Pollution Advisory Board because the Environmental Protection Agency did not have the funds. As a result, the U.S. portion was not done. GAO did not determine the effect of this (See p. 6.)

The Great Lakes Levels Study took 11 years to complete. One phase of the study was held up one year because of difficulty in obtaining initial study funds. (See p. 7.)

The Environmental Protection Agency's followup on various water quality problems was disrupted because the Agency used over $100,000 from various water quality programs to fund the U.S. portion of the Commission's study of the Garrison Diversion. (See p. 8.)

Many important decisions regarding the use of boundary waters cannot be made until Commission studies are completed. Because delays in these decisions can drastically increase the cost of the project, the two governments have requested that recent studies be completed in 1 to 2 years. However, such studies generally cannot be funded that soon through the routine budget and appropriation process. (See p. 7.)

Another factor which affects the present U.S. funding mechanism is that State governments are requesting more involvement in Commission studies. Responding, the Commission has appointed more State personnel to its boards. However, the States do not have the funds to cover the cost of participation and are looking to the Commission and U.S. agencies for financial support. (See p. 11.)

Indirect funding has caused the true cost of the Commission studies to lose visibility. Since 1971, the Commission has been involved in 13 studies, which will cost the United States an estimated $17 million upon completion. Because some of these funds were obtained indirectly through other agencies, the Congress is not aware of the total cost of the studies or that funds justified in the agencies' budget submissions for various projects were used instead for Commission studies. (See p. 6.)

LIMITED RESOURCES PROVIDED TO U.S. SECRETARIAT

In addition, the Commission is hampered because U.S. staff and financial support have not kept pace with the increasing demands placed on the Commission and the U.S. Secretariat. This means that the U.S. Commissioners have not been provided the technical advice and administrative support they needed; and they have had to rely on the Canadian Secretariat for support. (See p. 18.)

An example of the impact of the limited staffing is the amount of duties assigned to the staff engineer. This job calls for involvement in almost all Commission functions—reviewing and evaluating various reports from technical and control boards, advising the U.S. Commissioners on the soundness of engineering data, and preparing the technical portions of Commission reports. Because there has been only one engineer at the U.S. Secretariat, however, he has frequently not been available to provide this assistance. Instead, the Commissioners have relied on the assistance of the Canadian Secretariat which has three engineers performing these functions. (See p. 18.)

Although the need for a larger U.S. Secretariat staff long has been recognized, in each of the last 5 years the Commission's requests for additional staff has been turned down. (See p. 20.)

None of the U.S. Secretariat requests for additional staff for 1974, 1975, 1976, and 1977 was filled. In its 1978 budget proposal the U.S. Secretariat requested six additional positions. Two were cut from the budget proposal by the Department of State before it was submitted to the Office of Management and Budget and two were cut afterwards. The other two positions were included in the budget submitted to the Congress and were approved. The U.S. Secretariat's 1979 budget proposal again requests the four positions previously denied. (See p. 20.)

RECOMMENDATIONS

To correct the problems the United States has in providing funds for International Joint Commission studies, the Secretary of State, with the concurrence of the Director of the Office of Management and Budget, should

Establish a separate fund to ensure that funds are readily available to promptly begin needed studies that had not yet been requested at the time the budget was prepared; and

Include direct funding of Commission board activities in the State Department budget submission to the Congress. In this regard, other agency budgets should no longer include separate funds for Commission studies. (See p. 13.)

AGENCY COMMENTS AND ACTIONS

Officials of all the agencies involved agree that a separate fund should be established to ensure that funds are readily available to promptly begin needed studies, and said they would work toward its establishment. (See p. 14.)

Most of the agencies did not agree on direct funding of Commission board activities, principally because they perceived no operational problems stemming from the present arrangements. But this report shows that problems have been experienced by agencies in obtaining funds for board activities and that direct funding for all Commission activities in the State Department budget is both needed and practical. (See p. 15.)

Officials of all the agencies involved agree that there was a need for an increased staffing level of the U.S. Secretariat. The 1979 State Department budget submission to the Congress includes four new positions for the U.S. Secretariat. If authorized by the Congress, those positions should alleviate some of the U.S. Secretariat's staffing problems. (See p. 22.) ●

PANAMA CANAL TREATIES—EX. N, 95–1

AMENDMENTS NOS. 93 THROUGH 97

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT submitted five amendments intended to be proposed by him to the Panama Canal Treaty, Ex. N, 95–1.

AMENDMENT NO. 98

(Ordered to be printed and to lie on the table.)

Mr. SCOTT submitted an amendment intended to be proposed by him to the Panama Canal Treaty, Ex. N, 95–1.

RESERVATIONS SUBMITTED FOR PRINTING

RESERVATIONS NOS. 9 AND 10

(Ordered to be printed and to lie on the table.)

Mr. CANNON submitted two reservations intended to be proposed by him to the resolution of ratification of the Panama Canal Treaty, Ex. N, 95–1.

RESERVATION NO. 11

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted a reservation intended to be proposed by him to the resolution of ratification of the Panama Canal Treaty, Ex. N, 95–1.

RESERVATION NO. 12

(Ordered to be printed and to lie on the table.)

Mr. BROOKE submitted a reservation intended to be proposed by him to the resolution of ratification of the Panama Canal Treaty, Ex. N, 95–1.

(The remarks of Mr. BROOKE when he submitted the reservation appear elsewhere in today's proceedings.)

NOTICES OF HEARINGS

SUBCOMMITTEE ON PARKS AND RECREATION

● Mr. ABOUREZK. Mr. President, I wish to announce for the information of the Senate and the public, the scheduling of a public hearing before the Subcommittee on Parks and Recreation.

The hearing is scheduled for Friday, April 28, 1978, beginning at 10 a.m., in room 3110 of the Dirksen Senate Office Building. Testimony is invited regarding S. 88, a bill to enlarge the Sequoia National Park in the State of California by adding to such park the Mineral King Valley area, to provide for certain planning respecting the management of such addition, and for other purposes.

For further information regarding the hearing, you may wish to contact Mr. Tom Williams at 224–7145.

Those wishing to testify or who wish to submit a written statement for the record should write to the Subcommittee on Parks and Recreation, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.●

SUBCOMMITTEE ON ALCOHOLISM AND DRUG ABUSE

● Mr. HATHAWAY. Mr. President, I wish to announce that the Subcommittee on Alcoholism and Drug Abuse will hold a hearing to consider reauthorization of the Drug Abuse Office and Treatment Act of 1972 on Wednesday, April 19, 1978. Further, the subcommittee has scheduled a hearing on renewal of the Alcohol and Drug Abuse Education Act on Thursday, April 20, 1978. Both hearings will begin at 9:30 a.m. in room 4232, Dirksen.

Further information may be obtained from the subcommittee office at 119 D Street NE., Washington, D.C. 20510. Telephone (202) 224–8386.●

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

● Mr. SPARKMAN. Mr. President, I wish to announce that the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs, will hold a 1-day hearing, on April 13, 1978, on S. 2691, a bill introduced by Senator WILLIAMS, to provide for the furnishing of congregate housing services under the U.S. Housing Act of 1937.

The hearing will begin at 9 a.m. and will be held in room 4232, Dirksen Senate Office Building.

The subcommittee would welcome statements on the bill for inclusion in the hearing record.●

CIVIL SERVICE REFORM LEGISLATION

● Mr. RIBICOFF. Mr. President, on Thursday, April 6, the Committee on Governmental Affairs will begin hearings on S. 2640, the Civil Service Reform Act of 1978. The following is the schedule for the committee hearings as currently established:

April 6, 1978: James T. McIntyre, Jr., Director, Office of Management and Budget; Alan K. Campbell, Jule Sugarman, and Ersa H. Poston, U.S. Civil Service Commission.

April 7. 1978: David Cohen, president, Common Cause; panel of representatives from National Academy of Public Administration; Rocco Siciliano, Committee for Economic Development.

April 10, 1978: Ralph Nader, public citizen; Bertrand Harding, National Civil Service League; representatives from Disabled American Veterans, Veterans of Foreign Wars, and the American Legion.

April 12, 1978: Elmer Staats, Comptroller General of the United States; Dr. Jack Carlson, Chamber of Commerce of the United States; Vincent Connery, president, National Treasury Employees Union.

April 13, 1978: The Honorable Richard A. Snelling, Governor of Vermont; panel of representatives from: Federally Employed Women, Wheel, National Women's Political Caucus, and Coalition for Women's Appointments.

The hearings will be held each day in room 3302, Dirksen Senate Office Building. On April 6, the hearing will begin at 9:30 a.m. Thereafter, the hearing will begin at 10 a.m. I will announce additional days of hearings as the committee's schedule is set.●

ADDITIONAL STATEMENTS

PRESIDENT CARTER'S WELFARE REFORM PLAN

● Mr. CURTIS. Mr. President, attention has been focused recently on the Carter welfare reform plan and upon some of the problems which have been discovered in this legislation.

The National Welfare Fraud Association is made up of dedicated professionals in the field of controlling welfare fraud; it includes in its membership welfare fraud investigators, district attorneys' staff, and similar persons skilled in preventing and detecting welfare fraud. The past president of this organization, Mrs. Dorothy Forney, of Harrisburg, Pa., has established a nationwide reputation as an individual with demonstrated depth and expertise in this field and with a longstanding dedication to true welfare reform. I should like to request that a recent speech by Mrs. Forney on the subject of the Carter welfare reform proposal be printed in its entirety in the RECORD.

The speech follows:

CARTER'S WELFARE REFORM

Let's hope a closer look will be taken at the proposed panacea to all welfare problems offered by the Carter administration.

One could liken the silver platter fare to a paper house built on a statistical pyramid of cards: A slight breath of fresh air and down comes the model.

The plan, in light of analysis of cost, as it was presented to the American people, has all of the appearances of a statistical cover-up. Perhaps the most redeeming element of the plan for President Carter is that fiscal relief is planned politically for 1981 and therefore not to be realized until after the next election. The nation needs fiscal relief now—not in 1981.

The real cost of the program has yet to be uncovered or discovered. Several fallacies in the list of "Current Federal Expenditures and Offsets" must be thoroughly recognized and their full impact assessed. For example, an offset considered as a "fait accompli" is "wellhead Tax Revenues" of 1.3 billion dollars. This new tax is contained in the energy bill, and is another tax the middle class will shoulder directly through higher fuel costs. An offset of 3 billion dollars for Social Security is also included due to "more persons employed." However, if these are federal jobs, paid with taxes, does this not constitute a raid on the already seriously depleted Social Security Fund?

The administration refused to include $3.4 billion of expected tax benefits to nonrecipients of income supplements as a cost of the program. This is inefficient accountability for somewhere, somehow a replacement for the $3.4 billion must be found. Nor has the cost of the state supplement been included anywhere. In the first year, the States must pay 90% of their current costs; in the second year, only 60%, and in the third year just 30%. Thereafter, they will assume only 10% of the basic benefit. Will state taxes drop accordingly? And who, then, picks up the tab for the reduced state spending? Who will pay the taxes to pay the bill? None other than the already overburdened middle class working taxpayer. But perhaps by that time he will have become eligible for welfare himself, and we will reach that state long ago predicted of more persons taking from the government than contributing to it. At this point, we will be faced with New York City's fiscal collapse on a national scale, and inevitable socialization of the nation.

The lack of statistics is to be deplored. In a program of this magnitude, we are asked to accept dollar figures totally unsubstantiated by such things as the numbers of persons who will be added to the rolls, based on the expanded breadth of the program, when welfare costs will begin to de-escalate, and the effect on the public at large. A program purported to further include single persons, childless couples, and working intact families can only spell far higher costs. The numbers now carried only on state rolls and others not now carried anywhere, who will become a part of the program, have not been revealed, yet a stab has been made at costs which will undoubtedly be greater than set forth in the plan.

Another cost factor which has been totally ignored is the impact of additional millions of persons who will become eligible for Medicaid. The ominous portent here is the threat of National Health Insurance, covertly injected as a "proposal to be presented to Congress early next year." This only postpones the immediate need to reform another federal program out of control, with a solution not yet acceptable by many, yet one that is closely entwined with cash assistance.

Are we willing to take advice from the countries that have already been through this mill and are now trying to unwind the momentum? Or are we committed to indulging in the same trials and tribulations from which we will be unable to extricate ourselves fiscally?

A key alleged feature in the new welfare reform proposal is "Job Opportunities." The Federal government will be required to create 1.4 million public service jobs that "would pay the minimum wage or slightly above."

Upon closer examination, one must question the artificial creation of 1.4 million "new" jobs. The private sector has had difficulty filling millions of job openings appearing in daily and weekly newspapers regularly. If the unemployment figure blithely fed the public on a monthly basis were analyzed realistically, it would show probably a fraction of actually unemployed persons, according to Robert Snelling in an article in U.S. News and World Report in 1972.

Where have these jobs been up to this time? If a job needs doing, it is usually "created" by local governments or the states or private industry. The curtain is being drawn on the real significance of the artificial creation of jobs—this is merely a shift from one welfare program to another, and should not be couched in deceptive terms. Only the private sector can create real jobs.

If the administration intends to provide such jobs at "higher than minimum wages," how will it ever be possible for the private employers to fill the jobs now available? Government will be in direct competition for labor which should be available to private employers.

For example, in "The Jobs Component" of the President's plan, we find this statement: "Over two million low-income people are expected to participate in this employment and training program annually . . . includ-(ing) not only current welfare recipients but also many low-income people who are not currently eligible for welfare." And a further statement, "There will be no income or assets tests for determining eligibility (for government jobs)"—because "they may arbitrarily exclude people who both need and want to work."

In addition, "prevailing minimum wage" is open to various interpretations. Is it the Federal minimum wage, the minimum wage set by individual states within their borders—or does it mean the prevailing wage for certain jobs, which has been so costly to many areas?

Setting aside these negative elements, let us now examine other factors. In the President's proposal, the father with a small child in an intact family who declined a subsidized job under the family program would make them eligible in the "not expected to work" category if he leaves the family. Benefits to the family would be increased to $4,200 per year plus state supplements. He could then apply for benefits for himself as an individual and receive an additional $1,100 a year. Because the 1.4 million subsidized job slots are reserved for families, the father could not be offered or required to accept one and he would continue to receive $1,100 in cash benefits plus any state supplements. This is a real incentive to break up the family.

Despite President Carter's emphasis on strengthening family ties, the new plan would actually discriminate against marriage for the aged, blind or disabled; but the married and unmarried younger persons who are among the most able in our society would reap higher benefits. And, for the icing on the cake, if a married couple declined a job, total benefits would be denied; but if the couple were unmarried and receiving benefits as single individuals living together, half of the benefit would continue if one refused to work.

Most of the working poor and the lower spectrum of middle class workers have remained in jobs because they have had pride in supporting themselves and their families. The Carter plan is about to rob even these persons of their last shred of dignity. They may not have all of the comforts of life, they may find making ends meet difficult, yet they retain their self respect and self sufficiency. The Carter plan has already told them they are less than able to take care of themselves, and the stigma has begun.

High benefits characterize the plan, and the higher points of departure from the rolls will undoubtedly focus the attention of the nation's taxpayers more sharply on the "Program for Better Jobs and Income" than ever before on public welfare. Once the magnitude of the scope of coverage becomes evident, a backlash is inevitable. "Program for Better Jobs and Income" under the Carter plan is simply welfare by another name.

It is not difficult for anyone to recognize the deliberate attempts to federalize the welfare program. Ever so generously, the President in his plan gives the states the "option" to perform the "intake" function of the administration of cash assistance. There is no incentive offered to the states to accept that option. Since most employes would become federal employes under the plan, the unions will not object, and the states will be relieved of the entire responsibility except to pay their share of the cost to retain grants at present levels.

The Department of Health, Education, and Welfare estimates total federalization of the welfare system will reduce the number of employes required to administer the monster and result in greater efficiency. Perhaps a closer look at the recent SSI take-over is warranted. Five- and six-month delays are common. The error rate is even higher than the present welfare program. Fraud is evident but goes unchecked. Can HEW, therefore, assume another burden of more than 40 million people (cash grants to both AFDC and general assistance recipients, and food stamps) with any degree of efficiency with 50 percent less staff, as is proposed?

The estimated figures for the number of federal employes that will be required (a new layer of federal bureaucrats) is questionable. Even so, operating a dual system with both state and federal employes would be another administrative nightmare—and there is already an abundance of these without invitation to more.

The Carter plan is a direct challenge to the American taxpayers: Do we want local control, or do we want federalization and big-brotherism? Do we believe that 40 million citizens must have some kind of government prop, or do we prefer to believe we can be self-sufficient if government keeps its nose out of our business? Do we truly believe we can pay equal benefits nationwide, or are we certain that the states are able to decide what is best for them individually?

Not a word has been written in the proposal by the President concerning fraud, or punishment for cheating. Is the administration so convinced that honesty will return to a system which is so generous as to discourage work, break up families more than ever before, permit converting assets to costly household and personal items, remove any shred of fiscal responsibility that now exists, that it is willing to lay its integrity on the line in a plan which totally deceives the taxpayers of this nation? There is a kind of sophistry in espousing a welfare reform program that permits people with high assets, such as expensive cars, homes, and other personal effects, to live off the taxpayer and collect welfare as well.

To espouse "fewer people on welfare," when the plan will admit millions more; to set up government in direct competition with private employment; to gouge the middle class with more taxes for high-income people; to suggest that such a program is welfare reform is unconscionable.

President Carter's campaign promises included a very strong commitment to return government to local control. Among others on which he has retrenched, this is probably the greatest deception proposed so far.

The administration expressed dedication to human needs. This plan is probably the most discompassionate ever devised. It will remove the personal contact given by local jurisdictions to recipients in their hour of need to a mechanical approach which will result in the usual computer snarls that cannot be untangled for months.

To accept the premise that every state can be treated in the same way as every other state is to fail to recognize the vast differences in the people of our nation. They differ from state to state, even from county to county. A federal system attempting to administer from a single location in the nation is the most inhumane approach to the problem. We need instead to return to the local approach. Let the federal government provide the funds to the counties—but let the counties decide the rules. Everyone will be better served.

Several peripheral benefits have been completely overlooked in the Carter plan. A few years ago former Congresswoman Martha Griffiths (D-Mich.) spent a great deal of time and effort, as well as money, studying the administration of welfare in the nation. She found that some people benefited from as many as 11 different programs. This fact has not been considered in the Carter plan, and it must be assumed that multiple benefits in the form of housing subsidies, free meals, and others will continue. Nor have these costs been included in the projected cost for the new proposal.

One of the best solutions to the present welfare dilemma would be the training of highly skilled intake workers. It is the most important job in the system, yet it is the one with the least skilled employe. A recent GAO report backs this up. The job could be served best by a skilled social worker who has the true welfare of applicants and recipients at heart—one who would encourage job-search, self-reliance, and pride in self-improvement. Instead, our system is fraught with social workers who get the applicant after he has become a recipient, and then who must ensure continuance in the system or lose their own jobs.

The complexity of the proposed programs has not yet been fully realized. While the President complained in his presentation that the present system is complex, a few simple strokes of his pen could eradicate many of the stumbling blocks. But no President since the give-away began in 1933 has had the guts to do it. They believe it would be political suicide. The sooner one wakes up to the fact that it will be political suicide not to clean up, the better off all of America will be.●

FEDERAL BANKING AGENCY AUDIT ACT

● Mrs. HUMPHREY. Mr. President, for too long our bank regulatory agencies have escaped congressional auditing. At the present time, the Federal Reserve Board, the Office of the Comptroller of Currency, and the Federal Deposit Insurance Corporation are the only exceptions to a congressional audit by the General Accounting Office. Yet, their proper functioning is critical to the financial and economic well-being of the Nation.

I urge my colleagues to support H.R. 2176, the Federal Banking Agency Audit Act. Passage of this legislation is vital to improve the operating efficiency of the three agencies and to improve con-

gressional oversight of them. Last year, the operating expenses of these agencies totaled more than $900 million, but those expenditures were excluded from a congressional audit. The Governmental Affairs Committee has discovered significant problems in the operations of the Federal banking agencies. Congress does not now have the necessary means to insure that these agencies are appropriately expending funds and it needs to be able to do so. This bill will rectify that situation.

This bill is a prudent measure. It provides the GAO with access to all agency documents and materials necessary for authorized audits and requires the Comptroller to make reports to the Congress as often as practicable.

It does, however, recognize that the Federal Reserve Board must be able to independently conduct the Nation's monetary policy. Therefore, the monetary policy deliberations of the Fed are excluded from a GAO audit. But operations relating to bank supervision are rightfully included as subject matter for an audit. The Fed is a creature of Congress and its operations should be subject to close congressional scrutiny.

The bill has adequate safeguards to protect the confidentiality of bank and bank holding company reports and loan information. In addition, in only rare instances can the GAO disclose the identity of a bank, bank holding company, or the customers of either.

The authority given to the GAO by this bill is warranted and is adequately safeguarded. We cannot allow the operations of these agencies to remain isolated from proper congressional oversight. Swift enactment of this bill will more firmly establish the proper relationship between the Congress and the Federal banking agencies.●

THE RETIRED SENIOR VOLUNTEER PROGRAM

● Mr. GARN. Mr. President, the ACTION Agency which operates the retired senior volunteer program (RSVP) has proposed a 25 percent reduction in funding of the RSVP for fiscal year 1979. As the RSVP is one of the most cost-effective, worthwhile Federal programs in existence, I was shocked at the proposed reduction which if implemented would result in the loss of over 30,000 senior volunteers.

Since its beginning in 1971, RSVP programs throughout the Nation have met, if not surpassed, the guidelines established for this program. There are now over 40,000 volunteers aged 60 and over in 700 communities that are daily giving of their time. Every State in this Nation has nothing but praise for the RSVP program.

The uniqueness of this program and the irony of the proposed reduction is that the only cost for RSVP's is for local administration and meals and transportation for the volunteer. This means that the Federal payment for each volunteer is only about 40 cents an hour. RSVP also involves a significant 30 percent local match which assures local commitment and grassroots support. There is no other Federal program where we get so much for so little.

Of equal importance is the sense of usefulness that these volunteers feel. They know they are contributing to their community and are important members of society. They do not feel forgotten.

In my own State of Utah for example, there are over 1,800 volunteers working in hundreds of nonprofit organizations, hospitals, libraries, clubs, schools and nutritional centers. They work with the physically and mentally handicapped and read to the blind. They work with the low income and disadvantaged youth. And some volunteers, even though they know they will not get reimbursed for their expenses, transportation and meals, participate anyway. There is no end to the good they accomplish.

An important part of the Utah RSVP organization is the annual banquet where all volunteers are officially recognized for their tremendous contribution to their community and State. While Mayor of Salt Lake City, I had the opportunity to participate in these banquets where I was able to witness the various success stories of the volunteers and the genuine happiness they feel as productive members of society. It was evident that the RSVP program was one of the most important things in their lives.

Mr. President, as a fiscal conservative I believe in close scrutiny of Federal budgets and the elimination of waste. But the compelling success of this program coupled with its cost-effectiveness does not warrant a reduction in funding.●

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

● Mr. ANDERSON. Mr. President, as Senate author of S. 1728, the "Domestic Violence Prevention and Treatment Act" and as an original cosponsor of S. 2759, the "Domestic Violence Prevention and Services Act," I have been very pleased to work with the leadership and members of the National Coalition Against Domestic Violence. The coalition during hearings chaired by Senator ALAN CRANSTON on March 8 and by Congressman GEORGE MILLER on March 17 provided helpful, first-hand insights into the needs of battered women and their families, and how to best address them.

I request that the text of the coalition's statement be printed in the RECORD.

The text follows:

STATEMENT FROM THE NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

During these hearings you will hear the painful stories of women who have suffered great violence at the hands of those they love. You will hear the frustration, anger, and despair of victims, law enforcement officials, lawyers, and social workers as they tell of being overwhelmed by the extent and complexity of the problem of domestic violence. You will hear the personal feelings of what it is like to be beaten and the professional opinions of why it happens and how to respond to both the victim and the assailant. And then, you will make decisions on how the federal government should address these needs.

I am here to speak to you on behalf of the National Coalition Against Domestic Violence. We are representative of the more than 300 grass roots groups throughout the country currently providing shelter or other direct services to victims of abuse. Our members are from diverse racial, social and economic backgrounds. Most importantly, we are here to speak to you on behalf of all of the women who have found the courage to say: "Enough! We will not live our lives in fear and degradation. We will not raise our sons to be violators and our daughters to be victims. We will rescue ourselves and we will use what we have learned to help others who are trapped in the cycle of violence."

I want to say to you quite simply: We are here. We are the essential source of the great national outcry about battered women. We know our problems. We know our communities. If you want to help us, give us as much money as you can, as quickly and as directly as possible.

Administer the money in a way that gives us easy access to the decision makers. Write the guidelines so that we can understand them—we would be pleased to assist by participating in a peer review panel. Let us share with you what we have learned during the past several years.

From my experience, I believe that funding small community based programs which involve battered women in the decision making process is the most effective way to aid victims of domestic violence. These programs have enabled battered women to make basic changes in their lives quickly, effectively and at relatively little cost. As the Chairperson of the National Coalition, I am in close contact with these groups. Most of us began with little or no funding, administrative expertise, or established community support. Through the last few years, however, we have sheltered thousands of women and children, and established hot lines and support groups in most of the major cities as well as in many rural areas. We have provided the stepping stone for the battered woman to escape her world of isolation and violence.

Our communities have recognized both the sincerity and viability of our work. Established institutions and agencies are now turning to us for guidance as they begin to address the issue. Public response is being expressed through growing concern and commitment to meeting the needs of victims of domestic violence.

Our programs do meet these needs. Many of the women who have come to us are now back in the community offering shelter and support to other victims and their families. In the long run, these programs are self-sustaining due to significant community involvement and support. They represent an efficient use of resources.

Our programs work because we begin with a personal knowledge of the effect of violence. We know that battered women are almost always dependent upon someone else for their survival. It is common to describe them as passive, having no self-confidence and unable to set their own goals. I have known strong independent women who have been reduced to being unable to make a single phone call on their own behalf.

In order to break the cycle of violence, these women must first free themselves from their traditional dependency upon others for their economic, social and psychological well-being. Our programs, which rely upon the peer self-help model provide an effective alternative to tolerating violence.

I urge you to support legislation which gives top priority to funding community

based, direct service programs which rely upon the guidance of the victims of violence. I suggest that any research which is funded be directly grounded in these programs. Regional and national network and clearing houses for information are emerging. The National Coalition Against Domestic Violence represents a composite of these groups.

I urge that the work and concerns of these programs be recognized as legislative and other remedies are developed.

In considering where this money should be placed, I would like to express appreciation for the concerns raised by Representative Mikulski in her testimony. The National Coalition is concerned that this money not be splintered up and lost in a bureaucracy that is not easily understood by grass roots groups. We are concerned that funds reach local groups as directly as possible and in a way which enables these groups to determine for themselves how they can make the best use of this money. Nationally, we want a central coordination of information and decision making that is directly responsive to our needs and input. We will be happy to assist in determining the best way to address these concerns.

On behalf of the National Coalition, I want to express my appreciation for your concern. We look forward to working with you.●

THE NEUTRON BOMB

● Mr. HAYAKAWA. Mr. President, I cannot help noticing all the recent press attention that is once again being given to the so-called neutron bomb. For almost a year now, we have been periodically reading about how this weapon is a destroyer of people but not buildings. Hence the bomb has been described as a "people-killer," although almost all weapons of war back to stone clubs and bows and arrows are also "people-killers." After all, killing people is how we fight a war. So it is ironic that a less destructive weapon, designed to kill enemy soldiers while sparing civilian populations and cities where they live and work should come under such heated attack from those who want to diminish the horrors of war.

I am not satisfied with the arguments that are being used against the deployment of the neutron bomb. The principal opponent is the Soviet Union, and it appears that many officials in Western Europe and the United States have been listening to them. In my opinion, President Carter threw away an important bargaining chip when he ceased production of the B-1. Deciding against the deployment of the neutron bomb, without any concessions from the Soviet Union, is clearly not in the interests of this country. The neutron bomb is one of the most effective antitank weapons that we could have at our disposal. Its deployment would enhance deterrence by making the Soviets think long and hard about launching an attack against such formidable retaliation. In any case, the threat of neutron bomb production can be used to force some concessions from the Soviets on their new SS-20 nuclear missiles or possibly obtain withdrawal of some tank divisions.

Editorials in the March 30 New York Times and the April 5 Wall Street Journal point out many advantages of the neutron bomb. I submit these articles for the RECORD.

The articles follow:

[From The New York Times, March 30, 1978]

THE VIRTUES OF THE NEUTRON BOMB

Ever since the Carter Administration asked Congress last summer for funds to produce enhanced-radiation nuclear warheads, critics ranging from Soviet propagandists to Western cartoonists have had a field day attacking the so-called "neutron bomb." The archetypical capitalist weapon, Moscow has called it, a destroyer of people but not property. Grim forecasts of lingering radiation deaths have filled newspaper columns worldwide. Rarely have the relevant questions been asked: Is the neutron weapon really more terrible than other nuclear weapons? And, more important, would its deployment make nuclear war more likely?

The answer to both these questions is almost certainly "no." Hence, the NATO governments will probably decide within a few weeks to deploy this ground-launched tactical nuclear warhead whose modest blast and intense but circumscribed and short-lived radiation make it particularly effective against advancing tank armies. If the NATO partners reach that decision—and we think they should—the alliance could acquire a potent means to defend Western Europe against the contingency that its planners fear most: a breakthrough by massive Warsaw Pact tank forces that vastly outnumber NATO's. Neutron weapons in Western hands would significantly complicate Soviet tactical planning: If its tanks were to attack in mass, they would be highly vulnerable. If they were to disperse they would be easier targets for conventional precision-guided anti-tank weapons.

Faced with this prospect, Moscow has ceaselessly denounced the neutron warhead as a diabolic qualitative change in the arms race—and has threatened to deploy its own version unless NATO desists. The charge is hollow. Neutron warheads are pre-eminently defensive weapons, not useful offensively. NATO's strategy is—and would remain—defensive. Regrettably, nuclear weapons will play a considerable deterrent role in that strategy for the foreseeable future, since there is no likelihood that NATO will match the Warsaw Pact's conventional forces.

The evident effectiveness of neutron warheads is what bothers many West Europeans. Dutch parliamentarians recently resolved that NATO should not deploy them. They reason that because most of the tactical nuclear weapons now in NATO hands would be more destructive to surrounding territory than neutron warheads, NATO governments would be more reluctant to order their use. They fear a lowering of the nuclear threshold that would make the use of nuclear weapons more likely and raise the specter of retaliation, escalation and devastation.

Yet it is precisely because NATO's existing tactical nuclear weapons are less usable than neutron weapons that they are a less credible deterrent against the outbreak of conventional war. And since Soviet military doctrine calls for the early battlefield use of nuclear weapons in any case, the only certain barrier against nuclear escalation is preventing any war at all.

Nor is there reason to think that neutron warheads would be more inhumane than others. All nuclear weapons yield deadly radiation. Their effects vary, depending upon their size and their targets. But given the likely uses of neutron warheads, the number of persons who would be left to die slowly would be no greater than similar casualties from other nuclear weapons.

Neutron weapons will not reach NATO field forces until some two years after the allies decide on deployment. Given their defensive character, it is difficult to know why Moscow should be so worried. But if its expressed fears are genuine and not mere propaganda, it should offer something of value for NATO's agreement to suspend deployment. Pulling back some of its tank divisions, or scrapping the new SS-20 nuclear missiles that are targeted on Western Europe, would be good places to start.

[From the Wall Street Journal, Apr. 5, 1978]

A FRIGHTENING REPORT

The New York Times reports that President Carter has personally decided, against the advice of his Secretary of State, Secretary of Defense and National Security Adviser, to halt the development of the so-called neutron bomb. So far the White House officially says the final decision has not been made, but the report has to be described as frightening.

Not so much because of the weapon itself, though it would be a handy thing to have in the event of a Soviet tank attack in Europe. The truly scary thing, if the report proves to be true, is that the President has turned aside his top advisers and bought the arguments of the flaky left.

There are no serious arguments against the deployment of this weapon, properly called the enhanced radiation/reduced blast warhead. The only difference between the new warhead and the ones it would replace in Europe is that it would produce a smaller explosion, accomplishing the same military mission with less collateral damage. Nothing else would change, but a combination of anti-nuclear emotionalism, misleading press reporting and Soviet propaganda has turned the weapon into a cause celebre.

The salient technical points are as follows: The defense of Europe against the overwhelming Soviet land armies has long been predicated on the use of tactical nuclear weapons; some 7,000 nuclear warheads are already in place. At the low yields of tactical weapons, the chief lethal effect is nuclear radiation. The current warheads also produce large blast and thermal effects; the ER/RB warhead would reduce these effects, perhaps facilitating allied military operations and certainly saving a lot of property while the battle is being fought.

The arguments offered against the weapon are (1) it is inhumane to kill by radiation, as opposed to killing by blasts or burns, (2) nuclear weapons that might be used without blowing up the world increase the likelihood of nuclear war and (3) it annoys the Soviet Union. Whatever the merits of these arguments, they apply to the warheads already in place. If we accept the arguments, it follows not only that we should not deploy the ER/RB warhead, but that we should withdraw all present defense forces from Europe, relying on the strategic threat to blow up the world if the Soviet armies move.

There is the added complication of the political effects on the alliance if the President has decided or does decide to ban this warhead. When the controversy first arose, the U.S. took the position that the Europeans should decide whether it should be deployed on their territory. The Europeans would much prefer the U.S. to decide, and take the emotional and political heat. But the West German government pulled itself together, and now is asking for deployment. After getting them to take the heat, the reported de-

cision would pull the rug from under them. A fine display of American leadership.

It has been hard to understand the current administration on defense issues, and all the more so in recent weeks. The President is perfectly capable of making a hard-line speech at Wake Forest, and the administration is even taking sensible and politically courageous actions to shore up the strategically dangerous rift with Turkey. At the same time, it is preparing to gut the Navy and offering disarmament proposals that rely on askng the International Atomic Energy Agency to verify how much nuclear material the Soviets are using in bombs.

A presidential decision against the "neutron bomb" would be an ominous turn in this curious chain of events. In that event, a message to get serious about defense would have to be delivered quickly to Mr. Carter with whatever means may be available. A loud resignation or two on the part of high military officials, for example, or on the part of the U.S. Senate, rejection of the second treaty on the Panama Canal.●

COMPENSATION FOR VICTIMS OF CRIME

● Mrs. HUMPHREY. Mr. President, today we are faced with a most disturbing trend in law enforcement. The Federal Government spends almost $8,000 annually to feed, clothe, house, and provide medical services, psychiatric care and other services to the incarcerated perpetrator of violent crime. Yet, the plight of the innocent victim has been almost entirely ignored by the Federal Government.

We have made strong efforts to make our Nation's streets safe, and our actions are laudable. But even those persons most optimistic about the success of these actions realize that violent crimes will haunt thousands of innocent, unsuspecting victims. From 1967 to 1976 alone, the violent crime rate increased by over 80 percent. Most often, it is the poor and the elderly who are the victims of violent crime.

More than 20 States have recognized the need to compensate victims of violent crime for the economic hardship they suffer. However, the funding of some State programs is running dangerously low, and some States may be forced to terminate their programs. These victim compensation programs only compensate the innocent and only where the victim has been physically injured or has died. The programs do not compensate victims for the loss of stolen property and they do not compensate victims when compensation would result in double recovery.

This Government is too great to ignore the innocent victim of violent crime. The Government and the courts have made an effort to protect the legitimate civil rights of criminal defendants. Indigent accused are provided with legal counsel and all necessary expertise, at the public's expense. The accused is also clothed by a full range of constitutional protections. I urge my colleagues to also protect the rights of innocent victims of crime.

Last year, the Victims of Crime Act of 1977 was introduced in the Senate. This legislation would authorize the Attorney General to make annual grants to qualifying State programs to compensate victims of Federal and State crimes. Compensation would be provided for reasonable expenses incurred by the innocent victim for medical, dental, and psychiatric services, for physical and occupational therapy, and the loss of earnings within specific limits. State participation is voluntary.

My own State of Minnesota has had an extremely good victims compensation program since 1974. To be eligible for compensation, the victim must immediately report the crime to a law enforcement agency and completely cooperate with that agency. The program is run by only five persons. In Minnesota's 1977 fiscal year, the Crime Victims Reparations Board awarded $232,000 to 158 persons. The average payment per claim was just over $1,400.

I urge my colleagues to give thorough and thoughtful consideration to the Victims of Crime Act. Passage of this bill would greatly assist States in operating crime victims compensation programs and would be the action of a compassionate Congress.●

PRESIDENT CARTER PROCLAIMS MAY 3 AS SUN DAY

● Mr. PERCY. Mr. President, I was very pleased to learn that on Monday, March 27, President Carter issued the proclamation requested by the Sun Day resolution which I introduced with a number of my colleagues on February 6 and we passed on March 14. The President proclaimed May 3 as Sun Day, and called upon the American people to observe that day with appropriate activities and ceremonies that will demonstrate the potential of solar energy.

The intent of Sun Day—to inform and excite the American public about the potential of solar energy—is, of course, entirely consistent with the President's commitment to solar energy. The President's public proclamation cannot help but encourage those now organizing Sun Day activities that their work is beneficial and important. The President's proclamation can also help generate the public support so necessary to Sun Day's success.

Mr. President, the Sun Day resolution has succeeded. But Sun Day itself approaches rapidly. It is my hope that Members of the Senate will play a very active role in preparation for the celebration. I urge every one of my colleagues to find out what events are planned in his or her State or district—Sun Day activities are planned in all 50 States—and to encourage his or her constituency to participate in those events. I urge every one of my colleagues to take part in at least one Sun Day event on or around May 3.

A successful Sun Day can do as much or more to head this country in the direction of a clean, economical, and safe resolution of our energy problems as any legislation. I hope every legislator feels a responsibility to work as hard for Sun Day as he or she would for a good piece of legislation.

Mr. President, I submit for the RECORD President Carter's Proclamation 4558.

The material follows:

SUN DAY, 1978

(By the President of the United States of America)

A PROCLAMATION

Today the need to develop and expand renewable energy sources that can provide heating, cooling and power for homes, farms and factories is greater than at any other time in our Nation's history. For this reason, Americans are seeking ways of using the sun as an inexhaustible source of clean energy.

The Federal government and private organizations are working on programs to improve solar technology and encourage greater use of this safe, environmentally acceptable energy source. Our success, however, will depend upon an informed and involved public.

In order to inform the general public, industry and labor about solar technologies and to demonstrate the sun's potential in meeting America's energy needs, the Ninety-fifth Congress has adopted a joint resolution (H.J. Res. 715) designating Wednesday, May 3, 1978, as Sun Day and calling upon the President to issue a proclamation calling for its appropriate observance.

Now, therefore, I, Jimmy Carter, President of the United States of America, do hereby proclaim Wednesday, May 3, 1978, as Sun Day and call upon the American people to observe that day with appropriate activities and ceremonies that will demonstrate the potential of solar energy. I direct all appropriate Federal agencies to support this national observance.

In witness whereof, I have hereunto set my hand this 27th day of March, in the year of our Lord nineteen hundred seventy-eight, and of the Independence of the United States of America the two hundred and second.

JIMMY CARTER.●

FREDERICK MANFRED OF MINNESOTA

● Mr. ANDERSON. Mr. President, the State of Minnesota has a rich and varied literary tradition. Outstanding writers who either were born or resided in Minnesota include Saul Bellow, John Berryman, Theodore Blegen, Robert Bly, F. Scott Fitzgerald, Thomas Gifford, Judith Guest, Thelma Jones, Sinclair Lewis, Charles A. Lindbergh, Mary McCarthy, Sigurd Olson, Robert Pirsig, Ole Rolvaag, Carl Rowan, Harrison Salisbury, Charles Schulz, Alma Scott, Eric Sevareid, Abigail Van Buren, Thorstein Veblen, Robert Penn Warren, and numerous others equally luminous. Whether at a poetry reading in a rural community, or at a play on a distinguished Twin City stage, the written and spoken word is revered in Minnesota.

Southwestern Minnesota is privileged to be the home of a novelist whose work enjoys increasing national recognition. Frederick Manfred of Luverne, Minn., is a man whose rugged and imposing physical presence seems to suggest something of the carefully crafted characters in his "Siouxland."

Frederick Manfred's vivid "remembrance" of the past enriches all of us.

Fortunately, Manfred's literary gift is shared not only with his readers, but also with students and public who are eager to learn from him. To know Frederick Manfred is to appreciate the writer's discipline and literature's ageless value.

Freya, Marya, and Fred—Manfred's three children—share their family's talents and sensitivities. There is more to be heard from each of them. I know that my colleagues will enjoy reading the following vignette on Frederick Manfred published in the April 10, 1978, issue of People magazine:

It is false that the Great American Novel is unachievable. The truth, rather, is that it is being bitten off region by region. Before he died, Sinclair Lewis left behind the definitive evocation of Gopher Praire; William Faulkner's legacy was Yoknapatawpha County. Now a much underrecognized novelist, Frederick Manfred, 66, is rendering what he calls "Siouxland"—the harsh Calvinist region of the upper Midwest where Minnesota, South Dakota and Iowa join.

Typically, its literary archivist is a prophet not entirely honored in his own Siouxland. Around Manfred's native Doon, Iowa—it's called "Bonnie" in his 23rd and current book, "Green Earth"—a neighboring minister denounced the work from the pulpit, and several years ago, after numerous acts of vandalism, the Highway 75 sign announcing Doon, Hometown of Frederick Manfred was removed. A newspaper reviewer in nearby Sioux Center hailed "Green Earth" as "a great book, which not everyone should read . . . Even more than his loss of interest in his religion," the critic noted of Manfred, "his seeming fascination with sexuality has been disturbing to his people here."

The work would, at worst, be rated PG by contemporary standards, and Manfred comments, "God wouldn't have made sex so pleasant if it were just for procreation. Sex drive and creativity seem to go together," he adds, "into a great flowering of energy." Indeed, far from the repression of his youth (and separated from his wife of 34 years), Manfred has at least four novels under way. The only bounds he still imposes on himself are his 10x12x7-foot writing shed, where he begins work daily at 7 a.m. That is indeed something of a discipline, though, for the author is 6'9".

Perhaps his most close-to-the-bone portrait comes in the 721 pages (he sent his editor a first draft of 1,600 pages) of "Green Earth." "I took my first notes for this book while I was in college," he recalls. "I was 18. My mother died the previous summer, and I was lonesome for her, because I thought she, more than any other person, would have understood what I was trying to do." The central character is called Alfred ("Free") Alfredson, a gangling prairie farmer's son not dissimilar to the Frederick Manfred of half a century ago.

Back then, however, he answered to the name of Feike Feikema, the first of six sons born to God-fearing parents of Frisian (a North Sea island chain) stock. Even in adolescence his drift from strict Christian Reformed precepts disconcerted his elders. In high school, for instance, he was caught reading a forbidden copy of Thomas Hardy's "Tess of the D'Urbervilles." With some imagination he tried to explain away his transgression, saying that the book was "about how they milk cows in England. They didn't buy that," he recalls.

Feike attended Calvin College in Michigan, then bumped around the country playing basketball and newspapering. In 1940 he was stricken with what doctors diagnosed as terminal TB. Two years in a sanitarium brought physical recovery but left a psychic mark. "I felt, 'Look, buddy, you should have died, but you didn't,'" he remembers. "I came out of that a raging bull." He married journalist Maryanna Shorba, fathered three children and began writing with a velocity that resulted in a book every 18 months. None was ever sold to Hollywood, but two Indian frontier narratives, "Lord Grizzly" and "Scarlet Plume," became successful paperbacks. In 1952 he changed his name to Frederick Manfred, an anglicized approximation of his given name which, he says, few ever pronounced correctly anyway.

He now works out of a modest stone turretlike house perched on a bluff near Luverne, Minn. Below he sees the Rock River Valley and all three states of his Siouxland. Once each week he makes a 180-mile round trip to teach at the University of South Dakota, where he is writer-in-residence. A couple of times a year he cuts loose a little in New York City. He also visits, in Los Angeles, his daughter, Freya, 33, who has published two volumes of poetry and has just finished a novel. "She could be better than I am," he says, but he's hardly paralyzed by the thought. There's one work in progress that Manfred doesn't expect to publish until he is in his 80s or 90s. "It will be my Oedipus at Colonus work," he muses. "That's the one Sophocles wrote to prove he was still sound of mind, you know."

—ROSEMARY RAWSON.●

EDUCATION: A NATIONAL SECURITY ISSUE

● Mr. BROOKE. Mr. President, I take this opportunity to bring to the attention of my fellow Senators a recent speech by our distinguished colleague from Maryland, Senator CHARLES MATHIAS.

His remarks before the American School Counselor Association on the importance of education as a matter of national security are worthy of our attention. In particular, he makes a cogent case for better funding of several education programs largely neglected in the administration's fiscal 1979 budget request. And he has also made some thoughtful observations on the need for greater attention to the role of guidance and counseling in our Nation's schools. I urge my colleagues to read Senator MATHIAS' speech.

I submit the text of his speech for the RECORD.

The speech follows:

EDUCATION: A NATIONAL SECURITY ISSUE

I am delighted to be here today at this luncheon of the American School Counselor Association. Talking with you about education will be a real change of pace for me.

As you know, the Senate has been debating one issue—the Panama Canal treaties—ever since February 8 and it looks now as if that debate will go on at least until the end of next month. I don't think anyone would quarrel about the amount of time given to this debate. We must examine the issues affecting our national security at length to insure that all aspects of a question are explored fully and fairly before decisions are made.

But I cannot agree with those who say that the Panama Canal treaties are the most important business that has been, or will be, before the Senate in our lifetimes. In my view, there are other issues that lie closer to the heart of national security. One of them is education.

Long ago Aristotle identified the essential relationship between national security and education. I don't think the relationship has changed since Aristotle wrote:

"All those who have meditated on the art of governing mankind have been convinced that the fate of empires depends on the education of youth."

I'm not going to waste time here preaching to the converted about the importance of education to our national security. But I do think it's important to state that connection.

It's especially important now because the competition for the taxpayer's dollar among federal programs is getting more and more intense, while the taxpayer is getting less and less happy about giving up his dollars.

Last year at this time, Louis Harris and Associates asked a group of taxpayers this question:

"As far as you (and your family) are concerned do you feel you have reached the breaking point on the amount of taxes you pay?"

The response was an anguished and overwhelming "yes." Seventy-two percent of those polled said they had reached the breaking point on taxes. Since then the situation has gotten worse. We may not actually have a taxpayers' revolt on our hands, but we're dangerously close to one.

Given these economic facts of life, no politician, from the President on down, is going to support extensive programs in any area unless they are clearly of urgent concern. That is why it is essential to highlight the relationship of education to national security and to assert education's ascendant importance on any list of national priorities.

Every spring, as you know, Congress looks over the President's budget recommendations and evaluates the spending priorities that the budget establishes. I take an active role in that process as a member of the Senate Appropriations Committee.

This year the President's budget lays down challenges in a number of areas. I, myself, am particularly interested in the President's proposed budget for education. I have studied it carefully and, frankly, I am disappointed in it. Admittedly, there are a few bright spots such as the $400 million concentration money for disadvantaged children recommended under Title I of the Elementary and Secondary Education Amendments.

But, on the whole, the President's approach seems timid and niggardly. Regrettably, this Administration is repeating a budgeting practice in educational programs that has become all too familiar. Statutes that have been carefully and thoughtfuly worked out in Congress; that have passed through all the dangers and difficulties of the legislative gauntlet; that have been signed with fanfare by the President and hailed as promising new departures, are left either unfunded or insufficiently funded when budget-time arrives.

For example, when the President signed the Career Education Incentive Act, he declared himself:

". . . Pleased to sign into law H.R. 7 which authorizes $325 million in federal grants over the next five years."

The President then described the limited role the federal government had previously had in sponsoring career education, and concluded by saying that:

"While expanding that role, H.R. 7 is designed to ensure that state and local education agencies take the lead in developing and coordinating better career education programs."

That was in December. In January, when the budget was delivered to the Congress, the President had not recommended any appro-

priation—not a single dollar—to support the Career Education Incentive Act. And, remember, Congress had authorized $50 million for its first year of operation.

What happened to that Act is not an isolated example of executive hatchet work. Let's take a look at programs for the physically and mentally handicapped.

In 1974 the late Senator Humphrey and I sponsored an amendment to P.L. 93-380 that provided the first federal funding to schools attempting to serve handicapped students. The amendment expressed federal determination to help shoulder the extra costs involved in education of the handicapped. It led us to the enactment in 1975 of P.L. 94-142, the Education of All Handicapped Children Act.

No group of people is more aware than you are of the importance of P.L. 94-142 to handicapped children, to their parents and teachers, and to the administrators of every school in this nation. We can all be proud that our country has made this revolutionary commitment to providing free, appropriate education for every child in America.

But here again, despite a generous spending authorization and a clear formula for applying federal funds, the Administration has failed to support this statute adequately in its budget.

P.L. 94-142 calls for reimbursing schools for 20 percent of their additional costs for teaching the handicapped in FY 1979. The Administration, however, recommended only enough money in its budget for a 12 percent reimbursement rate, which falls $400 million short of the amount authorized by the Congress.

I think this is unacceptable. The mandate of P.L. 94-142 is unique. It requires schools and individual teachers to give special attention to the handicapped—to search for them—to bring them into the system—and then to draw up individual educational programs for each child identified under the Law.

P.L. 94-142 is one of the most carefully drawn and specific federal statutes ever passed by Congress. A concept of this breadth is not susceptible to petty economies. Cutting corners here could have a devastating effect on the quality of the entire program.

You, of course, are acutely aware of the Administration's failure to request funds for Title III-D of P.L. 94-482, which calls for the design and coordination at the national, state and local level of new guidance and counseling approaches to help young people develop and adjust to our complex society. This is another glaring budget omission.

There are, in fact, too many troubling aspects of the President's education budget proposals for me to discuss them here. Let me just assure you that making education accessible to and effective for all Americans heads my list of national priorities.

Although this is only my second year on the Labor-HEW Subcommittee of the Appropriations Committee, I think I can gauge the temper of the Subcommittee well enough to predict that before we're through with it we'll breathe new life into the education budget. I certainly intend to press for full funding for the vital programs shortchanged by the Administration.

But while we in Congress grapple with the challenge of providing adequate funding for such crucial programs as P.L. 94-142 and Title III-D of P.L. 94-482, you in the guidance and counseling profession face substantial challenges of a different sort.

Your profession, since its beginning in the early part of this century, has been dedicated to the idea that each person has a unique set of talents which, if given a chance to bloom, would immeasurably enrich the community. That idea is basic to our democracy. But it does not always find expression in reality.

You face the singular challenge of translating that idea into human, everyday terms. You have been given the job of awakening students to their individual worth and of opening up to them the full range of opportunities within their grasp.

Guidance and counseling professionals are uniquely qualified to overcome obstacles in the path of educating the handicapped. In Maryland, counselors already are closely involved in designing courses and working with parents of the handicapped because their training fits them naturally to that role. They are also helping classroom teachers to give each handicapped child the scope his talents require.

Maryland's Department of Education last spring inaugurated an important new program focussed on the simple, but too often overlooked, goal of making public school graduates competent in the skills needed to cope successfully with our increasingly complex modern world. This program—Project Basic—relies heavily on guidance and counseling professionals to help each student master a curriculum specifically tailored to his chosen career options.

Educators in Maryland count on members of your profession to set the standards that will make career education effective. They also expect them to be consultants to classroom teachers so that students can find career guidance in the classroom as well as outside it.

Guidance counselors in the program will help teachers anticipate the problems attendant on growing up and identify incipient learning and discipline problems so that they can be headed off and handled professionally. I suppose you could call this preventive counseling.

Project Basic also gives guidance counselors new responsibilities for the training of classroom teachers in the techniques that can soften the effects of students personal conflicts.

I bring up this Maryland plan to underline the importance of funding Title III-D of P.L. 94-482. That Law, which would make funds available to programs such as Project Basic, is crucial to your profession and to American education. It will set up a new office in HEW to serve as a clearinghouse for new ideas in education and as a source of direction for the guidance and counseling profession. And it will give states and local districts the money they need to use their school counselors to the best advantage.

For instance, far too much of a counselor's time now is taken up in simple clerical work, in moving the mountains of paperwork required by federal bureaucracy. That is a waste of a great resource. The Title III-D money could be used by local districts to hire paraprofessionals to relieve the school counselors of the paperwork burden and to free them for the vital tasks they have been trained to handle.

I intend to recommend that the Labor-HEW Appropriations Subcommittee approve $4 million under Title III-D in the Spring Supplemental for Fiscal Year 1978 to create that office within the Office of Education to provide national leadership for the guidance and counseling professionals. I will also recommend that the Subcommittee approve $10 million for Fiscal Year 1979 so that there is enough money for state and local programs.

In closing, I would like to sound one note of warning and to make one special appeal to you.

First, the note of warning. I perceive a growing dichotomy between career counseling and family and personal counseling. These two aspects of counseling are not necessarily compatible or combinable.

Anyone with the detailed knowledge of the requirements of the market place that career counseling requires, probably has his hands full with just that, while family and personal counseling involve an entirely different range of techniques and knowledge.

I do not think we can reasonably expect one counselor to handle both types of counseling. I personally think family counseling is of paramount importance. The child who is going through the trauma of parents divorcing has a personal need that far transcends his career orientation. But, I would not want to see either form of counseling suffer because counselors were overburdened by the dual responsibility.

I hope that additional funds will lighten the counselors work load. But, ultimately only you can guard yourselves against being spread too thin.

Now for my personal appeal. For many years now, I have wrestled with the question of how to identify problem children before they get in trouble and land in the courts.

Back in 1973, when Elliot Richardson was Attorney General, I think we came pretty close to developing an early warning system on juvenile delinquency. I urged him to strengthen the relationship between HEW and the Law Enforcement Assistance Administration (LEAA) because HEW could devise programs in schools to detect the problem kids before they came to the courts.

Elliot Richardson, having been Secretary of HEW, understood the problem. But he resigned as Attorney General in protest to the Saturday Night Massacre. Had he not, family counseling would be far better off today than it is. That's one of the little-known casualties of the Saturday Night Massacre.

Another discouraging aspect to this is that the Coordinating Council on Juvenile Justice and Delinquency Prevention hasn't met since December 1976. The Attorney General, the Secretary of Labor and the Secretary of HEW, all sit on that council, but it doesn't do much good if meetings are never called.

Within the Title III-D money that I will request, I intend to specify that funds be earmarked for at least a demonstration project in support of family and personal planning, specifically designed to identify problem kids before they get into serious trouble. And I'm going to insist that the Coordinating Council meet to take a look at my proposal.

My special appeal is that you support me in this effort. It is important and long overdue.●

TEMPORARY OPERATING AUTHORITY TO NEW INTERSTATE TRUCKERS

● Mr. GLENN. Mr. President, I was quite pleased to read the GAO's report of February 24, 1978, that recommended significant change in the procedures followed by the Interstate Commerce Commission in granting temporary operating authority to new interstate truckers.

Last November, I met with Mr. William D. Hall of Cleveland, Ohio, president of the Minority Trucking-Transportation Development Corp. Mr. Hall is also president and owner of Industrial Transport and Warehouse of Cleveland. Also attending that meeting were other minority truckers and Representative MILLICENT FENWICK of New Jersey, long an eloquent and outspoken champion of liberalized entry procedures. We discussed at some length the difficulties that smaller concerns have

in gaining operating authority. This issue is not exclusively a problem faced by minority truckers, it is a major national issue that has substantial ramifications on shippers, consumers, as well as the existing licensed carriers. Any action in this area touches on the competitive balance in the transportation industry and thus has the potential for having great impact on prices, service, and profits. Ultimately, these factors exert enormous influence on inflation, employment, and productivity. If we could view our governmental regulatory processes from more of a macroeconomic perspective, then I believe that we would find it much easier to rationalize and simplify our regulatory bureaucracy.

It is from this perspective that I would like to comment upon the GAO report of February 24. The report does not deal directly with the issues of regulatory reform and trucking deregulation, but the issues that are touched upon have very significant ramifications upon this current congressional debate. As the report points out, the basic regulatory framework of the ICC in control of entry and service levels had as its goal a stable industry that serviced all areas. That goal is basically sound. However, times and circumstances have changed and it is surely appropriate for us now to reexamine the means that have been used to attempt to achieve those goals. Is the myriad of complex, restrictive rules, and regulations that have proliferated over the years at all consistent with today's macroeconomic needs? That is today's basic quesiton.

"Temporary authority" is a means by which the ICC has allowed for a certain amount of flexibility with respect to those seeking entry into the tightly regulated interstate trucking field. Temporary operating authority applications are intended to meet "immediate and urgent needs" for service "which reasonably cannot be met" by existing authorized truckers. A trucker, particularly a small trucker might seek such authority when there is a new or relocated plant, a desire to switch modes of transportation, new commodities requiring new modes of shipping and so on. Often, truckers will seek this type of authority so that they may operate while applications for permanent authority are pending. Thus it is a possible means of development and growth that also builds a track record that may, in effect, strengthen the case for obtaining permanent authority. Temporary authority may last up to 180 days and may be renewed continually pending disposition of the permanent authority application.

The GAO report concluded that not enough temporary authorities were granted by the ICC, that the procedures used in such determinations were not the best and that as a result, shippers and potential truckers often suffered very harsh economic consequences. As examples, the report cites cases of shippers who lost sales and customers or who were forced to use less satisfactory transportation. Specific reasons cited for these shippers' problems were that both law, policy and ICC procedure placed a stringent burden of proof upon an applicant for temporary authority while protest rights of authorized truckers were perhaps overly liberal. Again, I point out that the basic concept of an authorized carrier's right to protest is legitimate. There certainly is validity to concerns about the value of operating certificates, loss of business, and so on. However, what concerns me is the GAO determination that aggravating the ICC's problem of striking some reasonable balance between authorized carriers and the need for new entrants were vague and inconsistent procedures that often failed to spell out what and how much information was required to support new applicants. Furthermore, the report pointed out that protesters were not required to demonstrate how they would be able to meet the needs of shippers who were supporting temporary authority applications of potential new carriers. I would imagine that these problems might present particular burdensome impediments to the smaller applicant who does not have the resources for, or access to high powered, expensive legal talent.

However, in all fairness to the ICC and particularly to Chairman Dan O'Neal, these problems are not his creations. In fact, the GAO report failed to mention several of the significant new steps taken under the leadership of Mr. O'Neal. His June 2, 1977, task force has come up with 39 recommendations on improved motor carrier entry regulation, several of which demonstrate an awareness of these problems. Additionally, several rulemaking proceedings (Ex Parte Nos. 107 and 110) have been instituted with an eye toward increasing flexibility in the entry area. I particularly support the creation of the Small Business Assistance Office within the ICC and the Chairman's efforts to review ICC staff training and guidelines. Hopefully, these steps will remove some of the obstacles faced by smaller, less affluent truckers. The Chairman has also presented a plan to the Commission that would relax some of the restrictions on contract carriers who are presently limited to seven clients. I might add that due to the President's desire to reduce the size of the ICC, its Chairman does not yet enjoy the luxury of receiving new support from the new administration's own appointees. This is a situation that I hope will correct itself in the near future as the ICC stabilizes in size and the President infuses new blood into the Commision.

In conclusion, Mr. President, I feel that the GAO report although highly significant, has only scratched the surface of an issue that calls for national attention. That issue is, of course, a reexamination and reevaluation of our entire scheme of Federal transportation regulation. I know that hearings in the trucking area will begin in the near future and I will follow them very closely. Additionally, as a member of the Senate Government Affairs Committee, I intend to pursue the transportation-related aspects of our own regulatory reform study. As I said earlier, it is time to view our national transportation policy from a much more coordinated macro-economic perspective. I expect to be doing just that in the days ahead.●

AIRLINE PROFITS SOAR WITH LOWER FARES

● Mr. PERCY. Mr. President, opponents of airline regulatory reform in the past have stated that price competition, as envisioned under the proposed legislation, would only lead to lower profits, higher operating expenses, and business failures. Nothing could be further from the truth, as evidenced by the recent filing of American Airlines before the Civil Aeronautics Board to extend its "Super Saver" fare to all cities within its system.

In its filing, American said that the 35- to 45-percent discount offered by "Super Saver" fares "has been a tremendous success for the airline." American noted that, based on higher load factors brought about by these discount fares, it earned an additional $7 million in profits for the 6 months ending September 30, 1977. The airline also stated that its two prime competitors scored similar impressive gains. TWA, American said, projected an additional profit of $3.2 million through April 30, 1978, while United Airlines scored an additional gain of $5.5 million in profits in the second and third quarters of 1977.

Some of the statistics offered by American Airlines for all carriers offering the lower fares, are startling. For instance, in the New York to San Francisco market there was a 59.1-percent increase in traffic since the institution of the "Super Saver" fare, while operating profits for all carriers went up 57.7 percent. In the New York/Los Angeles market, coach traffic increased 37.4 percent while operating profits were up 72.1 percent; Philadelphia/Los Angeles traffic went up 29 percent and operating profits increased 107.3 percent; Boston/Los Angeles traffic jumped 26.1 percent while operating profits went up 89.2 percent; and Boston/San Francisco traffic increased only 4.6 percent, but operating profits went up 26.9 percent.

These impressive results indicate that if air fares are lowered, a large number of Americans who are now driving energy-inefficient automobiles will switch to the Nation's airlines. It is estimated that 85 percent intracity traffic in the United States is by automobile today. Fare flexibility, which would allow airlines to competitively price their services without Government approval, is one of the major features of the Air Transportation Regulatory Reform Act of 1978 (S. 2493), which will soon be on the Senate floor. Opponents of reform argue that the approval of these lower fares by the current Board indicates the current system should be left intact. However, future Boards may not be as proconsumer as the current Board and they may well reject future fare cuts. Let us write fare flexibility firmly into

the law. The success of the "Super Saver" fares should conclusively indicate that well-managed airlines have nothing to fear and a lot to gain from the greater pricing flexibility they are offered in S. 2493.

I commend American Airlines on their recent filings.●

NUMBER OF MINNESOTA WOMEN, CHILDREN LIVING IN POVERTY IS INCREASING

● Mrs. HUMPHREY. Mr. President, I would like to take this opportunity to share with my colleagues a recent article commenting on the significant increase in the proportion of Minnesota households headed by women who are single, widowed, or divorced. Current policies and antipoverty programs are not adequately addressing the close relationship between women and poverty. Welfare reform is urgently needed, particularly as it relates to women who may be trapped within the poverty cycle.

Mr. President, I submit for the RECORD this informative article, which appeared in the Minnesota Brainerd Daily Dispatch of March 15, 1978.

The article follows:

NUMBER OF MINNESOTA WOMEN, CHILDREN LIVING IN POVERTY IS INCREASING

MINNEAPOLIS.—Increasing numbers of women and children in Minnesota are living below the poverty line, according to a report issued Tuesday by the state's Council on the Economic Status of Women.

"No longer is poverty distributed throughout the population, but has instead become concentrated in female-headed households," saaid Rep. Linda Berglin, DFL-Minneapolis, who released the report.

She said that although all female-headed households are vulnerable to economic hardship, those composed of mothers with young children and of elderly women living alone are disproportionately represented at the low income level.

In 1975 almost a fourth of all Minnesota households were headed by women, the report said. In the last 15 years, there has been a significant increase in the proportion of women who are single, widowed or divorced.

Women who must support themselves are hindered by a lack of career training, a welfare system that does not break the poverty cycle and "women's work" that pays poorly, according to the report.

State policies and antipoverty programs have not addressed the close relationship between women and poverty, Ms. Berglin said.

Other findings of the report were as follows:

In Minnesota in 1969, census data showed the incidence of poverty to be 6.9 percent for families with male heads, 24 percent for families with female heads, 34 percent for families with female heads and children under 18, and 47.4 percent for families with female heads and children under age 6.

Census data for 1969 showed the incidence of poverty among black families with a female head was 44.1 percent, and among Hispanic families with a female head it was 42 percent.

The same data showed the incidence of poverty among people age 65 and above was 22.4 percent for men and 46.9 percent for women.

The increase in the number of female-headed households was partly because of rising divorce rates; more than 13,000 were recorded in Minnesota in 1975. And rising illegitimacy rates among teenagers contributed to the number of female-headed households with young children. In the state in 1975, almost one of 10 live births was out of wedlock and more than half of those were born to girls 19 and under.

The percent of children living with both parents has declined in recent years. It is now estimated that 162,000 Minnesota children live in single-parent households.

The combination of elderly women living alone and female-headed households with dependent children accounts for a substantial majority of people in Minnesota living at low income levels. Almost two-thirds of all households with incomes less than $5,000 per year are female-headed.●

ACCESS TO NATIONAL PARKS

● Mr. ANDERSON. Mr. President, the National Park Service is to be commended for its recent efforts to make our national parks more accessible to the nonambulatory and handicapped. Recently, the National Park Service published a booklet entitled "ACCESS: A Guide for Handicapped Visitors." This handbook describes each national park throughout the United States in terms of access ramps, doorway widths, road surface conditions and other pertinent information aimed at making visits by all people an enjoyable possibility.

Copies of this public service handbook are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The order number is 024-005-00691-5 and the price is $3.50.

Minnesota has three national parks: Grand Portage National Monument, Pipestone National Monument, and the Voyageurs National Park.

I ask that the full text of the descriptions of the three Minnesota parks be printed in the RECORD.

The text follows:

ACCESS TO NATIONAL PARKS

Grand Portage National Monument, Box 666, Grand Marais, Minnesota 55604, (218) 387-2788.

(This 9-mile Grand Portage was once a rendezvous point of traders and trappers. It was also a principal route for Indians, explorers, and missionaries into the Northwest.)

Authentic reconstructions, including the Great Hall, Kitchen and Canoe Warehouse, are accessible by ramps or short steps with handrails. Taped messages, displays, self-guiding folders and on-site interpretation are available for visitors. The steeply-rising, ½-mile (.8 km) Mount Rose Trail has steps and handrails. The Grand Portage Trail is 8½ miles (13.6 km) long.

Many points of interest are within 500 feet (150 m) of the paved parking area. A campground, picnic area and hotel accommodations are nearby.

The Grand Portage post of the Northwest Company has been reconstructed. Watch for uneven ground and irregular steps.

A small, temporary visitor center, up several steps from ground level, offers information, exhibits and audiovisual programs. The Great Hall, which is fully accessible, has exhibits and interpretive programs. A comfort station with fully accessible and equipped stalls is located 500 feet (150 m) from the visitor center.

The monument is off U.S. Highway 61, 36 miles northeast of Grand Marais, Minn.

Pipestone National Monument, P.O. Box 727, Pipestone, Minnesota 56164, (507) 825-5463.

(From this quarry Indians obtained materials for making peace pipes used in ceremonies. It is "Living History" area.)

The visitor center is accessible with all facilities on one floor. Restroom outside doors are 31 inches (78.74 cm) wide, booth doors, 23 inches (58.42 cm). Some of the panel exhibits in the visitor center contain objects which may be touched and felt. The Circle Trail and old quarry are paved and accessible, although steep in places.

Voyageurs National Park, P.O. Box 50, International Falls, Minnesota 56649, (218) 283-4492.

(Once the route of the French-Canadian voyageurs, beautiful northern lakes are surrounded by forest in this land where geology and history capture your imagination.)

Visitors should first stop at park headquarters on Highway 53, at the south edge of International Falls, for information about the park, lodgings and restroom facilities. The park boundary is 11 miles (17.71 km) from the park headquarters. The parking lot at the temporary headquarters is gravel surfaced, but designated parking spaces are near the building. Restroom entry doors are 33 inches (83.80 cm) wide and stall doors 29 inches (73.66 cm). Permanent headquarters, visitor center and other facilities are planned.●

IMPORT RELIEF FOR THE AMERICAN STEEL FASTENER INDUSTRY

● Mr. GLENN. Mr. President, competition from foreign imports is a very serious problem confronting our Nation. Of particular significance is the competition facing the American steel fastener industry. The International Trade Commission recently recommended that import relief be granted to the fastener industry to remedy the market penetration resulting from imports of steel fasteners.

My colleague from Pennsylvania, Mr. HEINZ, today presented testimony before the Senate Subcommittee on International Trade concerning this matter. I am pleased to associate myself with Senator HEINZ' comments, and I urge every Senator to review this testimony before voting on Senate Concurrent Resolution 66.

I submit the testimony for printing in the RECORD:

STATEMENT OF SENATOR JOHN HEINZ

Mr. Chairman, the hearing today on the President's decision to reject the International Trade Commission's recommendation for import relief for the domestic steel fastener industry is crucial. I firmly support the ITC's findings and I believe that the Administration's decision is a serious mistake both for the fastener industry and for our overall trade policy.

In enacting the Trade Act of 1974, it was the intent of Congress to design a series of safeguards and remedies for American industries which had been severely injured by foreign imports. Producers who believed their industry was being impacted by imports could petition the International Trade Commission for relief. The ITC's recommendations would then go to the President for review and final executive decision. In the current case the President has made his decision not to aid the industry and it is now up to Congress to overrule him.

On December 7, 1977, the International Trade Commission found in favor of the fastener industry's petition. The ITC concluded that the industry had suffered substantial injury from imports, and that the facts of the case clearly necessitated import relief.

Import penetration had increased from approximately 21% of the domestic market in 1969 to 45% in 1977, employment fell during the same period by 36% from 68,400 workers to 53,400, and the industry is currently operating at only 50% of capacity. My own state of Pennsylvania, which alone produces over one-half billion dollars worth of nuts, bolts and screws yearly, has 54 fastener plants employing over 7,000 workers. The state has been hard-hit by the flood of imports; thousands of Pennsylvania workers have lost their jobs.

But not only the American workers and producers in the steel fasteners industry have been injured. Our ability to respond in the event of a national emergency may have been severely impaired. Steel fasteners are such a vital and essential product that we cannot fail to maintain an adequate domestic source of supply. We cannot afford to become dependent on foreign supplies, and we must insure free access to an adequate supply of American fasteners.

In addition, the Treasury Department's recent imposition of reference prices for steel imports will aggravate the situation by effectively increasing input costs for the domestic steel producers who import raw materials. These producers, faced with competition in the domestic market from imported fasteners, cannot increase the price of their fasteners to reflect cost increases without adversely affecting their competitive position. If this continues, it could mean even more serious problems for an already severely injured industry. It is not the purpose of the Trade Act to come to the aid of industries only after they are dead. We must anticipate these problems and act promptly.

For these reasons, I believe that the President's decision to deny the import relief recommended by the ITC is a grave mistake. The arguments used by the Administration to justify its action—possible inflationary repercussions, possible protectionist retaliation by importing nations, and the number of jobs which could be lost in other industries—are weak and do not make a convincing case that the ITC's decision was misguided.

What particularly concerns me is the argument that we might face foreign retaliation. In my view this possibility is much less important than maintaining our firmness and credibility with our trading partners. We must keep in mind that our credibility and leverage in multi-lateral trade negotiations depends on our past record in enforcing the laws we have enacted, and on our willingness to stand firm in support of our principles. There is no doubt that our position is severely weakened when foreign nations realize that much of our trade legislation, including Section 201 of the Trade Act, remains a paper tiger. Every recommendation of the International Trade Commission on import relief since the Trade Act became law has been altered or rejected by the Administration with the single exception of specialty steel. So long as we send this kind of signal to our trading partners—that we don't intend to enforce our laws or act aggressively in support of our trade principles—we will make no progress in obtaining international agreement on the kinds of trading relationships we would like to see.

It is not my intention to make a plea for across the board protectionism. What is really needed, of course, is better adjustment procedures in all nations, but this takes time and planning. Until we reach that point, industries which are impacted by imports and which suffer through decreased profits, worker layoffs, and reduced plant capacities, must be assisted. It is precisely the purpose of Section 201 of the Trade Act to provide such industries with temporary relief and with the necessary room to recover and regain their health.

I believe that the particulars of the steel fasteners case demonstrate that the industry needs temporary relief from fastener imports, and it is our duty to provide that relief by overriding the President's decision. I urge the committee to support S. Con. Res. 66.●

SALT I COMPLIANCE

● Mr. CLARK. Mr. President, The New York Times recently repeated without any apparent independent confirmation a charge in another publication that the Soviet Union's submarine program is in flagrant violation of the SALT I Interim Agreement limiting strategic offensive arms.

Such a charge, if true, would immediately call into question the wisdom of continued SALT negotiations with the Soviet Union. In addition, such a violation might well serve as justification for abandoning unilaterally all limitations to which the United States is now studiously adhering.

I know of no responsible official who believes that the Soviet Union is operating more than the 62 modern ballistic submarines and 950 SLBM's allowed by the Interim Agreement.

The original article ("Soviet Submarines Violate Pact," Aviation Week and Space Technology, February 27, 1978) the Times piece ("Survey Sees U.S. Leading Soviet in 15 Weapons," The New York Times, March 6, 1978), are in error in several regards.

The Times reported:

> The authoritative weekly Aviation Week and Space Technology reported that the Russians were operating 64 ballistic-missile submarines in violation of the interim U.S.-Soviet agreement on offensive weapons, which binds both Governments pending completion of the treaty on limitation of strategic arms being negotiated in Geneva.
>
> The agreement, under which the Russians are permitted 62 boats with 950 launchers expired last October 3, but both sides agreed to conform to it until a new one is signed.

There are several inaccuracies which need to be addressed. In the first place, the Interim Agreement has not bound either Government since its expiration on October 3. The two sides declared their intention not to take any action inconsistent with provisions of the Interim Agreement and with the goals of SALT II provided that the other side exercises similar restraint. There is no binding commitment in the declarations of either side. Thus, either side could go beyond the Interim Agreement limitations without being "in violation," although such a move would disturb the other side deeply and jeopardize the whole arms limitation process.

Second, the Aviation Week article is confusing in its reference to the limitations on ballistic missile submarines. That confusion is continued in the Times article. The SALT I limitation is not on all ballistic missile submarines. It limits modern ballistic missile submarines. The Interim Agreement provides that the Soviets may have no more than 950 ballistic missile launchers on submarines (SLBM's), and no more than 62 modern ballistic submarines. This means that the submarines which are counted against the ceiling are the Yankee and Delta class submarines. All ballistic missiles on the older H-class submarines, or modern ballistic missiles on G-class submarines, are counted against the 950 missile ceiling, but the H-class itself is not counted against the 62-submarine limit.

Under the terms of the Interim Agreement and Protocol, any new ballistic missile submarines are counted against the ceiling only after they have begun sea trials. Since we are able to observe any Soviet submarines completed, but held back from sea trials, there is no reason to doubt that we can verify Soviet compliance with the submarine limitations.

The accuracy of the charge of Soviet violations was denied initially in a background briefing session for reporters held at the Department of State on February 28. On March 1, the State Department posted a statement refuting the allegation.

Also on March 1, the Director of the Arms Control and Disarmament Agency, the Honorable Paul C. Warnke, appeared before the Committeee on Foreign Relations in closed session to provide the latest information on SALT. I questioned him about the original article, and he said he would provide a full answer for the record. The Deputy Director of the Agency, the Honorable Spurgeon M. Keeny, Jr., said in his response to the committee on behalf of Mr. Warnke:

> We have no evidence that the Soviets have deployed any modern SLBM submarines beyond the 62 limit as of this date. Additional SLBM submarines are under construction but have not yet commenced sea trials.

I thought the record should be set straight in this matter, particularly in view of the recent executive branch report to the Committee on Foreign Relations on other allegations of Soviet cheating. That February 28 report, which was provided to the committee in unclassified form and made available to the press, addressed eight issues which we raised in regard to Soviet compliance and five issues which they raised in regard to our compliance, as well as six issues in regard to their compliance which we studied carefully, but did not raise with them.

I have read that report and have reviewed other materials, many of them classified, on compliance issues. I have reached the conclusion that we simply cannot justifiably conclude that the Soviet Union is acting in bad faith in regard to SALT compliance.

I will not argue with anyone who claims that the Soviet side has used ambiguities of the ABM Treaty and the Interim Agreement to possible advantage. Yet, there is no one who has been able to cite a clear-cut example of cheating by the Soviets.

The American Ambassador to the Standing Consultative Commission, which deals with compliance issues, Robert W. Buchheim, made this very important and generally unreported statement on Soviet compliance earlier this year to the Committee on Foreign Relations:

The United States has raised questions about a considerable number of activities that we have observed on the Soviet side that bear on the objectives or provisions of the ABM Treaty, and the Interim Agreement on Offensive Arms. These have been clarified and dealt with.

Those discussions of such subjects in the SCC have never included any charge by the U.S. side of Soviet violation of those agreements.

Ambassador Buchheim recently submitted a classified report to the committee covering the major compliance issues in detail. This report provides solid justification for his statement to the committee.

The evidence leads me to the conclusion that the Soviet Union is prepared to meet its obligations under SALT. The record should not disturb us. Instead, we should be reassured.●

IMPROVING FEDERAL REGULATIONS

● Mr. RIBICOFF. Mr. President, just before the recess, President Carter signed a new Executive order entitled "Improving Government Regulations." The order, which was issued on March 23, is intended to simplify and reduce the burden of Federal regulations.

The Executive order directs that regulations be written in plain language. It requires that consequences and alternatives be evaluated, and that there be ample time for public comment. It provides that departments and agencies review their regulations to eliminate those which are unnecessary. Under the order, an executive agency, the Office of Management and Budget, is assigned principal responsibility for review and approval of proposed changes in agency rules pursuant to the terms of the order.

Improving the quality and clarity of Government regulations is a task to which the President is personally committed. As he stated at the signing:

I will be personally involved in assuring that the Executive Order is carried out.

I commend the President for the issuance of this Executive order, and for his personal commitment to its implementation. I also commend the President for the way in which the order was proposed and considered. It was an open process. For the first time to my knowledge, a proposed Executive order was published in the Federal Register and the public was given an opportunity to make comments and suggestions. I understand that many citizens took advantage of that opportunity. I am confident that the final product was thereby benefited.

I fully support the basic objectives of the new order. I share the President's concern about the "gobbledygook of Federal regulations." Ours is a government of too many laws. In too many instances regulations are obsolete, conflicting, confusing, or obscure. I support President Carter's commitment to chop down the thicket of unnecessary Federal regulations. Writing new rules in plain, understandable English is an important step. Unnecessary rules ought to be eliminated.

The key issues addressed by the Executive order have been carefully studied by the Governmental Affairs Committee. That consideration was part of the committee's comprehensive examination of Federal regulation, conducted pursuant to Senate Resolution 71.

Volumes III and IV of our "Study on Federal Regulation," both published in July 1977, concern public participation in regulatory decisions and undue delay in Federal regulation, respectively. Those volumes contain over 50 specific recommendations, including the following:

A detailed "sunset" proposal for review of agency rules to eliminate or modify those which are unnecessary, inconsistent, or obscure;

Expanded opportunity for public comment on proposed agency actions;

More systematic efforts by agencies to inform the public of proposed action, and solicit their comments;

Improved procedures for handling citizen complaints;

Requirement by statute that deadlines be set for rulemaking procedures; and

Proposals aimed generally at improving agency management and planning.

The President's Executive order is entirely consistent with the letter and spirit of the recommendations contained in volumes III and IV of our study.

PRESERVING THE INDEPENDENT STATUS OF THE REGULATORY COMMISSIONS

All departments and agencies within the executive branch of the Government are subject to this order. But the President has wisely decided that the order should not apply to independent regulatory commissions. That exemption is contained in the order, and the President has notified 17 independent commissions of his decision. The President explained this exclusion as follows:

The independent regulatory agencies are not included in the Executive Order. Many of the heads of those agencies are here. The overwhelming response of almost everyone in the initial publication of the proposed Executive Order was that regulatory agencies should come under the Executive Order. I don't think that is necessary. I think their independence should be preserved.

Mr. President, I fully agree that the independent status of the regulatory commissions should be preserved, and that the application of the order to those agencies would have violated that status. In my opinion, the course the President has chosen to follow is both wise and proper.

This exclusion for the independent regulatory commissions is an important recognition of their special status vis-a-vis the executive branch. Never before has there been such an explicit and clear Presidential acknowledgement of that independent status, and the advantages that justify its preservation. This decision sets a significant precedent for the future and, as such, merits particular attention at this time.

As with other aspects of this order, the "independence" issue was the subject of public discussion before it was decided. When the proposed order was first published, the administration solicited public comment on the question of whether the suggested procedures could be applied to independent regulatory commissions. In a letter dated December 16, 1977, 12 of my Senate colleagues joined with me in responding to that question. The bipartisan letter was signed by the chairman and ranking minority members of six Senate committees and subcommittees—including the Committees on Governmental Affairs, Judiciary, Commerce, and Banking, and the Subcommittees on Administrative Practices and Separation of Powers.

Our letter indicated our complete agreement with the basic objectives of the proposed order. However, we expressed concern about the means the President proposed to use to achieve those objectives. In other words, could the President, on his own initiative, lawfully require the independent regulatory commissions to submit their rules for review and approval by the Office of Management and Budget? What legal authority supports that action?

After a careful review of the law relevant to those questions, we concluded:

It is our unqualified view that the answer is "no." The Executive Order cannot lawfully be applied to the independent regulatory commission.

That conclusion was grounded on two major findings.

First, we determined that the proposed action would violate the intent of Congress that the executive branch not control the rules these agencies issue. In that consideration, we consulted volume V of the Committee's Study on Federal Regulation, which contains a detailed discussion of the independent status of the regulatory commission. A principal finding of that study was that—

Freedom from Executive domination was . . . the prime motivating force for the creation by Congress of the independent regulatory commission. More than anything else, [those agencies] were intended to be independent of the White House.

The concept that these commissions ought to be somewhat isolated from direct control and supervision by the White House has an ongoing history of more than 90 years.

Second, we concluded that there was no inherent constitutional authority for the President to unilaterally impose these procedures on independent commissions. Further, we found that there was no express statutory basis for this proposed application. Absent that authority, the order could not be applied to the rulemaking processes of these agencies. Our conclusion was supported by landmark Supreme Court decisions. See *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935); *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952).

The President has requested that the independent regulatory commissions voluntarily comply—to the extent that it is "applicable and advisable"—with the terms of the order. In his letter to the independent commissions, President Carter suggested that these agencies, on their own initiative, establish review programs similar to those contained in the Executive order. I agree that the commissions ought to develop, as a high priority, procedures to modernize their regulations. Some agencies are already

involved in active efforts along those lines. The President also requested that, by June 30 of this year, the agencies submit a progress report on their efforts to Congress and the White House. I would assume that those who choose to do so will submit that report, without prior review, simultanecusly to Congress and the President.

I believe that legislative action may be the best approach. I stand ready to work with the administration in any way I can to realize the laudible goals of the Executive order for the independent regulatory commissions as well as for executive branch agencies. I am confident that my colleagues, who signed the letter to the President, will join with me in that effort.

Mr. President, I submit for the RECORD our letter to the President, the Executive order as issued, the remarks of the President upon signing the Executive order, and the text of the President's letter to 17 independent regulatory commissions.

The material follows:

U.S. SENATE,
Washington, D.C. December 16, 1977.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We welcome the opportunity to comment on your draft Executive Order designed to improve government regulations. We applaud your decision to make this Order available in draft form to give the public a full opportunity to review and comment on it.

In asking for comments on the Order, you have specifically requested that comments respond to the question: "Should the procedures outlined in the Executive Order apply to the independent regulatory agencies"? Other issues are raised as well, but our comments will be restricted to this particular question.

It is our unqualified view that the answer is No. The Executive Order cannot lawfully be applied to the independent regulatory commissions. To do so would violate the intent of Congress that the Executive Branch not control the rules these agencies issue.

Essentially, the draft Executive Order is designed to do three things. First, it requires agencies to prepare a "regulatory analysis" for any regulation having a significant economic effect, analyzing all of the economic consequences of the proposed regulation and assessing all potential alternative approaches. Second, it requires agencies to undertake a periodic review of their existing regulations, to determine whether these regulations are meeting certain basic goals. Third, it requires agencies to prepare work plans and regulatory agendas for their significant regulatory activities and to provide additional notice to the public.

Under the Order, the OMB is assigned responsibility for reviewing agency compliance with these requirements. Agencies will be required to submit their new procedures to OMB by February 15, 1978, for OMB's approval. Regulations which have been prepared in violation of the Order's procedures could not be issued.

Mr. President, we agree completely with the basic objectives of the proposed Executive Order. Regulatory reform is a major goal of this Congress, and we would very much like to see these objectives achieved.

However, we have serious difficulty with the means used to accomplish these ends. In our opinion, the proposed Order cannot lawfully be applied to the independent regulatory commissions without an express statutory basis. At present no such basis exists.

Our opinion is based on a review of the judicial precedents and statutory law governing the independent regulatory agencies. We have also reviewed the opinion of the Justice Department dated July 22, 1977, which purports to support the Executive Order. A brief summary of our review may be helpful.

For the President to promulgate an Executive Order without a new Congressional statute, he must do so either (1) pursuant to an implied power derived from the Constitution, or (2) pursuant to a previous grant of statutory authority. In this case, we can find neither.

1. The only implied power upon which the President could conceivably rely—and in fact, the Attorney General's opinion does rely on it—is the responsibility of the President set forth in Article II, Section 3, of the Constitution: "to take care that the laws be faithfully executed." But there are a long line of Supreme Court cases, beginning with the 1838 decision in Kendall v. United States, and culminating in the famous steel seizure case (Youngstown Steel), which hold that the President cannot use this clause to impose new requirements where an express or implied Congressional authorization is lacking. The Youngstown Steel case in particular found that in situations where Congress has insulated an area from Presidential domination, the President has no such implied authority.

The history of the regulatory commissions is replete with efforts by Congress to insulate the commissions from Presidential domination. From the creation of the ICC in 1887, continuing through the creation of the FTC and the independent agencies of the New Deal, down to the new independent regulatory commissions created during the past few years, Congress has made it abundantly clear that these commissions are not subject to Presidential direction or control. Congress, and not the Executive, controls the guidelines for the independent regulatory agencies. Congress created these agencies. Congress provided for their organization. Congress adopted their statutory mandates. Congress controls their budgets and oversees their performance. Congress specifies agency procedures.

Congress has also determined that, in exercising the quasi-judicial and quasi-legislative authority which Congress had delegated to the agencies, agency actions shall not be subject to review or modification by either Congress or the Executive; only the courts may review final agency actions. And to ensure that the agencies will be able to act in a fully independent fashion, without fear of control or domination from the Executive, Congress has given agency members a set term, and provided that commissioners may be removed from office only for "inefficiency, malfeasance, or neglect of duty."

The Humphrey's Executor case, decided by the Supreme Court in 1935, established beyond question the constitutional ability of Congress to create agencies independent of Executive control. The Humphrey's Executor case dealt with a Presidential attempt to remove an FTC commissioner. The Court pointed out that aside from the appointment of commissioners, which Congress had given to the President, Congress had provided that the FTC was to be completely free of any Presidentially-imposed obligations. The Court said that the FTC is "a body which shall be independent of executive authority, except in its selection, and free to exercise its judgment without the leave or hindrance of any other official or any department of the government."

Then the Court went on to say:

"The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies. . . . Such a body cannot in any proper sense be characterized as an arm or an eye of the executive. Its duties are performed without executive leave and, in contemplation of the statute, must be free from executive control."

Thus, both law and tradition clearly demonstrate that the President is not free to act on his own initiative in setting procedures and requirements for the independent regulatory agencies. On the contrary, Congress by its actions has treated the independent agencies as "arms of Congress." Accordingly, this is an area which falls completely outside any implied Presidential authority under the Constitution (Youngstown Steel).

2. If there is no implied Constitutional authority, can Presidential power to act in this instance be derived from some express statutory authority? Again, we can find none.

As the foregoing has demonstrated, the statutory powers which Congress has granted the Executive in connection with the independent regulatory agencies are extremely limited. We know of only three Executive prerogatives which apply across-the-board to the independent regulatory commissions—(i) the power to make appointments to the commissions and to designate agency chairmen; (ii) the power to appraise agency budgets prior to submission to Congress (31 U.S.C. 2); and (iii) the power to subject commission staff to Federal civil service rules on hiring, ethics, and related personnel matters (5 U.S.C. 2102, 3101; 18 U.S.C. 208).

There is no way the proposed Executive Order, which governs agency procedures for developing and issuing regulations, can be said to fall within any of the three categories above. The Order does not concern budget preparation; nor does it concern the appointment authority; nor does it concern personnel standards and procedures.

We have reviewed previous Executive Orders to determine their applicability to the independent regulatory commissions. That review discloses only a single order with such coverage—the May 8, 1965, Order of President Johnson which sets ethical standards of conduct for all government employees, including employees of the regulatory agencies. That Order, however, was based on explicit statutory authority—namely, the statutes in the third category above, as well as the President's general power to delegate to Executive Branch officials (3 U.S.C. 301).

All of the other Executive Orders which we reviewed exempt independent regulatory commissions from their coverage. Executive Orders 11821 and 11949, issued by former President Ford two years ago, illustrate that pattern. Those Orders were designed to do the same thing which this proposed Order is designed to do—namely, require agencies to consider the costs and benefits of proposed regulatory agencies. The Executive Branch however, never sought to require compliance by the independent agencies. And the independent agencies did not implement the Orders. Executive Orders 11821 and 11949 thus constitute an important acknowledgement that the President's power does not extend to these agencies.

Absent either statutory authority or implied Constitutional authority, we conclude that the President would be acting without basis in law if the proposed Executive Order were applied to the independent regulatory commissions.

One final point merits emphasis. The opinion of the Attorney General suggests that the independent agencies are off limits as far as substantive requirements are concerned, but that the President can impose strictly procedural obligations on the agencies. We reject this view for two reasons.

First, there is nothing in either the statutes or the judicial precedents which makes such a distinction. Aside from the areas in

which specific statutory authority is granted, the courts have refused to allow Presidential control of the independent regulatory commissions. The courts make no distinction between substantive control and procedural control.

Second, such a distinction is almost impossible to draw. Procedures inevitably affect the substance of agency action; they cannot be divorced from substantive policies.

A reading of the proposed Executive Order makes this evident. The proposed Order on its face establishes substantive standards the independent regulatory agencies must meet when they issue any rule. For example—

The Order states that no independent regulatory agency may adopt regulations unless "the least burdensome of the acceptable alternatives has been chosen" (Sec. 3(d));

The Order requires that agencies consider the economic impact and costs and benefits of proposed regulations before they are issued, and that OMB review the criteria used by the agencies (Secs. 4 and 6);

The Order requires that agencies review existing regulations so that those that no longer meet statutory goals may be eliminated (Sec. 5).

This desire to influence the substantive content of the regulations clearly violates the intent of Congress. When Congress created the independent regulatory agencies, it prohibited Executive Branch Influence. The proposed Order undermines this. OMB would inevitably become involved in substantive questions. OMB could influence which regulations the independent regulatory agencies review and which they repeal or amend. OMB could influence the nature of the economic regulatory analysis and thus the content of the rules issued by the independent regulatory agencies. OMB could prohibit an independent regulatory agency from adopting the most effective regulation if there are other "acceptable alternatives" which would impose less burdens. OMB could assure action on some proposed regulations and reject all others by influencing the semi-annual agendas each agency must adopt.

In short, we can find no basis for making the distinction between an Executive Order which affects commission procedures and an Executive Order which affects substantive mandates. To do either, the Executive must come to Congress for a statute.

Mr. President, we hope these views will be helpful to you.

Sincerely,

——— ———.

Abe Ribicoff, Chairman, Committee on Governmental Affairs; James O. Eastland, Chairman, Committee on the Judiciary; Warren Magnuson, Chairman, Committee on Commerce; William Proxmire, Chairman, Committee on Banking, Housing, and Urban Affairs; James Abourezk, Chairman, Subcommittee on Administrative Practices and Procedures; James Allen, Chairman, Subcommittee on Separation of Powers; Charles Percy, Ranking Minority Member, Committee on Governmental Affairs; Strom Thurmond, Ranking Minority Member, Committee on the Judiciary; James B. Pearson, Ranking Minority Member, Committee on Commerce; Edward W. Brooke, Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs; Paul Laxalt, Ranking Minority Member, Subcommittee on Administrative Practices and Procedures; Orrin G. Hatch, Ranking Minority Member, Subcommittee on Separation of Powers; Jacob K. Javits, Ranking Minority Member, Committee on Human Resources.

IMPROVING GOVERNMENT REGULATIONS

As President of the United States of America, I direct each Executive Agency to adopt procedures to improve existing and future regulations.

Section 1. *Policy*. Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

To achieve these objectives, regulations shall be developed through a process which ensures that:

(a) the need for and purposes of the regulation are clearly established;

(b) heads of agencies and policy officials exercise effective oversight;

(c) opportunity exists for early participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;

(d) meaningful alternatives are considered and analyzed before the regulation is issued; and

(e) compliance costs, paperwork and other burdens on the public are minimized.

Sec. 2. Reform of the Process for Developing Significant Regulations. Agencies shall review and revise their procedures for developing regulations to be consistent with the policies of this Order and in a manner that minimizes paperwork.

Agencies' procedures should fit their own needs but, at a minimum, these procedures shall include the following:

(a) Semiannual Agenda of Regulations. To give the public adequate notice, agencies shall publish at least semiannually an agenda of significant regulations under development or review.

On the first Monday in October, each agency shall publish in the Federal Register a schedule showing the times during the coming fiscal year when the agency's semiannual agenda will be published. Supplements to the agenda may be published at other times during the year if necessary, but the semiannual agendas shall be as complete as possible. The head of each agency shall approve the agenda before it is published.

At a minimum each published agenda shall describe the regulations being considered by the agency, the need for and the legal basis for the action being taken, and the status of regulations previously listed on the agenda.

Each item on the agenda shall also include the name and telephone number of a knowledgeable agency official and, if possible, state whether or not a regulatory analysis will be required. The agenda shall also include existing regulations scheduled to be reviewed in accordance with Section 4 of this Order.

(b) Agency Head Oversight. Before an agency proceeds to develop significant new regulations, the agency head shall have reviewed the issues to be considered, the alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completion of steps in the development of the regulation.

(c) Opportunity for Public Participation. Agencies shall give the public an early and meaningful opportunity to participate in the development of agency regulations. They shall consider a variety of ways to provide this opportunity, including (1) publishing an advance notice of proposed rulemaking; (2) holding open conferences or public hearings; (3) sending notices of proposed regulations to publications likely to be read by those affected; and (4) notifying interested parties directly.

Agencies shall give the public at least 60 days to comment on proposed significant regulations. In the few instances where agencies determine this is not possible, the regulation shall be accompanied by a brief statement of the reasons for a shorter time period.

(d) Approval of Significant Regulations. The head of each agency, or the designated official with statutory responsibility, shall approve significant regulations before they are published for public comment in the Federal Register. At a minimum, this official should determine that:

(1) the proposed regulation is needed;

(2) the direct and indirect effects of the regulation have been adequately considered;

(3) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

(4) public comments have been considered and an adequate response has been prepared;

(5) the regulation is written in plain English and is understandable to those who must comply with it;

(6) an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

(7) the name, address and telephone number of a knowledgeable agency official is included in the publication; and

(8) a plan for evaluating the regulation after its issuance has been developed.

(e) Criteria for Determining Significant Regulations. Agencies shall establish criteria for identifying which regulations are significant. Agencies shall consider among other things: (1) the type and number of individuals, businesses, organizations, State and local governments affected; (2) the compliance and reporting requirements likely to be involved; (3) direct and indirect effects of the regulation including the effect on competition; and (4) the relationship of the regulations to those of other programs and agencies. Regulations that do not meet an agency's criteria for determining significance shall be accompanied by a statement to that effect at the time the regulation is proposed.

Sec. 3. Regulatory Analysis. Some of the regulations identified as significant may have major economic consequences for the general economy, for individual industries, geographical regions or levels of government. For these regulations, agencies shall prepare a regulatory analysis. Such an analysis shall involve a careful examination of alternative approaches early in the decisionmaking process.

The following requirements shall govern the preparation of regulatory analyses:

(a) Criteria. Agency heads shall establish criteria for determining which regulations require regulatory analyses. The criteria established shall:

(1) ensure that regulatory analyses are performed for all regulations which will result in (A) an annual affect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, levels of governments or geographic regions; and

(2) provide that in the agency head's discretion, regulatory analysis may be completed on any proposed regulation.

(b) Procedures. Agency heads shall establish procedures for developing the regulatory analysis and obtaining public comment.

(1) Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problem that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.

(2) Agencies shall include in their public notice of proposed rules an explanation of the regulatory approach that has been se-

lected or is favored and a short description of the other alternatives considered. A statement of how the public may obtain a copy of the draft regulatory analysis shall also be included.

(3) Agencies shall prepare a final regulatory analysis to be made available when the final regulations are published.

Regulatory analyses shall not be required in rulemaking proceedings pending at the time this Order is issued if an Economic Impact Statement has already been prepared in accordance with Executive Orders 11821 and 11949.

Sec. 4. Review of Existing Regulations. Agencies shall periodically review their existing regulations to determine whether they are achieving the policy goals of this Order. This review will follow the same procedural steps outlined for the development of new regulations.

In selecting regulations to be reviewed, agencies shall consider such criteria as:

(a) the continued need for the regulation;

(b) the type and number of complaints or suggestions received;

(c) the burdens imposed on those directly or indirectly affected by the regulations;

(d) the need to simplify or clarify language;

(e) the need to eliminate overlapping and duplicative regulations; and

(f) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

Agencies shall develop their selection criteria and a listing of possible regulations for initial review. The criteria and listing shall be published for comment as required in Section 5. Subsequently, regulations selected for review shall be included in the semiannual agency agendas.

Sec. 5. Implementation.

(a) Each agency shall review its existing process for developing regulations and revise it as needed to comply with this Order. Within 60 days after the issuance of the Order, each agency shall prepare a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review. This report shall be published in the Federal Register for public comment. A copy of this report shall be sent to the Office of Management and Budget.

(b) After receiving public comment, agencies shall submit their revised report to the Office of Management and Budget for approval before final publication in the Federal Register.

(c) The Office of Management and Budget shall assure the effective implementation of this Order. OMB shall report at least semiannually to the President on the effectiveness of the Order and agency compliance with its provisions. By May 1, 1980, OMB shall recommend to the President whether or not there is a continued need for the Order and any further steps or actions necessary to achieve its purposes.

Sec. 6. Coverage.

(a) As used in this Order, the term regulation means both rules and regulations issued by agencies including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.

(b) This Order does not apply to:

(1) regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);

(2) regulations issued with respect to a military or foreign affairs function of the United States;

(3) matters related to agency management or personnel;

(4) regulations related to Federal Government procurement;

(5) regulations issued by the independent regulatory agencies; or

(6) regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable or contrary to the public interest for the agency to follow the procedures of this Order. Such a statement shall include the name of the policy official responsible for this determination.

Sec. 7. This Order is intended to improve the quality of Executive Agency regulatory practices. It is not intended to create delay in the process or provide new grounds for judicial review. Nothing in this Order shall be considered to supersede existing statutory obligations governing rulemaking.

Sec. 8. Unless extended, this Executive Order expires on June 30, 1980.

JIMMY CARTER.

THE WHITE HOUSE, *March 23, 1978.*

REMARKS OF THE PRESIDENT UPON SIGNING OF EXECUTIVE ORDER TO IMPROVE GOVERNMENT RELATIONS

I think this is the first time in history that a Presidential Executive Order has been circulated for comment before it was issued, and the comments have been very constructive.

We have received some very careful and helpful comments from more than 350 people, and I think this is indicative of the interest that is shown in this particular action on my part.

This is also the first time that the Executive Branch, so far as I know, has attempted in a fundamental way to improve the government regulatory process by making regulations simpler, less burdensome, and by giving the public a chance to be involved in a critique of the effectiveness of regulations which quite often have the far-reaching effect of law and quite often are not as carefully considered as a legal act by the Congress.

Greater accountability will be built into the process in the future, since agency heads are required to publish semi-annually a list of significant regulations which they are considering or which they have under review, and because, again, of a greater opportunity for public involvement before the head of an agency makes a decision on a regulation.

We have also required in this Executive Order which I shall soon sign that agency heads reassess the effectiveness of existing regulations to determine not only the prospective need for regulation that is new, but the continuing of demonstrated need of existing ones.

When a regulation is determined to be required, we want it to be the least burdensome alternative among many that are considered. I want to be sure that the regulations, for a change, will be written in plain English that I can understand and that the head of the department can understand, and that the person who has written the regulation be identified by name. I want to have a lot of pride of authorship in the regulation and not shame when a regulation is indecipherable.

Another requirement in the Executive Order will be that the economic impact of regulations be assessed, whether or not they contribute to a burdensome and costly additional requirement on those who have to comply with the regulations.

In the major ones we want to be sure that they don't contribute to inflationary costs and that they are compatible with the overall economic policy of our country.

I will be personally involved in assuring that the Executive Order is carried out. And under me, the Office of Management and Budget will be working very closely with the heads of agencies and departments to insure that the spirit and the letter of the Executive Order is honored.

We want to make this a common effort. The independent regulatory agencies are not included in the Executive Order. Many of the heads of those agencies are here. The overwhelming response of almost everyone in the initial publication of the proposed Executive Order was that regulatory agencies should come under the Executive Order. I don't think that is necessary. I think their independence should be preserved. But to the extent that the Executive Order is applicable and advisable, I would certainly hope that the regulatory agencies would decide to implement them on your own initiative as a voluntary effort.

You might want to go even further in some instances than I have done in this Executive Order because this has to apply to literally dozens of agencies. And you might through your own actions focus more nearly on correcting a defect that exists within the ICC or the FEC or FTC or others.

I am very pleased that a common effort has brought this into being, and I am looking forward to the benefit for our entire country because of the cooperation that I expect.

I would now like to sign the Executive Order which I think will be a major step forward for the people of the United States, to make my job easier, make your job easier. I think everyone benefits by this one; nobody will suffer except people who sell typewriter ribbons and maybe some of the printers won't have as much to print. (Laughter)

THE WHITE HOUSE

The following is the text of the President's letter to heads of independent regulatory agencies. It is being sent to the heads of the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Reserve Board, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, and the Securities and Exchange Commission.

TEXT OF THE PRESIDENT'S LETTER

Today I issued an Executive Order to improve government regulations. This Order will open up new opportunities for public participation in the regulatory process, require regulations to be clearer and more understandable, and assure more effective oversight of the development of agency regulations.

I believe that this effort is one of the most important reform initiatives to be undertaken by my Administration. I have asked the members of the Cabinet and other agency heads to give personal priority and attention to implementing the Order. To be fully effective and achieve the full range of needed improvements, I believe that it would be useful for the independent regulatory commissions to initiate a voluntary effort to achieve similar procedural reforms.

As you know, public comment on whether or not to apply these procedures to inde-

pendent regulatory agencies was specifically sought in the November 18, 1977 notice in the Federal Register. The overwhelming response was that these agencies should adopt the provisions of the Order. The public is seeking a change. They are encouraging us to seek new approaches to the way in which government regulates. They point out that if regulations were simpler, less burdensome, and more clearly understandable, people would be better able to comply with them.

I believe that the new spirit of openness, simplicity and clarity advocated in this Executive Order responds to the public's concerns. I know that many important reforms are already underway in the independent agencies and I believe that the requirements of the Order complement these efforts. I am asking you as Chairman of your agency to initiate your own program to incorporate the provisions of the Order. In addition, it would be useful for you to report progress on your efforts to the Congress and to me by June 30, 1978. I look forward to reviewing these reports.

JIMMY CARTER.●

PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD the notification I have just received.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., April 4, 1978.

In reply refer to: I-1045/78ct.

Hon. JOHN J. SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78-28, concerning the Department of the Air Force's proposed Letter of Offer to Sudan for major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost $104.6 million and support costs of $12.4 million for a total estimated cost of $117.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Defense Security Assistance Agency.

Attachments.

TRANSMITTAL NO. 78-28—NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Democratic Republic of Sudan.

(ii) Total Estimated Value:

Major Defense Equipment*—$104.6 million.

Other—$12.4 million.

Total—$117.0 million.

(iii) Description of Articles or Services Offered: Ten (10) F-5E and two (2) F-5F air defense aircraft plus support equipment and spare parts.

(iv) Military Department: Air Force.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: April 4, 1978.

* As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).●

THE OLDER AMERICANS ACT

● Mr. CLARK. Mr. President, Congress is in the process of reviewing programs authorized by the Older Americans Act, which expires this year. The act established a network of area agencies on aging that are responsible for planning, developing, and coordinating various types of social services for older people. The act also authorizes funding for these services, model projects, elderly nutrition programs, research and training activities, multidisciplinary centers on gerontology, and multipurpose senior centers.

These programs are crucial for rural States like my home State of Iowa, which has the third largest percentage of elderly people—over 12 percent—of all States. Older people, particularly those who reside in smaller communities that lack the whole array of services provided in metropolitan areas, have tremendous social, financial, and health needs that are addressed by Older Americans Act programs.

My visits to nutrition sites, my tours of senior centers, my trips on elderly transportation systems, and my experiences with other programs serving senior citizens all confirm the conviction that the Federal Government should continue its commitment to these fine programs.

However, now is the time to do some fine tuning on the Older Americans Act, to make it more effective and administratively efficient. Through field hearings on the problems of the rural elderly, I have come to know that Federal efforts often have been insensitive to the special character of rural communities and to the special needs of rural people. Like other Federal programs, the Older Americans Act programs could be improved to make them more relevant to older residents of small communities. I testified before the Senate Aging Subcommittee on this subject earlier this year.

Many of the recommendations I made to the Senate Aging Subcommittee were derived from conversations I have had and correspondence I have received from those who are directly involved in aging programs in the State of Iowa. Their "front-line" experience with the operation of Older Americans Act programs makes them true experts on this topic, and I value their advice highly.

Among those who wrote to me were Glenn Bowles of the Iowa Commission on the Aging, G. Richard Ambrosius of the Iowa Association of Area Agencies on Aging, several area agency on aging directors, who consulted with their area advisory councils and nutrition project councils, and others in the field of aging in Iowa.

I am certain that this correspondence on the subject of needed changes in the Older Americans Act would be useful to Members of the Senate in their deliberations on legislation to extend the act. Therefore, I ask that these letters and my testimony to the Senate Aging Subcommittee be printed in the RECORD.

The material follows:

TESTIMONY PRESENTED TO THE AGING SUBCOMMITTEE OF THE SENATE HUMAN RESOURCES COMMITTEE, FEBRUARY 3, 1978

Senator Eagleton, members of the Aging Subcommittee, thank you very much for providing me with this opportunity to express some thoughts on the Older Americans Act.

In just the past few years, we have watched the aging programs grow both in terms of funding and in their impact upon elderly Americans. The expiration of the Older Americans Act programs this year allows Congress to do some fine tuning with twin objectives: first, to better address the social, economic and health needs of senior citizens, and second, to reach an even greater proportion of this nation's elderly population.

I come to you today as an advocate for one large segment of our older population which I believe continues to lack sufficient access to Older Americans Act programs: the rural elderly. My concern for the needs of the rural elderly stems both from the fact that I represent a state with one of the largest proportions of senior citizens, and from my tenure on the Special Committee on Aging. A year ago, I chaired a series of hearings for the Aging Committee in which we explored the problems of elderly persons in rural areas. In those hearings, I learned about the value of multipurpose senior centers for small communities. At that time, Title V of the Older Americans Act, which authorizes federal funding for the development of senior centers, had just received its first appropriation. Although the program was just beginning, one of the hearing witnesses predicted that rural areas would encounter special problems because of the high cost of renovation in small communities.

Today, a couple of years hence, I must report that this prediction has unfortunately become reality. The restriction in the federal senior centers program limiting funding to "acquisition, alteration, or renovation" discriminates against rural America and the rural elderly who reside there. The reason for this is that rural communities simply do not have available structures that are suitable for conversion into multipurpose centers at a reasonable cost.

I've recently learned of communities in Iowa that have been forced to choose between equally undesirable alternatives: they can either spend huge sums of money—much of it locally raised—to renovate basically unsuitable buildings that will eventually be plagued with heating, pumbing and other problems, or they can abandon their plans. Rural Americans need and deserve another alternative.

I therefore want to urge you to modify Title V of the Older Americans Act to permit, under certain circumstances, federal funding for the construction of multipurpose senior centers. State aging agencies should be responsible for setting criteria for construction funds and for final approval of individual sites. These decisions should occur in consultation with area agencies on aging and their advisory councils.

Other modifications of the Older Americans Act are needed to make it more responsive to residents of small towns and rural areas. Several of these changes were cited in letters I've received from Iowa's aging directors, who I asked to advise me in preparation for this testimony. Three suggested improvements, which I hope Congress will adopt, are the following:

First, transportation services should become a higher priority in the Act, as these services can be directly translated into greater access for the rural elderly to nutrition programs, health screening and other activities.

Second, the time has come to establish a federal program that would encourage meals-on-wheels services throughout the country. Small town people would especially benefit from an expansion of home delivered meals services, since the only viable alternative is often nursing home care in larger communities, far from their homes.

Third, the Title VII nutrition program for the elderly should be restructured so that rural communities are better able to participate. Current policies and funding patterns lead to a centralization of nutrition sites in larger communities, leaving rural people behind.

STATE OF IOWA,
COMMISSION ON THE AGING,
Des Moines, Iowa, January 6, 1978.

SENATOR DICK CLARK,
Russell Office Building,
Washington, D.C.

DEAR SENATOR CLARK: This is a follow-up to your letter of October 17, 1977 requesting information useful to the review of the Older Americans Act.

You expressed a particular interest in Senior Centers, transportation services, employment programs, and health services. The results of our area agency service priorities assessment would indicate the following results:

Priority 1—Transportation Services,

Priority 4—Senior Centers and Community Services,

Priority 7—Health and Other Services.

As you can see no mention is made for employment programs in this needs assessment.

We have enclosed for your use the distribution of existing FY78 expenditures in each of these service areas. We hope that this information will be useful in your review of the Older Americans Act.

Sincerely,

GLENN R. BOWLES,
Executive Director.

Enclosure.

PROJECTED EXPENDITURES BV SOCIAL SERVICE CATEGORY
FISCAL YEAR 1978

Rank—Social service category	Projected expenditures	Percent
1—Transportation service	$564,562	8
2—Congregate meals	3,901,767	56
3—Services to maintain independence—provided in the home	787,781	12
4—Services to maintain independence—provided in the community	451,112	7
5—Residential repair and renovation services	75,164	1
6—Leisure time activities	367,021	5
7—Other services and activities	460,822	6
8—Legal and counseling services	169,725	3
9—Information and referral services	179,266	3
10—Services to the institutionalized	0	0
Total	6,957,220	

Source: Annual area plan, fiscal year 1978, submitted by the area agencies on aging, exhibit A-10.

Note: For this analysis funds obtained under titles III, VI-A V, VII, and IX have been included in the projected expenditure

SOCIAL SERVICES PRIORITIES, STATE OF IOWA,
FISCAL YEAR 1978[1]

Rank—Social service category	Score
1—Transportation service	0.1065
2—Congregate meals	.1875
3—Services to maintain independence—provided in the home	.2722
4—Services to maintain independence—provided in the community	.4444
5—Residential repair and renovation services	.4490
6—Leisure time activities	.4900
7—Other services and activities	.6406
8—Legal and counseling services	.6453
9—Information and referral services	.8125
10—Services to the institutionalized	.0000

[1] Source: Annual area plan, fiscal year 1978, submitted by the area agencies on aging, exhibit A-10.

STATE OF IOWA,
COMMISSION ON THE AGING,
Des Moines, Iowa, January 17, 1978.

Hon. DICK CLARK,
U.S. Senate, Russell Office Building, Washington, D.C.

DEAR SENATOR CLARK: As a yearling Executive Director of the State Agency on Aging in Iowa, I have several concerns with regard to the Older Americans Act of 1965, as amended, and I will relate them in this letter.

The structure of the Act is cumbersome and its arrangement could be improved. The Act does not clearly define the state agency control of the activities within a state. The type of state advisory and/or policy making unit required to advise the state agency is not clearly set forth. From a management point of view, the Act should be clear in its language not only as to what authority and responsibility the State Agency has but also, what an area agency's responsibilities and function are. The Congress should write the Act in such a manner to assign one agency as responsible and accountable for the administration of the aging program in a state, as well as at the national level. Within the Act, Titles are administrated under varying guidelines and it becomes confusing to have different standards for Titles within an Act, it is recommended that administrative requirements be standardized or that all Titles be combined into one.

I have a strong view that all of the funds provided for by the Act should be channeled through the established aging network. The Congress wisely established an aging organizational structure to administer the aging program and it is the designated tax supported agency which should administer these aging funds to get the maximum utilization of the tax dollar.

At present, Title IX, Senior Employment funds are allotted to the Department of Labor and hence allocated to national contractors and the aging administration. The contractors take a cut of the money for administration costs at the national and again at the state level—this takes away funds which could be used for employment of our needy senior citizens and evades the already established aging network. Also, the national contractors quite often rely upon the aging network to utilize a large percentage of their job allotments. Jobs for the elderly can best be administered through the Administration on Aging and should not be relegated to any other federal program.

In November, I completed a series of public hearings on aging legislation throughout the state and the comments received from the elderly audiences were varied but the themes which I heard most often were: 1) the need for more dollars for the low-income elderly person; 2) a need to cut the cost-gap between the medicare/medicaid allowances and the charges of the private institutions; 3) the high cost of living with the recurring problem of keeping up with inflation and the increase in costs of drugs/medicine, and 4) desire for senior centers. All of these concerns have money as the final need.

The "meals on wheels" legislative proposals should be consolidated within Title VII of the Older Americans Act, without setting up a separate administrative structure which would duplicate costs and possibly an unneeded separate program. Also, a requirement exists to have commodity food training for the aging nutrition program personnel right along with the school lunch training program.

We appreciate your help in ending mandatory retirement, reduction in energy costs for the elderly and raising the earnings limit placed on the social security recipient. An emphasis should be placed on an increase in multipurpose senior center funding and to begin the development of comprehensive health services programs for the elderly in the centers. We must strive to eliminate duplication in all human services for the elderly, the handicapped and the low-income at the federal and the state level—we have too many agencies who are performing the same or similar functions for these people in areas of transportation, home services, outreach and need assessments.

With regard to the rural elderly, their needs are similar to urban elderly except that transportation requirements are of higher priority. They have a greater need for community type senior centers to serve as a focal point for medical, food and information services.

I wish you the best during the New Year and be assured that I am privileged to work with an understanding Iowa Congressional delegation to strengthen a respectable, no-frill, aging program. At present I plan to be in Washington, D.C. on January 25–27, and March 7–10 and will make every effort to schedule a time to again visit your office.

Sincerely,

GLENN R. BOWLES,
Executive Director.

IOWA LAKES AREA,
AGENCY ON AGING,
Spencer, Iowa, March 3, 1978.

Senator DICK CLARK,
Russell Building,
Washington, D.C.

DEAR SENATOR CLARK: Since the Congress is considering the reauthorization of the Older Americans Act, the Iowa Association of Area Agencies on Aging wishes to provide input in the reauthorization process to insure that the end result is an organization that will facilitate a coordinated and effective service delivery system to the senior citizens of the United States. In fulfilling that effort, the Association has directed me to draft a letter to you in support of the administration of both Titles III and VII of the Older Americans Act by the Area Agency on Aging.

Since their inception in the State of Iowa, Area Agencies on Aging have been administering the nutrition projects within their planning and service areas. We firmly believe that this type of administration facilitates not only an efficient, but cost effective service delivery mechanism. The Older Americans Act states that "an Area Agency on Aging will provide for the establishment of a comprehensive and coordinated system of delivery of social services within the planning and service area." We do not believe this can be accomplished if federal regulations fragment that service delivery system. Within the State of Iowa, we believe that the common administration of all aging programs has been the key to facilitating an aging net-

work, and maximizing service delivery economy. The reason for the cost savings of this type of administration is simply that all aging programs funded, coordinated, and/or operated by an Area Agency on Aging are administered through one central office. This facilitates the cooperative use of a common secretarial pool, a common accounting system, and the ability to pool available resources to purchase necessary equipment, office supplies, and support materials. It further facilitates the day-to-day interchange of information between nutrition project personnel, services coordinators, and all other support personnel of the Area Agency on Aging. This organizational structure is the primary reason for Iowa's success in the development of a cooperative, efficient and effective service delivery system.

At the March 1 meeting of the Iowa Association of Area Agencies on Aging, the Directors unanimously endorsed the concept of administering both Titles III and VII of the Older Americans Act through the Area Agencies on Aging. We respectfully request that you also consider supportiing this type of administrative structure. Unless we combine and coordinate all aging programs in the United States, an effective aging network will never become reality, and fragmented service delivery systems will continue to limit the effectiveness of aging programs. A fragmented system is a detriment to the seniors that aging professionals are charged to serve.

If I can provide you with further information and/or documentation, please feel free to contact me at any time.

Very truly yours,

G. RICHARD AMBROSIUS,
Chairman, Iowa Association of Area Agencies on Aging.

AREA I AREA AGENCY ON AGING,
Calmar, Iowa, November 17, 1977.

Senator DICK CLARK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CLARK: Since the Older American Act of 1965 expires in 1978 and it is now being reviewed, I will try to give you some response to the senior citizens' needs and how they respond to the programs we now have in this rural area. Our first program was started in the spring of 1974 and others have been added since.

The Title VII Nutrition (congregate meals) program was the first stated in three low-income counties with four sites. This has increased to eight meal sites in five counties. The attendance has also increased from an average of less than 200 to over 450 per day. Not only is the hot meal needed for most of the participants, it also reduces that isolation and lonliness feeling that many have, especially those living alone. Also, meals are delivered to the homes of those unable to get out. This also has increased from less than 10% to over 20% of the total meals served. I feel extra funds should be made available but added to the Title VII funds since they work very well together.

During the summer of 1975, the rural transportation program was started. We are presently operating one van in each of the five counties, five days a week and soon will be operating a van for handicapped, one day per week in each of the five counties. Our goal for the first year of operation was to serve 1,500 unduplicated individuals. We actually served over 2,000. This program is expanding and more and more are riding. We have mostly 15-passenger vans and our daily average is 11 or better. Many of these riders are in their 80's, live alone and have no other means of transportation.

This year we will receive the first Title V senior center funds. Two centers applied and were approved. We have 37 centers in the five counties with only a couple owned by the seniors themselves. So many requirements are placed on the Title V funds that few centers want to ask for the small amounts of funds. There still is a great need for assistance.

Under the Title IX employment program, we have employed several low-income individuals. Our biggest problem here is finding someone qualified. Many seniors are just too proud to admit that they have incomes below the poverty guidelines. Those we have hired are working out fine and I hope the program continues.

The County Health Service has performed a limited service to the rural areas. Recently, some extra funds have been received and more help was hired to reach more people. Plans are underway to have more health screenings, blood pressures, etc., done at the congregate meal sites, thus reaching more of the people that perhaps can't afford to visit a doctor on a regular basis. If the seniors can be kept in their homes they are much happier and seem to enjoy life longer. A visit now and then may help towards this end.

Considering the Older American Act as a long-range program, it might be advisable to place all of the funds available under one title and let each State and Area Agency on that state sit down and decide how the money should be programmed. Each state has different need priorities. The Area Agencies have close ties to the people. Working together, they should come up with good programs and programs that will help reduce the isolation and loneliness of so many.

It is my hope that as the Older American Act is reviewed and rewritten, it will be simple enough to be understood, yet stated in such a way so the meaning of the act will not be interpreted otherwise.

The best of luck.

Sincerely,

GEORGE A. PFISTER,
Director,
Area I Agency on Aging.

IOWA LAKES
AREA AGENCY ON AGING,
Spencer, Iowa, January 13, 1978.

Senator DICK CLARK,
Senate Office Building, Washington, D.C.

DEAR SENATOR CLARK: Since the Older Americans Act expires during 1978 and reauthorization of the Act is being considered, Area Agencies throughout the United States are recommending proposed changes they would like to see made in the Act. The Iowa Lakes Area Agency on Aging has spent a great deal of time discussing proposed changes to the Act, which resulted in the enclosed Position Paper. It is stated in the Position Paper the Agency further endorses the recommendations made by the National Association of Area Agencies on Aging.

In Northwest Iowa, the priorities established in aging programs developed are controlled by an Advisory Council of 27 senior citizens from throughout the 9 county service area. At their January 10th meeting, the Advisory Council endorsed the enclosed Position Paper as their recommendations for reauthorization. It is of optimum importance that major changes be made during the reauthorization to insure the future development of a comprehensive service delivery system at the local level. The staff of the Area Agency on Aging have dedicated their lives to developing the foundation for a service delivery system, but are currently drowning in unmet needs.

Your thoughtful consideration of this Position Paper will be greatly appreciated. If you have any question or if I can be of any assistance to you, please do not hesitate to contact me.

Very truly yours,

G. RICHARD AMBROSIUS,
Executive Director.

[Position paper from Iowa Lakes Area Agency on Aging, Spencer, Iowa, Submitted January 3, 1978]

ON RECOMMENDATIONS ON THE OLDER AMERICANS ACT REAUTHORIZATION

(By G. Richard Ambrosius, Executive Director)

During 1978, the Congress of the United States will be considering the reauthorization of the Older Americans Act which expires this coming year. Our elected officials will be considering Amendments to the Older Americans Act, which will most effectively facilitate a comprehensive service delivery program to the senior citizens of the United States. This position paper is designed to express my comments and concerns relevant to the reauthorization of the Act.

The 1972 Amendments to the Older Americans Act which created the Area Agencies on Aging were designed to provide grass roots input at the local level to insure that programs and services developed truly met the needs of senior citizens. However, the administration of the 1972 Amendments to the Older Americans Act which were designed to meet grass roots needs have been aborted through the use of National contracting and funding to other agencies and organizations with aging funds. Upon examining the Older Americans Act, it also becomes obvious that many of the regulations generated by this Act are designed to facilitate the needs of urban elderly, and do not take into consideration the problems of serving senior citizens living in isolated rural areas. For the most part, I concur with the recommendations forwarded by the National Association of Area Agencies on Aging.

The Older Americans Act should specify that the primary role of the Administration on Aging, State units on Aging, and Area Agencies on Aging, is one of advocacy in the development of a comprehensive and coordinated service delivery system to serve older persons. In the fulfilling of this role in rural areas, there should be a realization that it is also necessary for an Area Agency on Aging in a rural area to first develop the service delivery system through the provision of direct services. In order to properly fulfill the advocacy role, consideration should also be given to increasing the appropriation levels in the areas of information and referral and outreach. If the primary role of the aging network is one of advocacy, it is extremely important that this role be recognized at the National level by establishing the Administration on Aging as an independent agency within the Department of Health, Education and Welfare (HEW) with the Commissioner on Aging reporting directly to the secretary of HEW.

The Area Agency on Aging should be the sole means of delivering programs funded under the Older Americans Act to senior citizens at the local level. In other words, all Titles funded under the Act should be administered through the aging network, rather than being skimmed off by National contractors as is presently the case under several Titles of the Act, specifically Title IX and model projects on Aging. If this is not done, the concept that State and Area Agencies are the focal point for coordinating and pooling both public and private resources on behalf of the nations elderly will not become reality.

It is my belief that programs such as Foster Grandparents and RSVP which received funding under the Act should also be returned to the aging network for program administration. This would guarantee the availability of these programs throughout the aging network, rather than being developed only in areas selected by Regional and State offices of Action.

In fact, it would seem logical that the Older Americans Act could be amended under one Title with formula grants going out to

State and Area Agencies on Aging and thus allowing seniors at the local level to determine program priorities in the utilization of aging funds. If the Area Agency on Aging is to become the focal point for the delivery of comprehensive and coordinated service systems, it is of optimum importance that they be provided funding commensurate with the responsibilities delegated. When a State unit on aging delegates authority to an Area Agency for administering and monitoring programs for which the State is receiving administrative funds, the State unit on aging should allocate a portion of those funds to Area Agencies so that they may adequately carry out the role which they are assigned.

Further, all Older Americans Act funds allocated to Area Agencies on Aging for the development and administration of Area Plans, as well as Social Services, should be on a 90/10 matching requirement of cash or in-kind contributions. It is unrealistic to believe that local units of governments will ever be able to absorb the programs being developed by the aging network. Therefore, the current requirement to limit funding cycles to 3 years is totally inappropriate.

Whereas, one of the primary roles of the Area Agency on Aging is in the planning, development, and coordination of programs and services, the Older Americans Act should provide for a minimum planning cycle of 2 years. This would not only facilitate long range planning and multiyear funding cycles, but would greatly reduce the administrative demands and staff workloads inherent with the submission of an Annual Plan.

Under Section 305(B) of the Act, the Administration on Aging can establish National priorities and apply a required percentage for funding of these priorities. While it is recognized that in most cases these priorities apply throughout the United States, the Act should provide for the determination of priorities on an Area Agency on Aging level through the utilization of Needs Assessment Surveys. Our Congressional leaders must realize that the priorities established through a program controlled by urban centers may not apply to the needs of the Nation's rural elderly.

In rural areas throughout the United States, the development of multipurpose senior citizens centers could have an immense impact on the development of a coordinated service delivery system. Therefore, a great deal of emphasis should be placed on expanded funding under Title V of the Older Americans Act to include mortgage insurance and annual interest grants under Sections 506 and 507. Part A, of Title V. Section 511 of Part B should also be reauthorized and amended to provide for the staffing and operating costs of multipurpose senior centers. In many cases, the development of an adequate staff in a multipurpose senior center could facilitate long range planning for center development and self sufficiency. I would further like to see the emphasis placed on locating multipurpose senior centers in the central city eliminated from consideration of funding under Title V. Although it may be true that the central city in urban areas has a large concentration of low income senior citizens, this same conclusion simply cannot be applied in rural areas. In fact, in many cases it may be necessary to provide funding for new construction on the fringe of a rural community to facilitate adequate parking. This is largely necessitated by the lack of public transportation in rural areas.

Under Title IX of the Older Americans Act which allows for the employment of low income senior citizens, the current income level is totally unrealistic. Title IX should be restructured to allow flexibility in determining participant eligibility, such as using a State by State cost of living index rather than a National income level.

Although not currently part of the Older Americans Act, I would strongly endorse the enactment of National Wheels on Meals legislation. I would further encourage Congress to enhance the efforts of Area Agencies on Aging to develop a comprehensive delivery system to meet the needs of the nations rural elderly by providing that the Meals on Wheels program be administtred through the State units on aging and Area Agencies on Aging. The coordination of the elderly nutrition programs can best be accomplished if Congress provides that the Meals on Wheels program be addressed in Area Plans.

Based on census projections, one can readily realize that the United States is an aging Nation. We must begin now to plan for a coordinated service system to serve our ever expanding elderly population, especially in rural areas. Because of the present allocation formula which makes funding available on a strictly population basis, rural areas are often unable to hire an adequate staff to facilitate cost effective program delivery. The Congress of the United States and the Administration on Aging need to take an ever expanded role in meeting the needs of our nation's rural elderly, which to date seem to have been ignored. Although a great deal of funding is appropriated by the Congress, the amount of money reaching rural areas is extremely limited. Through the elimination of National contracting, the funding of millions of dollars presently funneled into model projects and educational institutions to research and analyze seniors' problems, could be going to Area Agencies on Aging who know what the problems are but do not have adequate resources to meet identified needs.

Although I do not negate the need for research, it seems contradictory to constantly remind rural areas of the new problems that senors are facing when there are currently inadequate resources to meet the needs of universal problems, such as transportation and in-home services. In many cases, we may be studying our elderly population to death.

I again reiterate that I concur with the recommendations made by the National Association of Area Agencies on Aging on the Sections not covered in this position paper. These recommendations were forwarded to the aging network by Leon Harper, President of the Board, on December 15, 1977.

NORTH CENTRAL IOWA
AREA AGENCY ON AGING,
Mason City, Iowa, March 6, 1978.

Re Older Americans Act Position Paper.

Hon. DICK CLARK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CLARK: A special committee consisting of three representatives of the Nutrition Council, three representatives of the Area Advisory Council, the Nutrition Project Director, and the Area Agency Director met at Fort Dodge on February 7, 1978 to develop a Position Paper on the Older Americans Act which is up for renewal by Congress. Following is the report of this committee:

1. In general the committee is supportive of the present framework of the Aging network. They approve the Area Agency concept with Area Agencies having the close day to day contact with Seniors. The committee feels that any new legislation should leave the Aging network intact so it can continue to plan, implement, and fund services to Seniors. Any new legislation should continue to provide Seniors the opportunity to help determine the type, amount, and level of services provided.

2. The committee recommends that any new legislation stress and reinforce the idea that benefits and services to Seniors are not welfare benefits, and should not require any means tests.

3. That the present practice of allocating funds to the State and Area Agencies by Components (Titles) should continue. This allows Congress to emphasize those programs designed to provide services to meet present critical needs of Seniors and new ones as they develop.

4. While the State and local Area Agencies should have as much local self-determination as practicable, this committee is not supportive of the proposal that all Older American Act funds be given to the State in a block grant and the State Unit on Aging make the determination of how this money is to be allocated to the various Component (Titles) in the state.

5. In the objectives of the Act (Title I) the committee would like to see added this objective—now implied, but not clearly stated: There is a critical need for the kinds of supportive services in both rural and urban communities that will enable Seniors to remain in their own homes as long as possible.

6. The committee would like to see a new title or section added to new legislation to separately fund "In-Home Supportive Services." This should be additional new funds above the present funding rate and used to provide services such as Handiman, Chore, Homemaker Aid, Homemaker Health Aid, Friendly Visitors, Telephone Reassurance, Live-In and Home Companion Services. Again, the idea was stressed that no means test is to be applied.

7. The committee was very supportive of the present nutrition program and urged that it continue to receive funds at the present, or increased funding levels. The committee also recommended that additional funds be made available to the Area Agencies to—

a. Support more transportation to and from the meal sites.

b. Help support "meals on wheels" programs.

8. That Congress do something about the insurance problems of providing reasonably priced insurance coverage to—

a. Seniors providing transportation on a volunteer basis to meal sites, senior centers, etc.

b. To provide liability coverage to nonprofit groups that are supplying services to seniors.

c. Nonprofit groups that want to utilize able-bodied, trained, and qualified seniors above 60 to drive buses and provide services.

9. That the present low-income guidelines for the Title IX senior employment slots be eliminated or at least raised to some more realistic figure. Also that the present 20 hour limit per week of employment be waived in some cases. Congress should look into the possibility of waiving the FICA tax and unemployment insurance for senior workers employed under this program.

10. That the present Action programs for seniors be administered and funded through the Aging Network. This would insure close cooperation and identification of objective between the Action and Aging programs. Action programs are R.S.V.P., Foster Grandparents, and Senior Home Companion programs.

Sincerely,
DONALD A. RYERKERK,
Director, North Central Iowa Area Agency on Aging.

SOUTHERN IOWA, COUNCIL OF GOVERNMENTS, AREA XIV AGENCY ON AGING,
Creston, Iowa, March 7, 1978.

SENATOR DICK CLARK,
Russell Office Building,
Washington, D.C.

DEAR SENATOR CLARK: The Advisory Council and the Nutrition Project Council for the Area XIV Agency on Aging have discussed the reauthorization of the Older Americans Act and have directed me to communicate to you their recommendations:

1. The legislation should be reauthorized and funded with at least a 50 percent increase in Title III, a 25 percent increase in Title VII, and a 25 percent increase in Title V.

2. Categorical funding should be eliminated, allowing senior citizens at the local level to decide what the priorities are.

3. There should be one Title for all Older Americans Act programs to cut down on administrative costs.

4. Both Titles III and VII should be administered by the Area Agencies on Aging. This administrative structure has been very effective in Iowa.

5. The Title IX funds (senior jobs program) should all go through the aging network instead of to the national contractors.

6. Volunteer programs under Action should be returned to the Administration on Aging.

7. Multi-year planning and funding cycles should be established to provide for a more comprehensive planning process.

8. Provision of direct services should continue to be allowed especially in rural areas where it is necessary to assure an adequate supply of such services or to ensure the quality of the services provided.

9. The state allotment formula should be amended to include a factor for concentrations of elderly (percentage of elderly to total population), in addition to the number of state residents 60 years or over.

10. There needs to be a clear delineation of roles for the Area Agency, Grantee, State Unit, and Regional Unit. Advocacy should be a primary role for all of these agencies.

11. The Area Agency concept should be continued because it is vital to the development of comprehensive and coordinated community-based health and social service systems for older Americans which foster independent living.

We appreciate your active participation in legislation involving senior citizens and look to you for continued assistance.

Sincerely,

LOIS HOUSTON,
Director.

DUBUQUE AREA PROJECT CONCERN
FOR THE ELDERLY AND RETIRED, INC.,
Dubuque, Iowa, March 20, 1978.

Hon. DICK CLARK,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR CLARK: Since the reauthorization of the Older Americans Act is being considered by Congress this year, I would like to express some concerns that I have in this area.

For the past ten years, I have been working at Project Concern—an agency which was set up with the help of a Title III grant under the Older Americans Act for the purpose of providing needed services to the elderly of this area. I have been involved in the formation of the Area Agencies on Aging from the beginning—serving on the task force which made the preliminary plans for the formation of the local Area Agency and then serving on the Advisory Board of the merged Areas I and VIII Agency on Aging, and continuing on the Area VIII Agency on Aging Board after the "un-merger".

I would like to offer the following observations and suggestions regarding the future of the Older Americans Act:

(1) The Area Aging Agency network set up through the Iowa State Commission on Aging is a viable means of planning programs, channeling funds and monitoring services to the elderly throughout the area. Every effort should be made to safeguard and strengthen this network. To be truly effective and efficiently administered, all services to the elderly should be co-ordinated through these area agencies. All federal funding destined for services to the elderly should be funneled through this system. This would include all funding authorized under the Older Americans Act and also any funding coming from other sources for services to the elderly, such as from UMTA, Department of Labor, ACTION, etc. This would eliminate national contractors—and the problems entailed in that situation. Utilizing the Area Agency on Aging offices for all funding would ensure the equitable allocation of funds throughout the state and areas.

(2) Provision should be made in the guidelines of the various titles for more flexibility at the state and area level so that OAA funds may be allocated to fit the priority needs of a particular state or area rather than being rigidly locked into federally mandated specifics which may not best meet the most pressing needs of a given area.

(3) I would most strongly urge the placing of the Older American Volunteer Programs (currently in the ACTION Agency) back under the Administration on Aging. The thrust of the ACTION Agency under the new administration is not in line with the basic goals and objectives of the RSVP, FGP, and SCP programs. They need to be administered by an agency whose focus is on the needs of the elderly—otherwise I fear they will be either phased out or bent out of shape to such an extent that they will no longer be meeting the vital needs they now do.

(4) Another concern I have is that funding be made available under the Older Americans Act to provide alternatives to nursing home care for these elderly who need some help but do not need to become completely dependent—deprived of all opportunity for any significant decision-making in their own lives as happens upon institutionalization. This funding could be for a variety of home services and alternative care plans, including adult day care, adult foster home care, expanding of the Senior Companion Program, provision of home health aids and homemakers, etc. Provision should be made for doing pilot programs—as this is a new concept in services for the elderly. We are aware that funding is available for some home services through Title XX from Social Services. However, for all practical purposes, at least in this area, funding is non-existent as there is insufficient Title XX funding to provide adequately for existing programs, and absolutely none to start any new services, no matter how badly needed.

(5) I urge your assistance in anyway feasible in the planning for the 1981 White House Conference on Aging. Continuation of an adequately funded Older Americans Act is vital to the well-being of this rapidly expanding segment of our population—the 60+ group. Some general guidelines which I consider important for legislation in this area are:

Programs should be designed to preserve the independence of older persons as long as possible.

The goal should be to assist communities to set up structures whereby special needs of all citizens are met.

Enough flexibility should be allowed so that programs may meet priority needs in a given area.

The trend should be away from segregating the elderly as a group, and the focus on needs. For example, there may be a need for special transportation services for persons who for physical, psychological or economic reasons cannot be served adequately by existing public transportation. Some of these persons may be elderly. As a necessary step towards this age desegregation, however, we will need special aging programs for some time to take care of crisis situations existing now for many elderly. But there should be built in incentives for communities to seek to eliminate whatever is making it difficult for individuals to meet a basic need.

I commend you for your continuing concern for the wellbeing of elderly citizens.

Sincerely,

GENEVIEVE HEATHCOTE,
Executive Director.●

DEREGULATION COMPROMISE

● Mr. ANDERSON. Mr. President, I recently requested the Library of Congress to analyze the pending proposal of the Senate energy conferees on natural gas. My particular concern was the effect on price and supplies of natural gas to Minnesota.

The study shows that if the Senate enery conferees' proposal is enacted Minnesotans will pay an additional $1.26 billion over the next 7 years. The average homeowner will experience a price increase of 71 percent; the average business will experience an 85 percent price increase.

I have announced my opposition to the pending Senate proposal. Minnesotans should not be forced to turn over $1.26 billion to the oil and gas industry. An industry who cries for more incentives for exploration yet using their profits to buy such energy supply sources as Montgomery Ward.

At this time I ask that the full text of the study done by the Library of Congress be printed in the RECORD.

The material follows:

THE NATURAL GAS SITUATION IN MINNESOTA

In 1975, Minnesota consumed 320.3 billion cubic feet of natural gas. This gas was produced primarily in the United States, but a substantial part of the supply (13 percent) came from Canada. Of the domestic production, 44 percent came from Texas producing properties, 22 percent came from Kansas, 12 percent from Oklahoma, and 9 percent from New Mexico. Interestingly, none came from Louisiana, the largest interstate exporter of natural gas. This data comes from the Federal Energy Regulatory Commission.

The Northern Natural Gas Company (Minnesota division) was the major source of natural gas, and the source of virtually all domestic gas, supplying 90 percent of the total gas consumed in Minnesota in 1975. No natural gas was produced and marketed in Minnesota in that year—only sixteen other States in the United States have no gas production at all.

The Bureau of Mines (now also in DOE) listed 1975 consumption in Minnesota as slightly more, 331.2 billion cubic feet. This represents only 1.6 percent of the natural gas consumed in the United States in that year, but 28 percent of the energy consumed in Minnesota (see attached flow chart illustrating energy flows in Minnesota). Obviously, substantial increases in natural gas prices to Minnesota will have a significant impact on the Minnesota economy.

As the flow chart illustrates, the natural gas consumed in Minnesota went to four economic sectors, and quantities in Btus are listed on the chart. In billions of cubic feet, again using Bureau of Mines data, the 1975 consumption by sector was as follows:

Sector	Quantity of gas (Bcf)	Total value (millions)	Average dollars per Mcf	Number of consumers (thousands)	Average consumption (Mcf)	Total average 1975 bill
Residential	114	$179.5	$1.57	724.0	157.4	$247.90
Commercial	62	78.1	1.26	69.0	898.5	1,131.90
Industrial	101	84.1	.83	at 7.0	14,400.0	at 12,000.00
Electric utilities	23	12.4	.54	at .1		
Pipelines (fuel)	4	2.1	.52			
Others (municipal governments)	27	26.0	.96			
Total	331	382.2		at 800.0		

ESTIMATION OF IMPACTS OF ALTERNATE GAS PRICE POLICIES

In order to estimate the cost impacts on Minnesota of the adoption of one or another of the three leading proposals for natural gas price reform, I have employed the following methodology and made the following assumptions:

The Northern Natural Gas Company delivered virtually all domestically produced gas used in Minnesota in 1975, as the following table illustrates:

Gas delivered to Minnesota in 1975 by pipelines (billions of cubic feet)

Amount, pipeline, primary source, and percent from source:

287.6, Northern Natural Gas (Minn.), U.S. (Hugoton-Anadarko, 95 percent.

12.4, Great Lakes Gas Transmission, Canada, 96 percent.

7.2, Intercity Minnesota Pipelines, Ltd., Canada, 100 percent.

6.5, Midwestern Gas Transmission Co., Canada, 100 percent.

3.7, Great Plains Natural Gas Co., U.S. (Northern Natural), 67 percent.

2.7, Interstate Power Company, U.S. (Northern Natural), 100 percent.

Of the six pipelines serving Minnesota, all are virtually fully dependent on one source or the other, and all of those consumers who are dependent on U.S. supplies obtain those supplies directly or indirectly from Northern Natural Gas.

Hence this analysis has focused on the supplies delivered by Northern Natural Gas, and the annual average gas bills for residential and commercial customers projected in the final tables should be read as those likely to be incurred by consumers of domestic gas only, rather than Canadian gas. It is assumed that Canadian gas pricing policies will not be affected by the domestic gas pricing policies at issue for the purposes of this analysis.

The analysis next assumes that the level of total gas deliveries to Minnesota by Northern Natural will remain constant at about 288 billion cubic feet per year over the period. Obviously, there are factors which will affect the amount of gas consumed in Minnesota—conservation induced by higher prices and regulatory programs, industrial fuel switching prompted by higher natural gas prices or the imposition of incremental pricing, or changes in the prices of other fuels, for example—but the amounts of such changes are unpredictable in this time frame and without a massive fuel consumption model with data inputs not currently available. Moreover, predicting the changes in overall demand for natural gas is not essential for this effort because the focus is on the comparative impacts of the three gas pricing approaches at a given level of demand, and the variance in demand levels that might occur from one pricing approach to another is likely to be small. A critical assumption in concluding that the variance in demand levels experienced under the three pricing approaches is likely to be small is that a similar incremental pricing provision will be adopted under all three. Under the proposed Senate compromise, of course, the incremental pricing provision to be put into effect is unclear and would be delayed until some time after the provisions of the other two approaches would be in effect.

Predicting the analysis on a constant total supply of gas to Minnesota from Northern's domestic sources, the next step is to divide that supply between old gas and new gas. A fairly standard decline rate for gas production is ten percent per year. Thus, I have divided the gas supply into old and new gas, with old gas falling by one-tenth each year during the period, and the new gas contribution rising by the amount necessary to continue the same level of deliveries.

The next step in the analysis is to factor each of the components of the total supply, old gas and new gas, by the prevailing price during each year of the period.

Table 1 presents the old gas supply from 1978 through 1985 and multiplies it by an estimated old gas price for each year to reach a total cost of the old gas portion of total supply for each year during the period. The old gas prices are derived from information obtained from Northern Natural Gas that their current weighted average natural gas purchase cost is $.68. A 2-cents-per-year escalation in this old gas price per year is added because the lower-priced contracts are more recent; the weighted average price will gradually swing in the direction of the more recent contracts, and renewals of old, expired contracts will be made under any of the three approaches at from 52 cents to 54 cents per Mcf.

Tables 2, 3, and 4 present the hypothesized new gas supply from domestic sources necessary to maintain constant deliveries of 288 Bcf, factored by the likely new gas prices under the Senate-passed bill, House-passed bill, and Senate compromise, respectively. The price paths for new gas under tables 2 and 3 are derived from the Congressional Budget Office study of September 1977, for new gas deregulation and the Administration plan, respectively. The new gas deregulation price path has then been modified to accord with the Senate-passed bill by changing the price allowed in the first two years after enactment to the $2.50 stipulated in the bill as passed, from the $4.00 and $3.50 projected by CBO. Both of these earlier provisions would lead to "vintaging" of new gas prices, whereas the current Senate compromise explicitly rejects it. "Vintaging" means that the gas sold at each year's price would continue to be sold at that price in successive years rather than receiving higher later prices as they are put into effect. Under the Senate compromise, all new gas will be sold at the latest prevailing price. Therefore, tables 2 and 3 include vintaging; table 4 does not. The prices set for new gas under the Senate compromise are based on a formula of two parts: annual rises of 3.5 percent for the first four years and 4 percent for the next four years in the period, plus an annual rise equal to inflation.

This analysis presents all estimates in current dollars. Thus, only the first part of the new gas price formula is reflected in the price path shown on table 4. The CBO price projections were also constant dollar projections, and it is reasonable to assume that they would be affected by inflation to the same extent that inflation would cause the prices under the Senate Compromise to rise. Obviously, if for some reason gas prices under the House-passed bill (which are tied to the domestic oil mix to refiners) or under the Senate-passed bill (which are unregulated) failed to reflect inflation, the impacts of the Senate compromise with a built-in inflation index would be comparatively that much greater.

Tables 5, 6, and 7 add the computed cost of old gas (table 1) to the computed total cost of new gas (tables 2, 3, and 4) for each of the years in the period, and then subdivide the totals for each year by the amount of total gas supply to obtain the average price per Mcf that would be paid to producers by Minnesota consumers, under each of the three proposals.

Tables 8 and 9 finally take the computed producer cost per Mcf, add constant estimated transmission and distribution charges, and estimate natural gas bills for each year and for the entire period, for residential consumers in Minnesota and commercial customers in Minnesota, respectively. The constant factors for transmission and distribution are estimates based on perusal of American Gas Association rate service information, but, as constants, are not critical to the final comparison. The gas quantities used for consumption, 160 Mcf per year for a residential consumer and 900 Mcf per year for a commercial customer, are estimates which approximate recent experience.

There are numerous factors which must be taken into account in estimating the impacts of such measures on a national level which can reasonably be ignored here: the potentially different supply responses to different prices in the producing fields, the impacts on the intrastate market, the new gas definition, etc. While significant differences in these factors would be noted at the national level, the reflections of those differences in the gas prices paid by Minnesota consumers are probably minimal.

The period used for estimation in this analysis, 1978 through 1985, is somewhat "out of gear" with the timing of the Senate compromise, which has an April 1977 effective date for escalations (although not for actual prices paid, which become effective on enactment), and is adjusted monthly. This analysis is not amended to reflect either the effects of the final part of 1977 or the monthly adjustments. Since the first would tend to reduce the impacts of the compromise and the second would tend to increase them, and both are relatively minor in effect, they tend to cancel out.

In the one-year period after deregulation becomes effective under the compromise, January 1, 1985, an extension of the same trends of price and impact is assumed for Minnesota consumers because either the President or both Houses of Congress may extend the provisions of the compromise for two years after a six-month test period, and a marked jump from trends under it would

make it more likely that they would do so. In addition, the accuracy of any prediction of market forces at that point would be highly suspect; it would not be suitable merely to transpose the impacts and prices estimated for that year under the Senate-passed bill.

1. OLD GAS SUPPLY DECLINED BY 10 PERCENT PER YEAR AT OLD GAS PRICE

	Old gas supply (Bcf)	Old gas price	Total old gas cost (millions)
1978	259.2	$0.70	$181.4
1979	230.4	.72	165.9
1980	201.6	.74	149.2
1981	172.8	.76	131.3
1982	144.0	.78	112.3
1983	115.2	.80	92.2
1984	86.4	.82	70.8
1985	57.6	.84	48.3
Total			951.4

2. NEW GAS SUPPLY REQUIRED TO MAINTAIN CONSTANT DELIVERIES UNDER SENATE-PASSED BILL, ASSUMING VINTAGING

	Necessary new gas supply (Bcf)	Price per Mcf CBO estimate	Cost of year's addition to new gas supply (millions)	Total cost of new gas (millions)
1978	28.8	$2.50	$72.0	$72.0
1979	57.6	2.50	72.0	144.0
1980	86.4	3.17	91.3	235.3
1981	115.2	3.10	89.0	324.3
1982	144.0	3.00	86.4	410.7
1983	172.8	2.90	83.5	494.2
1984	201.6	2.80	80.6	574.8
1985	230.4	2.80	80.6	655.4
Total				2,910.7

3. NEW GAS SUPPLY REQUIRED TO MAINTAIN CONSTANT DELIVERIES UNDER HOUSE-PASSED VERSION, ASSUMING VINTAGING

	Necessary new gas supply (Bcf)	Price per Mcf CBO estimate	Cost of year's addition to new gas supply (millions)	Total cost of new gas (millions)
1978	28.8	$1.75	$50.4	$50.4
1979	57.6	1.80	51.8	102.2
1980	86.4	1.89	54.4	156.6
1981	115.2	1.95	56.2	212.8
1982	144.0	2.00	57.6	270.4
1983	172.8	2.05	59.0	329.4
1984	201.6	2.08	59.9	389.3
1985	230.4	2.08	59.9	449.2
Total				1,960.30

4. NEW GAS SUPPLY REQUIRED TO MAINTAIN CONSTANT DELIVERIES UNDER PROPOSED SENATE COMPROMISE, NO VINTAGING

	New gas supply (Bcf)	New gas price [1]	Total cost of new gas (millions)
1978	28.8	$1.75	$50.4
1979	57.6	1.81	104.3
1980	86.4	1.87	161.6
1981	115.2	1.94	223.5
1982	144.0	2.02	290.9
1983	172.8	2.09	361.2
1984	201.6	2.18	439.5
1985	230.4	2.27	523.0
Total			2,154.4

[1] 1978–81 rising 3.5 percent annually, 1982–85 rising 4 percent annually.

5. MINNESOTA'S ESTIMATED TOTAL AND PER-MCF COSTS UNDER THE SENATE-PASSED BILL

	Old gas cost (millions)	New gas cost (millions)	Total (millions)	Cost per Mcf
1978	$181.4	$72.0	$253.4	$0.88
1979	165.9	144.0	309.9	1.08
1980	149.2	235.3	384.5	1.34
1981	131.3	324.3	455.6	1.58
1982	112.3	410.7	523.0	1.82
1983	92.2	494.2	586.4	2.04
1984	70.8	574.8	645.6	2.24
1985	48.3	655.4	703.7	2.44
Total	951.4	2,910.7	3,862.1	1.67

6. MINNESOTA'S ESTIMATED TOTAL AND PER-MCF COSTS UNDER THE HOUSE-PASSED BILL

	Old gas cost (millions)	New gas cost (millions)	Total (millions)	Cost per Mcf
1978	$181.4	$50.4	$231.8	$0.80
1979	165.9	102.2	268.1	.93
1980	149.2	156.6	305.8	1.06
1981	131.3	212.8	344.1	1.19
1982	112.3	270.4	382.7	1.33
1983	92.2	329.4	421.6	1.46
1984	70.8	389.3	460.1	1.60
1985	48.3	449.2	497.5	1.72
Total	951.4	1,960.3	2,911.7	1.2

7. MINNESOTA'S ESTIMATED TOTAL AND PER-MCF COSTS UNDER THE PROPOSED SENATE COMPROMISE

	Old gas cost (millions)	New gas cost (millions)	Total gas cost (millions)	Cost per Mcf
1978	$181.4	$50.4	$231.8	$0.80
1979	165.9	104.3	270.2	.94
1980	149.2	161.6	310.8	1.08
1981	131.3	223.5	354.8	1.23
1982	112.3	290.9	403.2	1.40
1983	92.2	361.2	453.4	1.57
1984	70.8	439.5	510.3	1.77
1985	48.3	523.0	571.3	1.98
Total	951.4	2,154.4	3,105.8	1.35

8. ESTIMATE AVERAGE ANNUAL RESIDENTIAL GAS BILLS IN MINNESOTA UNDER THE 3 PROPOSALS, ASSUMING 160 MCF AVERAGE CONSUMPTION

[In dollars]

	Estimated charge for transmission and distribution	Total cost per Mcf to average residential customer			Average annual bill		
		Senate passed	House passed	Senate compromise	Senate passed	House passed	Senate compromise
1978	1.10	1.98	1.90	1.90	316.80	304.00	304.00
1979	1.10	2.18	2.03	2.04	348.80	324.80	326.40
1980	1.10	2.44	2.16	2.18	390.40	345.60	348.80
1981	1.10	2.68	2.29	2.33	428.80	366.40	372.80
1982	1.10	2.92	2.43	2.50	467.20	388.80	400.00
1983	1.10	3.14	2.56	2.67	502.40	409.60	427.20
1984	1.10	3.34	2.70	2.87	534.40	432.00	459.20
1985	1.10	3.54	2.82	3.08	566.40	451.20	492.80
Total					3,555.20	3,022.40	3,131.20
Average		2.77	2.36	2.45	444.40	377.80	391.40

9. ESTIMATED AVERAGE ANNUAL COMMERCIAL GAS BILLS IN MINNESOTA UNDER THE 3 PROPOSALS, ASSUMING 900 MCF AVERAGE CONSUMPTION

[In dollars]

	Estimated charge for transmission and distribution	Total cost per Mcf to average commercial customer			Average annual bill		
		Senate passed	House passed	Senate compromise	Senate passed	House passed	Senate compromise
1978	0.80	1.68	1.60	1.60	1,512	1,440	1,440
1979	.80	1.88	1.73	1.74	1,692	1,557	1,566
1980	.80	2.14	1.86	1.88	1,926	1,674	1,692
1981	.80	2.38	1.99	2.03	2,142	1,791	1,827
1982	.80	2.62	2.13	2.20	2,358	1,917	1,980
1983	.80	2.84	2.26	2.37	2,556	2,034	2,133
1984	.80	3.04	2.40	2.57	2,736	2,160	2,313
1985	.80	3.24	2.52	2.78	2,916	2,268	2,502
Total					17,838	14,841	15,453
Average		2.47	2.06	2.15	2,229	1,855	1,931

RETIREMENT OF LYNN SEEBER FROM THE TENNESSEE VALLEY AUTHORITY

● Mr. BAKER. Mr. President, it was with great regret that I learned Monday of the retirement of Mr. Lynn Seeber, who has served with distinction as the general manager of the Tennessee Valley Authority for the past 8 years, during a period of difficult and often controversial environmental and energy issues. His position as the chief staff official of TVA charged him with the management of TVA's responses to these issues. He has handled that responsibility with intelligence and diligent effort.

The people of the entire Tennessee Valley owe Lynn tremendous gratitude for the service he has rendered in his years with TVA.

I ask that the announcement issued by the Tennessee Valley Authority be printed in the RECORD.

The announcement follows.

TVA GENERAL MANAGER ANNOUNCES RETIREMENT

R. Lynn Seeber, TVA General Manager since 1970, announced today he is leaving the agency May 17 after 26 years' service. Seeber said he has no immediate plans other than to "rest, perhaps travel some, and spend more time at the lake."

Seeber said he has been considering what he called his "early retirement" for some time, and had advised the Board of Directors of his plans several weeks ago. Seeber said he would be taking accumulated vacation time between now and May 17. Assistant General Manager H. H. Stroud, Jr., will be Acting General Manager in the interim.

Members of the Board expressed regret at Seeber's decision.

"Lynn Seeber's work in a tremendously difficult job has been outstanding," said Chairman Aubrey J. Wagner. "We have worked closely together for many years, and Lynn's service has been extremely valuable to the TVA Board, to TVA, and to the region we're in business to serve."

Director William L. Jenkins said he is "sorry to see TVA lose a person of Lynn's caliber. His intelligence, decisiveness and ability to work well with the Board and staff certainly will be missed."

"Lynn and I were colleagues in the Division of Law some 17 years ago," Director S. David Freeman said. "We have kept in touch from time to time through the years, and I had looked forward once again to a close

working relationship with him in the future. I consider Lynn a personal friend and am sorry he feels that he needs to 'recharge his batteries.' "

Seeber, a Clinton, Tennessee, native, was graduated from Clinton High School and obtained a B.S. degree in Business Administration, with a major in Industrial Management, from the University of Tennessee in 1949. He received a J.D. degree from the UT College of Law in 1951.

Seeber is a U.S. Army veteran, having served in the field artillery from 1946 to 1948, including an assignment in Japan.

He was employed by TVA in the Division of Law, where he worked primarily with the Division of Purchasing and the Division of Personnel. He served briefly as Director of Reservoir Properties before his appointment as Solicitor in the Division of Law in 1967.

In April 1969, Seeber became Assistant General Manager, and was designated by the TVA Board to become General Manager effective March 1, 1970. The position of General Manager is the top administrative post in TVA, with responsibility for carrying out the programs and policies determined by the Board.

Seeber is married to the former Julie Jennings of Clinton, and they live on Fort Loudoun Lake south of Knoxville.●

SECRETARY ANDRUS MAKES HIS STAND

● Mr. CHURCH. Mr. President, one of the best decisions that President Carter made after assuming office in January 1977, was to name Cecil Andrus Secretary of the Interior.

Like Teddy Roosevelt, Gifford Pinchot, and Aldo Leopold, Cece Andrus favors the careful management of our country's natural resources. As Governor of Idaho, he was not afraid to speak out when he saw the resources of our public lands being squandered or misused. As the Secretary of Interior he now has the authority to not only speak out, but to actually put an end to shortsighted and ill-considered resource policies.

The March issue of Reader's Digest contained an excellent article describing Secretary Andrus' efforts to "do what is right for all Americans." I ask that this article be printed in the RECORD.

The article follows:

SECRETARY ANDRUS MAKES HIS STAND

(By James Nathan Miller)

Despite opposition from an aroused band of special interests, President Carter's Interior Secretary is determined to do what is right for all Americans. At stake: trillions of dollars of land, water and minerals.

Fourteen months ago, when President Carter named Cecil Andrus Secretary of the Interior, Andrus glided through his confirmation hearings amid a chorus of hosannas. Today, many Interior watchers are privately calling him the President's worst Cabinet appointment. Others call him the best.

The reason for the disagreement is that Andrus is trying to pull off a coup that few of his predecessors have attempted and none has achieved. He's trying to wrest control of the Interior Department from the outside interests that have long run it by remote control. If he succeeds, it will be one of the major domestic achievements of the Carter Administration, with the most profound effects on the way the nation handles its public lands. To see what's involved, start with the action Andrus took a year ago February that brought an abrupt end to his Washington honeymoon: an investigation of the oil and gas industry.

In the Gulf of Mexico, the Interior Department leases offshore gas fields to private companies. The leasing companies are not supposed to hoard this gas in anticipation of future price rises. By law, they must show diligence in looking for the gas, and when they find it they must put it on the market expeditiously. If a company fails to produce gas within 5 years, the lease is forfeited—unless Interior's Geological Survey (GS) grants an extension of the lease. From 1973 through 1976, gas producers in the Gulf made 319 applications to the GS for such extensions. The agency granted all but four.

RUBBER STAMP

During this period, Congressional investigators showed that the GS merely rubber-stamped the companies' applications without investigation, and critics charged that as a result—even during last winter's natural-gas shortage—many companies were being allowed to withhold gas for speculative purposes. But the critics had no conclusive proof—the gas companies and the GS, claiming trade secrets were involved, refused to give out details, and Interior officials never got around to a serious investigation of the charges.

Then Andrus took office, and one of his first moves was to dispatch experts to the GS offices in Louisiana, where Gulf of Mexico records were kept. Two weeks later, he told reporters that his investigators had found that the GS had indeed failed to police the leases. He called for an in-depth investigation to determine whether gas was being willfully withheld and stated that if any evidence of criminal conduct were uncovered, he would turn it over to the Justice Department. And he stripped the GS of its exclusive authority to grant extensions to the leases by announcing that henceforth he himself would exercise that authority.

Since then, Andrus has fired the director of the GS, turned down two applications for lease extensions and, by threatening more such actions, forced a speed-up on 12 other leases. As this article goes to press, the number of non-producing fields has been reduced by 25 percent, and Andrus is continuing to order other companies to accelerate production.

Why was Andrus able, in a matter of days, to dig up facts that had gone undiscovered by his predecessors for years? This brings us to the question of who has been running the Interior Department.

RUINED DOMAIN

When Congress created the Department in 1849, it gave the agency the job of presiding over the Western lands that were steadily being absorbed into the nation. At first, the Department needed only two agencies to do this job: the Bureau of Indian Affairs and the General Land Office. But as the West was populated, the department began subdividing like an amoeba. Today it has some 16 specialized bureaus, services and administrations responsible for managing literally trillions of dollars worth of land, water and minerals. Its domain comprises 842,000 square miles—23 percent of the nation—and its 80,000 employes run everything from the Grand Coulee Dam to the Washington, D.C., park system, from Alaskan bird sanctuaries and Arizona grazing lands to the Statue of Liberty. The problem is that as each specialized department came into being, it fairly quickly fell under the domination of the specialized group it was supposed to oversee. To appreciate how this happened—and the devastating effect it has had on the public lands—consider the case of the Bureau of Land Management.

The biggest users of America's public domain are the 22,000 ranchers and businessmen who hold permits to graze cattle and sheep on the Interior Department's grazing land. Because of the size of the area involved (270,000 square miles, or an area a little bigger than Texas) and the ruinous effect that overgrazing had already had on the land, Congress in 1934 passed the Taylor Grazing Act, giving Interior authority to set strict limits on grazing.

But BLM's range managers quickly discovered that whenever they ordered a reduction in the number of cattle a rancher could graze, the rancher would complain to his Congressman, the Congressman would complain to BLM headquarters in Washington, and an order would soon come down to district headquarters to leave the rancher alone. Over the years, the agency gave up even trying to police the law.

The results are visible today from Wyoming to Oregon to the Mexico border. Vast areas of the bare, gullied, cactus-and-sagebrush "desert" through which you drive for hours on end are actually not desert at all. Before the sheep and cattlemen came, much of this territory was a sea of waving grass from horizon to horizon—and would be today if the BLM had done its job. But livestock have been allowed to nibble the grass to its roots and then to trample the roots to dust and mud. Stripped of their protective matting, these manmade deserts have become easy prey to erosion, and today—almost half a century after the Interior Department was given the authority to prevent overgrazing—they continue to lose millions of tons of topsoil to the rivers of the West. Overgrazing, in fact, is the most widespread cause of environmental damage in America.

"THE THREE R'S"

And so it went at Interior: outside influence ran through the department like sap through a tree. Just as the Geological Survey fell under the control of the oil men, and the BLM of the ranchers and coal miners, so did the Bureau of Mines become the mouthpiece of the mining industry and the Bureau of Reclamation a governmental arm of the dam-building lobby.

What about the man who presided over all of this, the Interior Secretary? In recent years, he has usually been a former Western governor specifically picked for the job because he knew how to get along with the ranchers, miners, oil men, etc. His job was to keep them happy, not to rock their boat. Says Monte Canfield, a former high official at the BLM who quit out of frustration in 1972 after trying to break the coal industry's stranglehold on the department's coal-leasing policies. "The only thing a conscientious Interior official could accomplish, if he had the guts, was to prevent some of the worst giveaways. It was impossible to change the basic policies that underlay those giveaways."

When Jimmy Carter named Andrus Secretary of the Interior, the interests that ran the department examined Andrus's resumé and concluded that he filled their specifications. He was a Westerner, tall, softspoken, likable. He was the governor of Idaho, and on the whole had got along well with development interests there. So Andrus went to Washington unopposed by the Western development lobbies and with the unanimous support of the national conservation lobbies.

It turned out that the conservationists had made the better guess. Andrus told me recently that he knew before coming to Washington of the Department's subservience to outside forces. Yet it wasn't until he took over the agency that he realized how bad the situation was. As soon as he found out, he made no secret of his outrage. He called it "the three R's—rape, ruin and run." He promised to end "the little fiefs that have divided Interior for years." The department, he said, was "a centipede, with each little pair of feet scuttling off in its own direction."

POWER AT THE TOP

Andrus's main weapon in the struggle to regain control of the centipede is the staff

with which he has surrounded himself. In a total rewriting of Interior's organization chart, he has taken all policy-making authority away from the heads of the "little fiefs" and centralized it at the very top of the pyramid, in the hands of the staff he himself has appointed. While his top people are a diverse collection—Easterners, Westerners, businessmen, conservationists, state and local politicians, old associates of Andrus, known as the "Idaho Mafia"—it's this very diversity that is their common theme. Andrus explains it simply: "The public lands belong to the backpackers and the ghetto dwellers as well as to the ranchers and miners. I haven't denied development interests their representation. I've simply extended it to others as well."

While that doesn't sound particularly extreme, at Interior it presents a revolution—and to the development interests it means Andrus has sold out to the environmentalist. Says Carl Bagge, president of the National Coal Association, "Every time I lift up a rock, I see a professional environmentalist." This "environmentalist-sellout" charge is the theme running through all the growing attacks on Andrus, and you'll probably be hearing it with increasing frequency in coming months.

What are the facts behind it? Of Andrus's 40 top appointments, a half dozen have gone to environmental activists. That's a half dozen more than before, and they have been given tasks never before entrusted to an environmentalist. One appointee, for instance, is now assigned the task that Monte Canfield said was impossible—revamping the department's basic coal-leasing policies to prevent giveaways to the coal industry.

Andrus himself defines his basic environmental credo this way: "If I'm faced with a decision of development with adequate safeguards for the environment, I'll come down on the side of development. If I'm faced with development without adequate safeguards, I'll come down on the side of the environment."

Here are some samples of this philosophy in practice:

In Indiana, rejecting conservationist claims that a nuclear plant would pollute the air and water of a national park, Andrus okayed the plant's construction.

In Utah, where conservationists insisted that a large coal-fired plant would foul the air of another national park, Andrus agreed and vetoed the plant's site.

In California, he enraged logging interests by backing a law that will add 48,000 acres of redwood forest to Redwood National Park.

In Alaska, he enraged conservationists by recommending that Eskimos be allowed limited hunting of the endangered bowhead whale.

ALIENATED INTERESTS

In sum, the change that seems to be coming over Interior is not that the environmentalists are taking control, but that they are being listened to. And while the developers are losing control, they clearly haven't lost it yet. Andrus's staff at the top is now setting policy, but this policy still has to be carried out by the same old bureaucracy in the field, with all its old alliances still intact. At least twice when Andrus has testified on Capitol Hill, he has found that he's been preceded by damaging (and incorrect) versions of his plans leaked to Congressmen by the BLM and Bureau of Reclamation. To appreciate how tough a battle he faces to end this sort of thing, look at the lobbies who oppose him—every one of which he has managed to alienate during his year in office:

Oil

In addition to pressuring the oil industry for more gas production, Andrus has backed a bill to give Interior stronger control of off-shore leasing, and has come out in favor of forcing the companies to get rid of their coal and uranium holdings.

Coal

Last year, Interior won a major victory when Congress passed an Andrus-backed law imposing strict environmental controls on strip-mining. Andrus is the first Interior Secretary to urge Congress to pass such a law.

Hard-rock minerals

Andrus wants to reform the ancient Federal Mining Act of 1872, which permits hard-rock miners to go onto federal lands without using environmental precautions and to keep both the claims they stake and the minerals they find without paying the government for them. Andrus wants environmental restrictions, strict leasing requirements and royalty payments imposed on hard-rock miners.

Water

Last March, Andrus called for "the end of the dam-building era in America." He then recommended changes in Western water policies long sacred to pork-barrel lobbyists and Western governors and Congressmen. (The power of the dredge-and-dam establishment can be judged by the fact that one of its main lobbies, the Water Resources Congress, boasts 93 Senators and Congressmen as its vice presidents.)

Farm land

Andrus has announced that he intends to enforce the Reclamation Act of 1902, which says that water from federal irrigation projects can go only to family-owned farms. Interior has allowed this law to be violated for half a century, with the result that today the Bureau of Reclamation is sluicing large amounts of subsidized water to farm land owned or controlled by such "family farmers" as the United Brands Co. and the Southern Pacific Land Co. Andrus's determination to enforce the law has outraged the whole agribusiness community—and along with it Washington's most powerful farm lobby, the American Farm Bureau Federation.

MIXED PROSPECTS

With groups like these shooting at him from all sides, Andrus's situation brings to mind General Custer at the Little Big Horn. What are his chances of winning the battle? There are two schools of thought on the subject. One says that Andrus has little chance of success, that there are too many laws and too many lobbies entrenched in Congress and in his own bureaucracy. The other view is that he may pull it off—*if* Jimmy Carter doesn't back down on him. According to this view, the lobbies appeared powerful in the past because no President since Theodore Roosevelt really dared to confront them. Carter *is* confronting them (all of Andrus's important changes are basically implementations of Carter campaign promises), and it's a mistake to judge this new ball game by the rules of the old game.

One thing is certain: if Andrus *does* win his fight, it will be a famous victory for those who really own these lands: the 217 million citizens of the United States.●

NOMINATION AND CONFIRMATION OF FEDERAL JUDGES

● Mr. GARN. Mr. President, there is growing concern in this body and throughout the country about the manner in which Federal judges are nominated and confirmed. In this regard, I believe the experience of Utah and the activities of the Utah congressional delegation will be of interest to our colleagues and others who are interested in the process of judicial selection.

Perhaps it would be naive to expect that the Utah formula would work in other States; certainly we could expect opposition to the Utah formula in other circumstances. But, in an important sense, the details of the Utah plan are not at issue. The principles are certainly at issue. Frankly, under different circumstances within the Utah delegation itself and if the political alinement between Capitol Hill and the White House were different, we probably would have devised a different plan. For example, the Utah plan was devised and executed by all members of the Utah delegation, Senators and Representatives, Republicans and Democrats. If the composition of the delegation had been different, the plan likely would have been different. For this reason, other States may or may not involve members from both Houses. And for this reason and others, other States may or may not wish to follow the Utah lead and learn from our experience.

However, it is my earnest hope that other Senators will adopt a system of merit selection that will raise the judicial nominating process above the politics-as-usual plane. The details of the Utah plan may not be important, but it is important that the principal parties were all committed to merit selection, that there was nonpartisan discussion about the best option, and that the members of the commission were selected according to their abilities and contribution which they can make to the selection process.

To demonstrate the close working relationship of the members of the delegation and the flexibility that characterized our discussions I can point to my own specific plan for a Utah judicial nominating commission which I put forth in November 1977. This was the first specific plan proposed for Utah. I recomended a 13-member commission to be comprised of 4 persons selected by the senior Senator, 4 by the junior Senator, 3 by the Utah bar, and 2 by the Governor. Of the four selected by the senior Senator, at least one would be a nonlawyer and one would represent a Utah law school; of the four selected by the junior Senator, at least one would be a nonlawyer and one would represent the Utah supreme court. At the time of this recommendation, I said:

> I have been working on the idea of a selection or recommendation commission for most of the last year. I feel that appointments to the federal judiciary should be made totally on merit, without regard to political affiliation or political background. A commission established as I have proposed will have members representing lawyers and non-lawyers, Republicans and Democrats and Independents, judges, and academicians. I hope that we can move ahead promptly with the establishment of a commission and the appointment of commissioners. I, of course, am happy to receive additional recommendations on the nature and appointment of the selection panel.

My colleagues within the delegation took me at my word and made some excellent suggestions regarding the commission. After discussion and negotiation, we agreed on an 11-member commission, and that commission has already begun its search for the qualified candidates who will be recommended to

the President for his nomination to fill a current vacancy of the U.S. District Court for the District of Utah. This vacancy occurs, because of the recent death of Judge Willis W. Ritter.

The Utah Federal Judicial Nominating Commission's 11 members were chosen as follows: The Utah congressional delegation extended an invitation to the two deans of the Utah law schools, or their designees (we are fortunate to have had both deans accept the invitation); one member of the commission was chosen by the delegation from a list of three persons submitted by the Utah State Bar; the other eight members of the commission were elected jointly by the congressional delegation.

We have an excellent and highly distinguished panel. The commission has had its initial meeting and has selected Rex E. Lee, dean of the J. Reuben Clark Law School, as its chairman. The other members of the commission are: Daniel L. Berman, Salt Lake City attorney; Rex J. Hanson, Salt Lake City attorney and former president of the Utah State Bar; Robert H. Harmon, Salt Lake City businessman; Walter E. Oberer, dean of the Univerity of Utah College of Law; William D. Oswald, Salt Lake City attorney; Darrell G. Renstrom, Ogden attorney and chairman of the Utah State Senate Judiciary Committee; Alice Shearer, Salt Lake City civic leader; Belle Spafford, internationally known women's leader; and David W. Sorenson, a Logan attorney. The commission has eight lawyers and three nonlawyers. Two of the lawyers are deans of the State's law schools.

The Utah Federal Judicial Nominating Commission held its first meeting on March 18, 1978. It is now accepting applications from interested persons and recommendations from those who would like to bring qualified persons to the attention of the commission.

At its first meeting, the Utah congressional delegation provided the commission with the following documents:

One. The commission (or charge) to members of the commission;

Two. A "notice of vacancy on the U.S. District Court for the District of Utah" (a public notice to be issued by the commission);

Three. A list of instructions for the guidance of the commission;

Four. A proposed timetable;

Five. The "questionnaire for prospective nominees for U.S. district judge," and

Six. A cover letter for the questionnaire.

The commission was free to amend or discard some of this material and was bound by some of it. For example, the instructions were given to the commission by the delegation with the expectation that the instructions would be followed. In this manner, the commission will serve the delegation in the manner anticipated by the delegation when it established the commission and the applicants and others interested in the methods of judicial selection can be assured that judgment will be made on objective criteria for which notice has been given. On the other hand, the commission was given a degree of discretion and it discarded the recommended application form and is using one similar to an application recently used in Colorado.

We relied heavily on the supporting documents furnished by the Department of Justice to the circuit court nominating panels. Of course, appropriate changes were made.

The Utah commission will continue to accept applications until April 15, 1978. Their recommendations to the President will be made about May 15.

Mr. President, the Utah experience is showing that members of both major political parties can work together to help insure that the men and women who attain the Federal bench will be the best possible candidates—that they are endowed with the intellectual, temperamental, and moral traits that qualify them for their tremendous responsibilities—in which property, liberty, and even life itself may hang in the balance — and life tenure. I believe the Utah Federal Judicial Nominating Commission will serve as a model for merit commissions throughout the country. And, based on our present experience, it will make an excellent model.

I ask that the instructions provided by the Utah delegation to the commission be printed in the RECORD. These should prove of interest to many who are interested in merit selection.

The material follows:

To all members of the Utah Federal Judicial Selection Commission:

The following instructions are provided for the guidance of the Utah Federal Judicial Selection Commission. To obtain the highest quality in nominees for appointment to the United States District Court, it is important for the Commission to adhere to the following procedures and standards.

A. PROCEDURE

1. The Commission should hold an initial meeting for the purpose of discussing these procedures and standards, and of informing itself about the United States District Court, the nature of its business, and the Court's particular needs for certain backgrounds or expertise. The Chief Judge of the District Court should be invited to meet with the Commission to discuss these matters. Such other persons may be invited to discuss the business and needs of the Court as the Commission may desire.

2. Public notice of the vacancy on the United States District Court for the District of Utah should be given by the Chairperson of the Commission by transmitting a written notice to all bar publications, legal newspapers and other newspapers with substantial circulation in the State of Utah. The Commission may give such other publicity of the vacancy as it considers desirable. The notice should be in the form attached to these instructions.

3. The Commission should not limit its consideration to the names which come to it, but the Commission should also seek out names of likely judicial prospects by inquiries to lawyers, law professors, judges, and citizens. However, no member of this Commission should be considered for selection.

4. Each person to be considered by the Commission should be sent a copy of the questionnaire, with the covering letter (as shown in the attachment to these instructions) as well as a copy of the notice of vacancy. If a person does not return the questionnaire, fully completed, by the date specified in the covering letter, the Commission shall not consider that person.

5. The Chairperson shall preliminarily screen the completed questionnaires and recommend to the Commission those who are not sufficiently qualified to merit further consideration under the standards stated hereinafter. The Commission may adopt additional procedures for preliminary screening in order to identify qualified prospects. The Commission should make such inquiries and obtain such information as to persons who are to be considered further as it deems necessary to form a sound judgment whether, or to what extent, those persons meet the standards.

6. After the Chairperson's preliminary screening and such further screening as the Commission may undertake, the Commission shall decide upon those persons it desires to invite for personal interview. No person shall be placed on the list transmitted to the President without a personal interview participated in by a majority of the Commission.

7. The Commission may devise its own internal procedure for selecting the names to be transmitted to the President. But the following guidelines should be observed:

(a) Discussion among Commission members should be of sufficient duration to ensure that the relevant qualities of the qualified prospects are known and evaluated.

(b) Each person whose name is recommended to the President must be approved by not less than six (6) members of the Commission and no name shall be placed on the list for transmittal to the President unless a majority of Commission members deems the individual to be well qualified to be a federal district judge under the standards set forth hereinafter. Methods of voting and deciding on the names to be submitted shall be under procedures determined by the Commission.

(c) A list of the names, in alphabetical order, of the most qualified persons shall be submitted to the President. The list must contain the names of at least three (3) persons but shall not contain the names of more than five (5) persons, who a majority of the Commission members considers to be sufficiently well qualified to be a federal district judge.

8. The Commission's Report to the President shall be in writing over the signature of the Chairperson, and shall be transmitted to the Associate Attorney General, Room 5133, U.S. Department of Justice, Washington, D.C. 20530. The Report shall be mailed no later than May 15, 1978. A suggested timetable to enable the Commission to meet that deadline is attached. At the same time the Report is submitted to the President, a copy of the list of names submitted in the Report shall be forwarded to each member of the Utah Congressional delegation.

9. The Commission's Report to the President shall be accompanied by information which the Commission has assembled on each person recommended. A completed questionnaire on each person recommended shall be included with the Report.

10. All information, and its sources, concerning any prospective nominee shall be kept confidential by Commission members, except that the President, or his representative, may request and obtain from the Commission any information it has about any person on the list of recommended nominees. At the time the list of recommended nominees is transmitted to the President, the Commission, acting through the Chairperson, shall send a letter to each person who submitted a completed questionnaire informing that person whether he or she is on the recommended list. Commission members should not otherwise reveal to anyone, except as provided in Paragraph A8 hereinabove, the names of the persons recommended to the President. Formal announcement of the names recommended to the President by the Commission shall be made jointly by the Utah Congressional delegation.

11. Unless otherwise stated, any function assigned to the Commission may be performed by one or more of its members on behalf of the full Commission, if so directed by a majority of the Commission.

12. Thirty days after the submission of its Report to the President and transmission of letters to all prospective nominees for whom completed questionnaires were received by the Commission, the work of the Commission shall be deemed completed, the Commission shall be disbanded and the service of Commission members shall be concluded. However, all matters considered by the Commission shall remain confidential upon disbanding of the Commission except as otherwise set forth hereinabove.

B. STANDARDS

The Commission shall be guided by the following standards in evaluating qualifications of proposed nominees to be recommended to the President.

1. *Integrity and Good Character*. A proposed nominee must be, and must have a reputation for being, ethnical and honest (intellectually, professionally, and financially) and must be well regarded in the community as a person of integrity and good moral character.

2. *Sound Physical and Mental Health*. A proposed nominee must be physically and mentally capable of sustained work on difficult intellectual problems. The person must be free of physical, mental, or emotional difficulties which could impair such capability.

3. *Outstanding Legal Ability*. A proposed nominee must be a member in good standing, of the bar of the State of Utah and must have a demonstrated professional competence, which includes ability to deal with complicated legal problems, aptitude for legal scholarship and writing, familiarity with state and federal courts and their processes, and substantial experience in the law. The Commission should not confine its consideration to persons in any one type of legal work but should seek out and consider a wide range of prospects in all segments of the practicing bar, in government service (including local and state court judges) and on law school faculties. Whatever the background, an individual must have demonstrated industriousness and a high level of competence in the law and be well regarded professionally by other lawyers.

4. *Legal Experience*. Experience or particular relevance may have been acquired in the following areas: (a) substantial appellate experience as a lawyer or judge; (b) substantial trial court experience as a lawyer or judge; (c) substantial federal law mastery as demonstrated by teaching or by professional association with public or private offices dealing extensively with federal law; (d) substantial legal writing with relationship to federal law; (e) substantial experience in judicial education or law reform activity of a highly professional nature, with some correlation to federal matters. Generally, experience in at least two of these areas is required. In cases of substantial and outstanding service as a judge, experience in one of these areas would be sufficient.

5. *Judicial Temperament*. A proposed nominee must be, and must have a reputation for being, fair and impartial, open-minded, and even-tempered, and a qualified nominee must have the ability and temperament to work together with fellow judges, to be courteous and considerate of jurors, parties, witnesses, counsel, and court personnel, and also to work for long periods in relative isolation. The person should be free of biases against any class of persons or any religious or racial group.

6. *Disqualifying Factors*. The Commission shall eliminate from consideration any person who has been convicted of a felony or a misdemeanor other than a minor traffic violation or juvenile offense, who uses alcohol excessively, who uses narcotics, who has been guilty of professionally unethical conduct, or who is not a citizen of the United States. A person who has less than 15 years of legal experience or who is over 60 years of age should be considered only in unusual circumstances or whose qualifications are exceptionally meritorious.

7. *The Demands of District Court Judging*. In applying the aforementioned considerations, the Commission should be mindful of the nature of the position to be filled. The task of a district court judge in contemporary society is intellectually and physically demanding. The federal district courts carry very heavy caseloads. The duties of a district judge require long hours of presiding over trials and hearing oral argument on motions, and of reading large quantities of briefs, records, judicial opinions, scholarly articles and books. The job requires an analytical mind capable of dealing with masses of factual data and legal authorities.

A district judge must have the composure and ability to decisively make fair and legally sound rulings without prior preparation in issues which arise in the course of a trial. At the same time, since many decisions of a district judge are expressed in written opinions, which must be constructed with clarity and precision, good writing ability is also important.

A district judge comes into regular contact with lay persons as well as lawyers. Thus, the stature of and respect for the federal system of justice will be a function of the demeanor and fairness of a district judge. It is important that his or her patience, evenhandedness, and courtesy to all be constant and clear.

A judge is bound to apply the law objectively in deciding the controversies that come before him, but the law is not always clear in a particular case. A district judge, therefore, must sometimes formulate or shape legal rules. Thus, a person's general sense of values and outlook on society are significant factors for the Commission to take into consideration, as they will bear on the soundness of the decisions that person must make as a judge. A belief in the fundamental premises of the United States Constitution is essential. Since a judge is charged with doing "justice under law," a person's instincts for justice and injustice may properly infuse his decisions as a judge, and the Commission should consider these qualities. Finally, a quality of great importance is "wisdom," the product of an enlightened, intelligent mind, seasoned by experience.●

THE NATIONAL ACADEMY OF RECORDING ARTS AND SCIENCES

● Mr. CRANSTON. Mr. President, I call attention today to a distinguished nonprofit national organization, founded in the State of California, which has served over the years as a powerful and invaluable force in the recording field, the dominating segment of the entertainment industry. I refer to the National Academy of Recording Arts and Sciences (NARAS).

In 1977 the recording academy marked the centennial of the development of recorded sound by paying special tribute to Thomas Edison, America's great scientist and a pioneer in the development of the phonograph. This year the academy is itself celebrating a milestone, the completion of two decades of service and dedication to the advancement of the recording field. The occasion was recently observed by the presentation of the 20th annual "Grammy Awards Show" on February 23.

There is a common, inseparable bond between pioneers in recorded sound such as Thomas Edison and the recording academy. The academy devotes itself to preserving the artistic integrity of the recorded sound made possible by Edison's genius. His invention helped make possible a significant contribution to the world's culture and heralded what has emerged as a worldwide multibillion dollar recording industry, much of it based, I am proud to note, in my home State of California. The academy was established to advance the arts and sciences of recording.

The academy was born in 1957 because a small group of concerned individuals believed that the artistic creativity in producing records deserved as much recognition as the commercial success records may enjoy. It was formed by recording artists, composers, and other creative people to foster creative leadership for artistic, cultural, educational, and technical progress in the recording field and to recognize, encourage, and reward excellence.

The academy has grown from a mere handful of members to an organization which today is composed of more than 5,000 persons creatively involved in the field of recording and enrolled in one of the academy's seven chapters in major music centers in the United States. It is internationally known for its coveted Grammy Awards. The chief aims of the awards, conferred for outstanding artistic and technical achievements are to recognize excellence and to encourage even higher standards for creative and technical efforts, as well as to make the public aware of the cultural contributions of the recording industry.

Named for the old-fashioned gramophone, the Grammy, the most prestigious award in recording, is unique in several respects. It is the single award which is voted upon only by those who are directly and creatively involved in the producing of records. It is truly an award which is given to artists by their peers, who include singers, conductors, producers, songwriters and composers, engineers, musicians, arrangers, spoken word and comedy participants, and album cover art directors and writers of album notes.

Moreover, the Grammy Award is different from all others in that it is not only a music award. It honors accomplishments throughout the broad scope of recorded sound: Popular, including rock, folk, country, jazz, rhythm and blues, classical, ethnic and religious music, as well as the spoken word, including documentary, comedy, dramatic reading and children's records.

Grammy Award ceremonies have been held each year since 1959 and since 1971 they have been televised live on national networks. The "Grammy Awards Show" is now an annual, prime-time network special, telecast live and reaching an estimated international audience of 55 million viewers. It is today one of the most important and most anxiously awaited yearly events in the entertainment world.

While the recording academy may be best known for the Grammy Awards, it

engages in numerous other wide-ranging professional and educational activities which are vital to the advancement of recording.

The NARAS Institute, named for the academy's initials, is sponsored by the academy. It encourages, creates and implements recording and music courses in institutions of higher learning and has established grass roots programs aimed at familiarizing students and other interested individuals with the creative and commercial aspects of the recording field. The institute produces symposia, as do the individual chapters, that enable educators and recording executives to hold indepth discussions of subjects of mutual interest. The institute also examines a college's or university's program in the recording field upon request and offers accreditation to such programs meeting its criteria.

Another area of the academy's activities centers around its hall of fame, which was established in 1973 to honor recordings of lasting, historical, or qualitative achievements released before inception of the Grammy Awards in 1958. The hall of fame facility, to be constructed in Burbank, Calif., and scheduled to be opened to the public upon completion, will be an entertainment and educational attraction of national scope. It will house the hall of fame awards, related artifacts, recording and research libraries, and rare collections of recordings and record players. Unique exhibits and demonstrations will help to increase public awareness and appreciation of the recording field's vast creative and technological contributions to our American culture.

Because recordings so richly enhance our lives, the academy performs a role of critical importance in fostering the artistic and technical progress of the recording field. To this end, the academy's function and goal can be best summed up by its credo:

We, the National Academy of Recording Arts and Sciences, dedicate ourselves to the advancement and enlightenment of the recording industry. We pledge ourselves to foster creative leadership for artistic, cultural, educational, and technical progress; and to give formal recognition to high artistry and craftsmanship in the recording field. As artisans and spokesmen for our industry, we shall pursue the highest standards for our respective fields and strive together for the attainment of excellence overall.●

EX-NEW YORKERS FOR NEW YORK

● Mr. MOYNIHAN. Mr. President, I should like to call the attention of the Senate to a new and promising organization called "Ex-New Yorkers for New York." The impulse behind it is both simple and honorable: the "special passion," as Colman McCarthy termed it in Saturday's Washington Post, that practically everyone who has ever lived in New York feels for that great city. In the words of founder Anita Epstein, "We are determined to fight the 'drop dead, New York' syndrome" that is encountered in some quarters of late. The millions of ex-New Yorkers, and descendants of New Yorkers, now domiciled in every corner of the nation have long needed a unified voice on behalf of a single, central proposition: that, as I put it in a recent address to the White House Conference on Balanced Growth, "New York is the capital city of the Western world. . . . If New York City should go bankrupt, none of the other things we are talking about at this conference will matter. . . . Worse, it will be, and will be seen to be, a failure of democratic government of an altogether ominous degree."

Ex-New Yorkers assembled in this new organization are sending a loud and important message to the Nation: More people care about New York City than one might suppose; far more than only those who live there.

I shall submit Colman McCarthy's column for the RECORD at the conclusion of these remarks. I should also like to take this opportunity to salute Anita Epstein—who has devoted her considerable talents and a great deal of time to the formation of this group. Herself a refugee from foreign oppression, her tireless efforts on behalf of the city that gave her sanctuary—as it has for so many past and present Americans—bespeak a gratitude and dedication that is all too rare. I would like to congratulate her, and the many ex-New Yorkers who have joined, on the group's promising start. I would also like to alert other ex-New Yorkers to a forthcoming opportunity to join with her in an organizational meeting—and celebration of New York—on Wednesday evening, April 19, at 8 p.m. at Georgetown University's Copley Hall.

The article follows:

[From the Washington Post, Apr. 1, 1978]

EX-NEW YORKERS AND THEIR SPECIAL PASSION

(By Colman McCarthy)

In her whimsical poem "Valentine for New York," Phyllis McGinley wrote:

Tumultuous town, absurd and thunderful
I think you're wonderful . . .
I like you real. I love you when you're phony.
In other words, no matter where I gad about
You're what I'm mad about.

Despite poets, madness for New York by its gadding children has never been measurable. But it may soon be organized. Anita Epstein, a resourceful Silver Spring resident who spent most of her early years in Brooklyn after fleeing from Hitler's Europe, has formed Ex-New Yorkers for New York. It is a non-profit group that seeks, first, to rally the affection of the city's near and far-flung natives and, second, to make their voices heard in the current debate on New York's financial future. At the moment, Congress is considering legislation that would provide federal guarantees of $2 billion in long- and short-term securities. The current program of loans expires June 30. When one bill was introduced last week, its sponsor, Rep. William Moorhead (D-Pa.), said nervously that although his subcommittee would give quick approval, opposition in the full House and Senate was wide and strong.

Epstein wonders about that opposition. How can so many in Congress, she asks, fulminate against New York City when their own districts contain large numbers of ex-New Yorkers? She speaks of cities like Miami, Los Angeles, Washington, Chicago, Atlanta and others as almost suburbs of New York. New York University, she reports, has an out-of-town alumni list of 116,000. The figures are similar for the city's other major schools.

In the three months since founding her organization, Epstein has learned that "feelings for New York by ex-New Yorkers is not a just a nostalgia thing. These are people—from all five of the boroughs—who feel a profound sense of debt. They recall the total richness of their lives in New York. Maybe it was the $7.50 a semester at City College, or the ethnic neighborhoods and their bakeries and delis, the museums or even just the merry childhood days of stickball in the streets".

In organizing her membership group, Epstein says that "we are determined to fight the 'drop dead, New York' syndrome." The timing is opportune. Not only has New York not dropped over in urban deadness, but the evidence suggests that new life is returning. According to Senate testimony by Treasury Secretary W. Michael Blumenthal, "New York has made major progress to improve its financial condition. Indeed, every step that it pledged to take, in discussions before Congress in 1975, has been taken." Blumenthal was not offering mere boosterism; the current legislation—the Seasonal Loan Act—has produced a profit for the federal government of $30 million.

Epstein lacks hard figures on the exact number of ex-New Yorkers around the country. But she can document that New York is a truly national city. From 1974 through 1976, she says, 18 New York City museums lent works of art to 322 cities and towns in 46 states. Some 28 performing-arts groups from New York toured 501 cities in 46 states. More than 300 book publishers deal with sellers in every state. Those are some of the exports. Imports also tell a story. According to the Rubin Management Company, one of several New York office and apartment builders, its last venture—a $10 million apartment building in midtown Manhattan—meant buying ceramic tile from Alabama, air conditioning compressors from Wisconsin, gas ranges from Tennessee, steel from Pennsylvania and refrigerators from Kentucky.

In this newest go-round on New York's future, such business-oriented groups as the Association for a Better New York and the Coalition for New York appear to be better prepared to lobby for emergency help. Although Congress is accustomed to hearing from the powerful, sometimes it is more swayed by citizen groups like Ex-New Yorkers for New York. The latter catch fire by the combustions of emotion, pride and, in this case, roots. In the current membership drive (for $4.98, at Box 7, Silver Spring, Md. 20907), Epstein is finding that ex-New Yorkers tend to be effusive when sending in letters—telling her stories about the old neighborhoods and the old ways. Her goal now is to organize that effusiveness into a social force, and to make the case that more people than is realized have positive and passionate feelings about New York. To offer some support to New York is to offer full support to those feeling, all of them human and wholesome.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. HELMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Are we now on the treaty?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I thank the Chair.

Mr. President, the remarks I am about to make have the purpose of setting the record straight, dating back to a rather lengthy discussion that occurred on this floor during the debate on the Neutrality Treaty.

I offer these remarks so that they will appear in the RECORD, and, therefore, be available to anyone who may want to reach the facts involved in a discourse by my good friend and able colleague, the distinguished Senator from Alaska (Mr. GRAVEL).

It was early in March, as I recall, Mr. President, that Senator GRAVEL spoke at some length on this floor relating to the world's total shipping tonnage, especially oil shipping tonnage, that, according to him, cannot transit the Panama Canal.

The able Senator stated that 44 percent of bulk cargo tonnage cannot use the Panama Canal.

At that time, Mr. President, in the friendliest sort of way, the Senator from North Carolina challenged the point the able Senator from Alaska was attempting to make, and there were others in this Chamber who similarly made comments in rebuttal to the Senator's point. Going into this matter at some length, as I say, I think the record should be set straight.

In his remarks, the able Senator from Alaska put the oil shipping tonnage at 76.5 percent, which he described as a "stunning figure." Then he went on to say that "37 percent of all the tankers cannot go through the Panama Canal but that 37 percent represents 76.5 percent of the tonnage of oil carriers in the world."

"We are here debating," the Senator exclaimed, "and literally ripping our guts out, ripping the national fabric with, I think, our false emotion over something that has changed on us and we are not even aware of the change."

The able Senator, on March 1, produced charts, which were placed around the Chamber, indicating a projection of figures meant to demonstrate that the Panama Canal is becoming more and more obsolete.

He cited as his source "a research house that handles brokerage for the world's maritime fleet * * * a charter company out of Oslo, a firm called Fearnley and Egers Chartering Co."

The distinguished Senator said his figures were developed in the last 30 days.

The Senator used as a basis for his argument President Johnson's Interoceanic Commission projections on transits and tonnage through the Panama Canal. He showed us that the projections were in error on transits but essentially correct when it came to tonnage.

From this the Senator concluded that tonnage is what counts, not ship transits through the canal, and he went on from there. Well, this Senator from North Carolina agrees with the Senator that it is tonnage that counts. But he insists that it is cargo tonnage specifically intended to transit the canal, not all the cargo afloat on the high seas going somewhere else.

Well, from this point on the distinguished Senator from Alaska took a course of argument that went farther and farther from the mark and, unfortunately for his cause, proved nothing.

He sought to support his cause—ratification of the treaties—by stating that the increasing capacity of world maritime tonnage construction demonstrates the rapidly increasing obsolescence of the Isthmian waterway.

Mr. President, let me respectfully explain the method followed by the distinguished Senator from Alaska and then show how he was wrong in his conclusions.

He said he wanted to show what has taken place from 1961 to the present regarding construction of bulk carriers in the world. I quote the Senator's formula in his own words:

> We count the vessels that are on the seas, we measure their weight and just ask ourselves how many of them could go through the Panama Canal.
>
> Then when we get a figure and percentage, we can determine the rate of obsolescence of the canal, and now it is 57 percent obsolete in world maritime terms.

Then, Mr. President, my distinguished colleague from Alaska gave in quick succession this set of figures and his conclusion. I am quoting the Senator again. I might say parenthetically, Mr. President, that he was using a chart at that point. He proceeded to say:

> I took one-third of what had happened, and I am pointing to this line of decline. In 1966, 89.59 percent of the world tonnage was able to use the canal.
>
> In 1977, 42.20 percent of the world tonnage was able to use the canal. In 1986, only projecting one-third of past experience, 29.24 percent of the tonnage will be able to use the canal. In the year 2000, 7.64 percent of the world tonnage will be able to use the canal.
>
> As a lay person—and I am not a great statistician—but, as a lay person, I would say if that projection, very conservatively made, would hold true, that by the time we, as we would say, "Give back the canal to the people of Panama," that we would give them back a sucked dry lemon.

Mr. President, the Senator from Alaska gave us the names of other sources, official and private, which would back up his figures. He cited the U.S. Maritime Administration, and "Drury of London," which he stated he visited.

The distinguished Senator said, when he had copies of his charts passed out on the floor, that there was a possibility that some of his colleagues might want to dispute his presentation. He said very sincerely, I am certain, these words:

> . . . I hope they will study it, because if I am presenting something which is in error it should be exposed. These data are very, very important to these deliberations. If these data are wrong I think I should be called on the carpet for that.

Well, I am not calling my good friend from Alaska on the carpet, but I do feel obliged, even at this late date, to set the RECORD straight.

In any case, a bit later on, my distinguished colleague, obviously completely convinced by the conclusion he drew from his statistics, declared:

> I really would encourage the national conservative community that has chosen to make this issue of Panama their cause celebre, and I challenge them, to dispute these figures because the computations are not difficult . . .
>
> To me, it is almost unbelievable, but once the figures are there, we have to just accept them.

Well, Mr. President, obviously some of our colleagues not only accepted the figures of the Senator from Alaska, but also his conclusion as to the indicated proof of the canal's growing obsolescence. The distinguished Senator from Idaho (Mr. CHURCH) declared:

> But no one, I think, could argue with the proposition that the figures themselves, if accurate, are stunning.

And Senator CHURCH went on to take to task those of us opposed to these treaties in the following words:

> Now, this has led the opponents of the treaty to say something I never expected to hear them say: "Let us not give this white elephant to the Panamanians; it would not be fair. Let us keep it for ourselves."

To which, Mr. President, the Senator from Alaska, who had presented the argument for the waterway's obsolescence, replied, "Maybe we could put it in the Smithsonian." And there was great laughter in the Chamber.

Mr. President, that is why the Senator from North Carolina is speaking this evening, at 5:30, not because any Senators are present or many people are in the galleries, and certainly not because the news media will cover this in any way, but just so there will be a record showing that the able Senator from Alaska (Mr. GRAVEL) missed his mark completely.

The Senator from North Carolina disputes the presentation of the Senator from Alaska. I suggest that what is "stunning," to use Senator GRAVEL'S words, is not only the set of figures which the Senator from Alaska presented to us, after chasing them down in Oslo, Norway, and London, England, and Washington, D.C. What is stunning is that any figures on maritime construction tonnage can be used in an erroneous formula that has no basis to lead U.S. Senators and the American people to believe that the Panama Canal is an obsolescent white elephant and that by the year 2000 it will be, as Senator GRAVEL characterized it, a "sucked dry lemon."

Maybe it is equally stunning that any of my distinguished colleagues could be impressed by such an argument.

With all due respect to my colleague I must say that the Senator's formula is just about as worthless as those of any alchemist who ever sought to turn lead into gold.

The able Senator is very concerned, and correctly so, that oil from his State of Alaska gets to the refineries in the

Lower 48 as rapidly as possible. Royalties to his State government are in inverse proportion to the costs involved in that delivery.

Suffice it to say at this point, Alaska would profit more if very large and ultra large cargo carriers—the oil carrying supertanker VLCC's and ULCC's—could transit the Panama Canal. Certainly the current method of lightering the Valdez VLCC's west of Panama and hauling the Alaskan oil through the canal in smaller tankers to gulf and east coast ports is more expensive and directly diminishes royalties to Alaska.

But I believe this Alaskan-oriented concern of the good Senator from that State has obscured his understanding of another fact of maritime shipping life namely, that except for Alaskan oil, only a very small portion of the world's oil passes through the Panama Canal.

Only a small percentage, Mr. President, of the world's shipping tonnage has any need to transit the Panama Canal, because of the simple facts of geography and economics.

The Senator from Alaska obviously overlooked one overwhelmingly important factor in determining what I believed to be his erroneous formula for calculating the obsolescence of the Panama Canal.

That factor, Mr. President, of course, is the matter of trade routes.

Inasmuch as the able Senator from Alaska admits that the majority of maritime shipping tonnage other than oil tankers can transit the Panama Canal, I shall, in my remarks in refutation of his argument that the canal is growing more and more obsolete, emphasize the circumstances of seaborne oil shipping tonnage.

Senator GRAVEL, to put it frankly, failed to take this matter of trade routes into consideration.

He is within the ball park on the figure of 76.5 percent of the world's tanker shipping tonnage that cannot transit the Panama Canal.

By the way, Mr. President, the Senator from North Carolina did not go to Oslo or to London for my material, but I just went right across the street to the Library of Congress and its Congressional Research Service, and I also checked with MARAD and the American Petroleum Institute right here in Washington, D.C., and I have in hand a copy of an oil route map which I will be glad to make available to any Senator who is sufficiently interested in studying the map.

As this map clearly demonstrates, the oil routes of the world simply do not utilize the Panama Canal. In fact, they do not even utilize the Suez Canal. Each route of seaborne oil movements is determined very simply by the location of a producing field at the point of origin and a refinery at the point of destination.

I do not need to point out to the distinguished occupant of the Chair that man did not decide where oil is to be found in this world. God put the oil in certain regions, and man has built refineries in certain places, and oil routes on the high seas follow the major routes as shown on a map from Exxon's spring, 1975 issue in its house organ, "Lamp."

The map was reprinted from the Oil and Gas Journal which is published in Tulsa, Okla., and I believe I am correct in saying that its data is from year's end 1974. I am delighted to have this map, which is available to any Senator who asked for it.

Mr. SARBANES. Mr. President, will the Senator yield for just a question?

Mr. HELMS. Yes.

Mr. SARBANES. I just want to know if the map contains the routes in 1975. The point the Senator is making is an interesting one.

Mr. HELMS. I am glad to furnish the map.

Mr. SARBANES. He did make reference to Suez. I want to get the date because obviously the Suez route was broken when the Suez Canal was closed, although that does not affect the thrust of the point he is trying to make with respect to the Panama Canal. If I could get the date it would be helpful because I think Suez as long as it was open was an important route for the movement of oil.

Mr. HELMS. The date is year end 1974.

Mr. SARBANES. Yes. All right.

I thank the Senator.

Mr. HELMS. I will be delighted if one of the pages will hand the Senator this map. He may find it of interest while I proceed.

I thank the Senator for his question.

As I believe the Senator will agree, this map is worth perhaps many thousands of words on this subject because an examination of the map provides a clear picture that the major oil sources, the Arabian Gulf, North and West Africa producing areas are on the other side of the world from the United States, so it is obvious that direct routes going east or west from that part of the globe do not require use of the Panama Canal. We do not see a single route on this map through that waterway, the Panama Canal, because the quantity through the canal is so small.

The oil people would like to use the Suez Canal, but it is not possible for the ULCC's and VLCC's to transit the Suez Canal when these vessels are loaded. Some of them can pass through in ballast, but not with a payload. At its narrowest, the Suez Canal is almost five times as wide as the Panama Canal locks, and, of course, the Suez has no locks whatever to restrict tanker size.

So, that was the source of my difficulty in understanding the point of the Senator from Alaska that day about a month ago, and that is the reason I found it strange that in the erroneous argument for the Panama Canal's obsolescence no mention was made of the Suez Canal having the similar inability to transit the supertankers.

I may be burdening the subject, Mr. President, but I ask the indulgence of Senators.

Venezuela once was the major source of U.S. imported crude. But as the route map shows clearly, that oil, too, does not need the Panama Canal to get to the United States.

Upon inquiry, the Maritime Administration informed me the major routes of the supertankers plying the high seas are the following. And I believe this pretty well conforms to the information contained in the map which I just shared with the able Senator from Maryland.

In any case, from the Arabian Gulf to the United Kingdom and the European Continent; from the Arabian Gulf to the East, Japan, and so forth; from the Arabian Gulf to the Caribbean and East Coast of South America; from West Africa to the same three destination areas above; and from the Mediterranean to Brazil, and so forth. North Africa is a source region.

The Caribbean to U.S. gulf coast is not now considered a major route.

Of course, the route from Alaska has only opened up in the past few months. While it might be considered to be becoming a major route, it in no way changes the oil flow routes elsewhere. It could begin to affect quantities coming to the States from elsewhere when North Slope production helps to meet our energy needs more adequately, but not the routes themselves.

The point is that, again, the major world routes traveled by the supertankers do not pass through the Panama Canal. So the entire exercise pertaining to the "stunning,"—and I use the word used by the able Senator from Alaska—76.5 percent of the world's oil shipping tonnage that cannot transit the canal simply has no bearing on the Panama Canal and its alleged obsolescence.

Alaskan oil shipping tonnage must be considered separately, but as long as North Slope oil is consumed exclusively by the United States, it will not make the slightest change in the routes plied by supertankers delivering from other sources to destinations outside the United States.

Mr. President, a second fact depicted on this route map of oil movements by sea is the quantity of oil carried to the various refinery destinations. Those quantities are indicated by the width of the route paths.

This tonnage, cargo tonnage—the actual amount of oil hauled—is what really matters.

Mr. President, I ask unanimous consent to have placed in the RECORD at this point a table which shows quantities of oil moved across the seas in thousands of barrels per day. The table gives substantially what the map demonstrates.

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

ESTIMATED MAIN SEABORNE OIL MOVEMENTS

To	Western Europe	North America: East coast [1]	North America: West coast	Japan	Other Far East	South America: East coast [2]	South America: West coast	Africa [3]	Others	Total world
From—										
Middle East:										
Gulf	8,860	1,420	260	3,700	2,120	1,100	20	620	260	18,360
East Mediterranean [4]										
Africa:										
North	1,420	480	20	60	20	180			40	2,220
West	940	860	20	60		220		40		2,140
Latin America:										
Caribbean	440	3,560	60			60	20			4,140
West coast			60			20				80
Southeast Asia	20		400	[5] 880	120		120			1,540
Soviet bloc	960	40		20	40	200		20		1,280
Western Europe	240	100						40		380
Canada	20	80								100
China				160						160
Others [6]			120	40	20	20	20			220
Total world	12,900	6,540	940	4,920	2,320	1,800	180	720	300	30,620

[1] Includes Canada and imports into North America via transhipment terminals.
[2] Includes Caribbean Sea.
[3] Mostly South Africa.
[4] Includes shipments via Red Sea-Mediterranean pipeline.
[5] Includes 40,000 barrels per day from Australia.
[6] Includes Alaska and the United States, west coast.

Source: H. P. Drewry (shipping consultants) Ltd., London.

Mr. HELMS. A quick calculation tells us that less than one-third of the world's oil moved by sea even comes into the Western Hemisphere.

At the very outset, then, regardless of the total amount of oil-carrying tonnage plying the high seas or being built in the world's shipyards—and here is the basic error of the Senator from Alaska—more than two-thirds of the crude oil shipped is not even destined for the Americas.

Clearly, the Panama Canal is never going to be proved obsolescent by the formula used by the distinguished Senator from Alaska on this floor.

Mr. President, this table is "Estimated Main Seaborne Oil Movements," published on page 337 of the International Petroleum Encyclopedia for 1977, and it cites as its source H. P. Drewry (Shipping Consultants) Ltd., London.

The Senator from North Carolina assumes that this is the same firm the distinguished Senator from Alaska visited in making his two-continent search for oil tonnage statistics.

If Senators will look at the table they will see source areas listed vertically at the left, and destination areas listed horizontally across the top.

If we add the bottom line figures in the four coluumns for the East Coast and West Coast of both North America and South America, we come up with 9,460,000 barrels per day shipped to the Western Hemisphere.

The last vertical column on the right gives the world total seaborne oil movements as 30,620,000 barrels per day. Since not even 10 million barrels a day come into our hemisphere it is immediately seen that less than one-third of the world's total oil production comes to the Americas.

Mr. President, the percentage is only 30.9 percent.

We see, then, that practically 70 percent of the world's oil goes by direct routes to the Old World, and does not even come close to the Panama Canal.

Mr. President, neither the map nor the table indicates what percentage of the world's shipping cargos crude oil comprises.

However, I have determined it for the year 1974 from two sources furnished by the Library of Congress:

Statistical Yearbook, 1976, published by the United Nations Department of Economic and Social Affairs, sets forth on page 63 figures for total world commerce given in long tons of cargo unloaded annually. For 1974 the figure reported was 3,204,000,000 long tons.

B. P. Statistical Review of the World Industry, 1974, published by British Petroleum Co., Ltd., London, shows seaborne crude oil tonnage for 1974 to have been 1,655,800,000 metric tons. That converts to 1,629,307,200 long tons of crude oil.

Thus we see, Mr. President, that in 1974, crude oil carried on the high seas amounted to 50.85 percent of the world's maritime cargo total.

Over one-half of the ocean cargoes was crude oil.

This means that the 30.9 percent of the world's crude which we have determined was destined for the Americas is the equivalent of but 15.71 percent of the world's total commerce.

This demonstrates even more clearly, Mr. President, that the so-called "stunning" figure of 76.5 percent—the percentage of the oil shipping tonnage that cannot transit the Panama Canal postulated by the Senator from Alaska—has practically nothing to do with the realities of the Western Hemisphere and the Panama Canal.

The Senator from North Carolina now will take a moment to pinpoint what did come to the United States via that canal in 1974, the year for which our route map took its data. My source is volume 3 of "A Long Term Forecast of U.S. Waterborne Foreign Trade" published by Department of Commerce, Maritime Administration.

The United States is served by some 31 international trade routes. Basically, only two of these routes take crude oil through the Panama Canal. In 1974 only one of them did, route No. 17—identified as U.S. Atlantic, Gulf and Pacific/Indonesia, Malaysia, Singapore. In 1974 the United States imported a total of 11,733,846 long tons of crude petroleum via that route. At a conversion factor of 7.4 barrels per long ton of that gravity oil, it amounted to 86,830,460 barrels.

The American Petroleum Institute in its "Annual Statistical Review, Petroleum Industry Statistics, 1965–1974," citing the U.S. Bureau of Mines as its source, reported the figure of 3,477,000 barrels of foreign crude imported daily into the United States in 1974. That made for an annual total of 1,269,105,000 barrels that year.

Since we imported through the Panama Canal a maximum of 86,830,460 barrels via route No. 17, we find that only a maximum of 6.8 percent came into the United States via that waterway. I say maximum, because route No. 17 carries crude direct to our Pacific Coast where, I am told, the largest portion of it is unloaded for our Western refineries, before passing through the canal. I do not have the precise breakdown.

Therefore, considerably less than the 86.8 million barrels came on to our Gulf and East Coast refineries.

In any event, Mr. President, it is shown by these figures that at the very most, only 6.8 percent of the oil imported in 1974 could have come through the canal to the United States. The actual percentage is, of course, very much less.

Oil from abroad does come through the canal in some years via route No. 24—identified as U.S. Pacific/East Coast South America. However, at least since 1973 it has been much less than by way of route No. 17.

The Senator from North Carolina is not anxious to get into the projection business to the same degree as the distinguished Senator from Alaska. But he will quote the predicted figure for the year 2000 for both routes as forecast by the Maritime Administration in the study being quoted.

They project 30,893,248 long tons, or 228,610,035 barrels, will be imported via route No. 17, and 18,686 tons, or 138,276 barrels via route No. 24.

Such increasing figures, of course, do not in any way support the obsolescence of the Panama Canal by the year 2000 that my good friend the distinguished Senator from Alaska is predicting for us.

Mr. President, the Senator from North

Carolina believes that some other comparisons will help us see the error in the formula by which the Panama Canal is supposed to be proven obsolescent—and worthy only of a niche in the Smithsonian.

Let us look at the world's deepwater ports and their facilities.

First and foremost, the United States does not have a single deepwater port capable of receiving oil from the ULCC's and the VLCC's. MARAD considers a deepwater port to be a natural port capable of handling upward of 150,000 deadweight tons. That is further defined as summer deadweight.

Valdez, Alaska, of course, could qualify, but we all know it exports oil, and does not receive oil.

MARAD informs me that in the entire world there are only a total of 151 such ports. Of these, 118 can take oil, and 33 take dry bulk—grain and the like.

There are only 10 natural deepwater ports in the entire Western Hemisphere that can accept both VLCC's and ULCC's. These all take oil and are listed below:

Freeport, Bahamas; South Riding Point, Bahamas; Aruba, Netherlands West Indies; Curacao, Netherlands West Indies; Bonaire, Netherlands West Indies; Trinidad; St. Croix, Virgin Islands; Sao Sebastiao, Brazil; Point Tupper, Nova Scotia; and Come By Chance, Newfoundland.

On the very face of it, Mr. President, the bulk of the world's tankers—the majority of them—are not likely to be traveling to such a small number—a minority—of the ports capable of receiving their oil.

If we include Valdez as the 11th Western Hemisphere deepwater port, we find that of the 118 oil receiving deepwater ports around the globe, the entire New World has but 9.32 percent of all the deepwater ports in the world.

U.S. deepwater offshore ports that are to be built, such as the Louisiana offshore oil port—the so-called LOOP—are still in the offing.

But even when they are in operation, supertankers carrying oil from any likely source but Alaska still will not need to utilize the Panama Canal.

Mr. President, let us look at another fact of shipping life.

The Senator from North Carolina could quote numerous sources to show how for several years in the past, many, many tankers remained idle. The American Petroleum Institute informs me even as high as one-third of the tonnage has been idle. Again, the Senator from North Carolina wants to emphasize that cargo tonnage is what is important. If there is no cargo tonnage to be hauled, the supertankers' own tonnage counts for naught, whether they could transit the Panama Canal or not. Clearly, the Senator from Alaska made no provision for idle ship tonnage in his fallacious formula.

Mr. President, it seems that while in Oslo, the Senator from Alaska failed to pick up some very important figures from Fearnley & Eger's Chartering Co., Ltd. Or, if he got them, he subsequently failed to use them in his projections.

The Senator from North Carolina has discovered that figures from that firm have been utilized by the Organization for Economic Cooperation and Development—the OECD—to show the average deadweight tonnage of the world's existing fleet of vessels of various classes, and the average deadweight tonnage of vessels on order in those various classes.

Mr. President, the Fearnley & Eger statistics for vessels on order, show that, as of January 1 for each year, the trend from 1974 to 1977 has been just the opposite of that which the Senator from Alaska seems to believe is true—and would have us believe is true. Even though I believe I have shown his formula is irrelevant, it is important that we know the true trends.

The OECD published in Paris a study entitled "Maritime Transport, 1975, A Study by the Maritime Transport Committee." A subsequent volume with the same title was issued for the year 1976.

Mr. President, I have prepared a consolidated table from both volumes and I ask unanimous censent that it be printed in the RECORD at this point in my remarks.

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

AVERAGE SIZE OF SHIPS IN SERVICE AND ON ORDER, 1974-77

[In deadweight tons (metric)]

	Existing fleet as at—				Vessels on order as at—			
	Jan. 1, 1974	Jan. 1, 1975	Jan. 1, 1977	Jan. 1, 1977	Jan. 1, 1974	Jan. 1, 1975	Jan. 1, 1976	Jan. 1, 1977
Tankers over 10,000 dwt	64,400	74,700	84,600	94,200	171,400	165,900	150,200	137,200
Combination carriers	103,700	109,100	111,100	112,800	137,800	131,200	118,100	112,700
Dry bulk carriers	31,600	32,700	33,100	33,700	44,400	44,400	40,500	38,300
Other cargo carrying ships	7,300	7,300	7,400	7,500	9,600	14,200	14,900	15,600
All cargo ships	21,500	24,300	26,000	27,600	86,800	82,200	53,800	36,500

Source: Fearnley & Eger's Chartering Co. Ltd. "Review 1975," and Fearnley & Eger's Chartering Co. Ltd., "Review 1976."

Mr. HELMS. I have taken the figures for both existing fleet and vessels on order for 1974 from the earlier volume, and those for the years 1975, 1976, and 1977 from the latter volume. Somewhat different figures for 1975 and 1976 in the second publication in no way change the trends evidenced. More correct figures can be assumed to me available in the later volume.

Contrary to the trend proclaimed by the Senator from Alaska on the basis of vessel construction in earlier years, and later projected construction, precise construction figures for vessel tonnage paint a picture of decreasing tonnage on order in every class of vessel except those categorized as "Other Cargo Carrying Ships"—and those are all the much smaller ships.

The size trend in construction of tanker and other cargo vessels, Mr. President, is downward.

There is a renewed emphasis on smaller vessels for various economic reasons.

On page 67 of the 1975 OECD report there appears this paragraph:

The average size of various vessel types existing and on order is given on page 70. It is notable that the average size of vessels on order has declined steadily over the last three years for all three types of bulk carrier, with the lack of new orders for the largest size categories and the growing interest in product tankers and bulk carriers that can transit the Panama Canal.

Mr. President, let me repeat:

The growing interest in product tankers and bulk carriers that can transit the Panama Canal.

That does not sound like any deathknell or obsolescence is indicated, does it?

Mr. President, I also repeat that the figures given below are taken from Fearnley & Eger's Chartering Co., Ltd., of Oslo, the same source to which the distinguished Senator from Alaska credits much of the data behind his projections.

I will not read the tonnages of the existing world fleet since they were still going up somewhat by January 1, 1977.

I shall, however, read just the tonnages of the tankers on order over 10,000 dwt—deadweight tons—for each of the 4 years.

They were: 1974, 171,400; 1975, 165,900; 1976, 150,200; 1977, 137,200.

The Journal of Commerce for February 27 of this year touches on this trend in a page 1 article titled, "Shipbuilders Begin To See New Tanker Orders Ahead."

Mr. President, I ask unanimous consent to insert this article in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. Mr. President, the Senator from North Carolina cannot resist making mention of what he considers an ironic development in view of the argument of the Senator from Alaska based on ship construction tonnage.

Business Week for March 6, 1978, in a timely article entitled, "Tankers Are Still in the Doldrums," reports that the Senator's Norweigian source—and now, indeed, my own, Fearnley and Eger—was forced to sell a 250,000-ton tanker only 4 years old to pay off a mortgage. The vessel, which cost some $30 million new, brought only $10 million—a true

reflection of the big tankers' recent doldrums.

Mr. President, I ask for unanimous consent to insert this article in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. HELMS. Mr. President, the concept behind the tanker tonnage formula used by the Senator from Alaska, concerned as he is with quick delivery to the lower 48 States of Alaskan oil, is just not applicable.

Let me cite a couple of examples, both utilizing other forms of transportation, to demonstrate how it is not applicable.

First, one that is not a precise parallel, but easily understood: automobiles. Let us belabor the obvious for a moment.

While it is true that any car can be driven on Alaskan highways, the fact is that no car will be driven in Alaska if its owner never takes it to Alaska.

The Motor Vehicle Manufacturers Association informs me that in 1976, U.S. retail passenger car sales amounted to 8,611,000, and total import passenger car retail sales amounted to 1,498,000.

The National Automobile Dealers Association informs me that in Alaska there were only 11,886 new car registrations in 1976.

Now, Mr. President, if we divide 11,886 by the total of domestic and import auto sales namely, 10,109,000, we come up with a percentage for Alaska that is practically microscopic. To quote the Senator from Alaska:

> To me, it is almost unbelievable, but once the figures are there, we have to just accept them.

The exact percentage is 0.12 percent.

Little more than one-tenth of 1 percent.

Yet this is the same kind of reasoning—the same kind of figuring—the Senator from Alaska has been doing to lead us to believe the Panama Canal is worthless, or becoming so, since so many tons of the world's shipping, which never, never will go near the canal, cannot squeeze through that waterway.

Should we tear up Alaska's highways—or give them to the Russians—because 10,097,114 new 1976 cars—and similar number of 1977 and 1978 models—have not been bought and used by its residents or used by out-of-Staters on Alaska's roads?

I think not, Mr. President; the absurdity of it speaks for itself.

Even should Alaska's automobile density increase greatly, it will always remain but a small portion of that of the entire Nation, regardless of its proportion.

Cars that will never travel in Alaska are like tankers that never will go near the Panama Canal.

Mr. President, another comparison will also show the error of the Senator's rationale. My second example again utilizes Alaska as the setting, this time for airplanes—very large aircraft.

I am informed by the Federal Aviation Administration that there are 763 public and private airports in Alaska, including heliports and seaports: 543 are public; 220 are private.

Of this total, 37 airports are fully certified for air carrier operation.

Thirty more are certified for limited air carrier operation.

At once we can see that in Alaska every airport cannot handle a widebody aircraft. Or even an intermediate jet. Some will take the Boeing 747's and McDonnell Douglas DC-10's. Some cannot even take a 727 or DC-9.

Can all the fully certified 37 fields handle the 747's and DC-10's?

The FAA informs me that only Fairbanks and Anchorage handle those two types of very large passenger jet aircraft.

Kenai is used as an alternate for those airplanes. Ketchikan and Juneau could be used, but are not.

Mr. President, if we were to follow the logic of the Senator from Alaska regarding the proof of the Panama Canal's obsolesence being in the world shipping tonnage that it cannot handle, then we would have to declare obsolete some 758 public and private airports in Alaska. Widebody jets are here. More and more are being produced. The Senator from North Carolina does not, however, expect to hear his colleague demand that Alaskan runways and facilities be given to Russians.

The design utility of the airports and the design utility of the aircraft determine the availability of the one to the other. But that is not all. The market, the passenger, and freight potential come into play, as do a myriad of economic factors.

These kinds of factors, Mr. President, help to determine the seaborne oil and bulk cargo routes, just as they determine the airline routes.

Safety also plays a role.

The FAA does not allow four engine jets to land at National Airport in Washington, D.C.

Do we Senators who continually use National declare it obsolete? Certainly 747's and DC-10's could carry far more passengers in and out of the Nation's Capital if they could operate out of National.

The new European-built A-300 Airbus is having trouble at La Guardia Airport in New York City because of its weight. Its wheels are close together and concentrate that weight. Its impact on the runways is evidently excessive.

That does not make La Guardia obsolescent, even if the new Airbus should never use it for scheduled flights.

One FAA official made the offhand observation, without searching out the precise figure, that perhaps three-fourths of the airports in the United States cannot handle the 747's and DC-10's.

If we take that as an approximate figure, not one of them is made obsolete or can be shown to be on the road to obsolescence, by the inability of the huge jets to utilize it.

Mr. President, for a final example, let us look at the Panama Canal itself.

The Governor of the Canal Zone, Maj. Gen. Harold R. Parfitt, submitted a prepared statement when he testified before the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee on July 25, 1977, in which he said:

> There is ample evidence that an absolute advantage to world trade exists that permits the Canal to retain its importance. There are today, for instance, almost 25,000 vessels of 1000 gross registered tons and over, out of an approximate world fleet of 27,000, that can transit the Panama Canal, and some 4,000 actually do use the Canal.

I repeat, Mr. President, General Parfitt's words, "and some 4,000 actually do use the canal."

In other words, 21,000 vessels over 1,000 gross registered tons that could transit the Panama Canal, simply do not do so.

Trade routes, Mr. President, determine the shipping through the canal—not the number of ships afloat or under construction.

Mr. President, in conclusion, it should be clear to the American people, and my colleagues—including, I hope, my colleague from Alaska—that the supercargo carriers and supertankers that cannot transit the Panama Canal, or those vessels whose owners or charterers choose not to use it, have no more bearing on that waterway than the cars that never will drive on Alaska's roads, or the big jets that cannot land at all of Alaska's airports, have on those particular roads or airports.

I thank the Chair and I yield the floor.

EXHIBIT 1

SHIPBUILDERS BEGIN TO SEE NEW TANKER ORDERS AHEAD

(By Craig Howard)

For the first time in almost five years, shipbuilders around the world are beginning to see firm signs of new tanker orders, shipping and banking sources claim.

The new orders involve product carriers, able to carry various grades of fuel and its derivatives, and crude oil carriers able to serve U.S. ports.

Already some signs of this new trend are evident. In past weeks, Socal has ordered two 120,000 dwt. tankers from Mitsubishi in Japan, while British-flag independent owner Ravi Tikoo announced last week that he had ordered one 87,000-tonner, with the option to build two more, from IHI, also in Japan.

Additionally, experts in the ship sale and purchase market report, Kuwait National Petroleum Co. is seeking to buy eight new or used product carriers in the 30,000 dwt. range.

This new demand not only reflects the fact that construction of these classes of tankers was neglected in the early part of the decade, when every shipowner was ordering supertankers, but also steadily growing U.S. import demand and increasing traffic in refined rather the crude oils.

SHORTAGES EMERGING

Thus, even though the world tanker fleet has in the region of 100 million tons of surplus tankers—largely VLCCs, shortages of products carriers and intermediate sized oilers are beginning to emerge.

The trend has been further bolstered by new anti-pollution and safety legislation around the world as well as the high price of fuels. Existing tankers in these ranges are not only too few, but also do not meet the latest government regulations and burn too much fuel.

Thus, Salim M. Lalani, vice president, specializing in shipping affairs, at the Bank of America told The Journal of Commerce: "We are seeing more interest in intermediate

sized tankers, especially for delivery after 1979."

Shipping sources pointed out that to have vessels ready for 1979 delivery, they would have to be ordered now or within the next few months.

It was also noted that the Socal and Tikoo orders were very specific. Normally, tankers of 120,000 dwt. would be considered too large for American ports but Socal is believed to have required that these ships be especially shallow-drafted so that they can carry full loads from the Arabian Gulf to the U.S. West Coast. Similarly, in announcing his latest order, Mr. Tikoo said that the ships were designed to trade between the Arabian Gulf and U.S. East coast ports.

Moreover, it is reported, new ships are being offered at bargain prices by shipbuilders begging for work. Maximum sized tankers for U.S. ports are being offered in Japan at an incredibly cheap $20–$23 million, and even less in such countries as Brazil and Korea.

The more complicated products tankers, though smaller but equipped with stainless steel cargo tanks, are commanding similar prices.

Moreover, it is reported, credit terms are good while shipowners have been able to specify delivery date ranges of as much as 18 months. Thus, should the expected demand for these vessels be delayed, owners have secured the right to delay the delivery of their new ships.

Another trend now being identified is that more and more interest in new buildings is being shown by buyers that have no shipping background—a reflection, some sources said, of the fact that many of today's shipowners cannot afford to maintain their present fleets, let alone take on new ships.

EXHIBIT 2

TANKERS ARE STILL IN THE DOLDRUMS

In London last week, the Intergovernmental Maritime Consultive Organization, a United Nations body, threw out a U.S. proposal that could have cut the world's 100 million tons of tanker surplus by roughly a third. Now tanker owners wonder how to pump new life into their depressed industry as the world oil market continues slack. With no immediate end to the tanker crisis in sight, owners, bankers, and, increasingly, governments are being forced to consider new ways to heal the ailing business. It is mainly foreign tankers that are affected, since U.S. flag tankers are under the protection of the Jones Act, and are owned by petroleum.

In Scandinavia, the Norwegian Shipowners' Assn. estimates that 60 Norwegian shipowners will have a cash deficit totaling $450 million this year, unless tanker rates improve. Some companies are already being forced by their banks to sell tankers. Swedish shipowner Malmros Rederi, reportedly under pressure from its bank, has put on the market a 372,000-ton tanker for which the company paid up to $55 million. Negotiations are under way to sell the ship to a Hong Kong company for $22.5 million.

In another case, the Norwegian company Fearnley & Eger sold a 250,000-ton tanker to France's Total Oil Group for $10 million. The deal came after the French export guarantee agency insisted that Fearnley sell the ship to pay an outstanding mortgage. When it was built four years ago, the tanker cost an estimated $30 million, and the recent sale has set a new low for tankers that size.

BANKERS' FEARS

The Fearnley sale has chilled the banking world because other banks now dread the day when they, too, may have to force tanker sales to recoup loans.

A major U.S. multinational bank estimates that $25 billion, some 40% of which is owed to private banks and 60% to governments, is a risk. Jim Davis, shipping director for the London merchant bank Kleinwort Benson, Ltd., wants Arab oil countries to chip in $5 billion to help. "If Arab nations want their investment in shipping to be profitable, an improvement in the tanker market must be generated," Davis says. So far, there has been little Arab response to the idea.

In Japan, where tanker owners estimate their losses will total $85 million this year, the government is helping by backing an "in-tanker stockpiling association" that would put surplus tanker bottoms to work by stockpiling oil for emergency use.

IDLING TANKERS FOR PROFIT

But perhaps the most controversial solution is a try for an owners' cooperative that would lay up enough idle tanker capacity to increase tanker rates. In Scandinavia, 23 independent tanker owners are forming a London-based group, International Tanker Services Ltd., the aim of which is the orderly marketing of 40 million tons of larger tanker capacity.

The owners already have about 17 million tons of supertankers in the proposed pool, but the plan is running into a good deal of opposition. "When I think of [the plan's] cartel qualities, I think it has very real difficulties," says Kleinwort's Davis.

The tanker picture, however, is not entirely bleak. Though a partial recovery in mid-1976 failed to last (BW—June 14, 1976), there are some experts who predict an enduring upturn in the tanker market by 1980.

Tormod Rafgard, general manager of Oslo-based International Association of Independent Tanker Owners, for example, sees some hope in an expected reduction in delivered new tankers this year to about 10 million tons, compared with 24 million tons in 1977. He also predicts scrapping of tankers this year at last year's brisk rate of 10 million tons, as well as a 10-percent hike in tanker demand, compared with last year's 6-percent increase. Says Rafgard, "There will be a reasonable tanker market by 1980."

But many see it taking longer. "I don't know anybody who expects a good tanker market before 1982 or 1983," says Andrew Carpenter, tanker director of H. P. Drewry Ltd., London shipping consultants. "Demand for oil has not increased, and there will be more demand for shorter-haul North Sea and Alaskan oil. The Suez is being expanded to take large ships. All this will dampen growth . . . and we will need two years of 10 percent growth before we get rid of the bulk of that surplus. I don't see more than 6 percent this year."

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RESERVATION NO. 12

Mr. BROOKE. Mr. President, to date, the administration has been unable or unwilling to submit the implementing legislation related to the Panama Canal treaties formally to the Congress. I continue to be perplexed as to why this is the case.

Nevertheless, like many of my colleagues I have received what is purported to be the final draft of that legislation along with a detailed explanation of each of its sections. I use the term "purported" because State Department officials, in making this material available to me, stated that it might still be revised somewhat after, I repeat, after the OMB reviews it.

The State Department has had 7 months to draft the administration's proposals. Department spokesmen stated last fall to the Senate Foreign Relations Committee that the implementing legislation would be submitted to the Congress by late October or early November of 1977. And yet they are still awaiting OMB approval of the draft. In case other Members of the Congress have not been provided the latest draft, I ask unanimous consent that it and its explanation prepared by the State Department be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. BROOKE. Mr. President, when I first called attention to the dilatory way the administration was handling the implementing legislation at the beginning of our debate on the treaties, many of the proponents of the treaties stated that the implementing legislation had no bearing on the final Senate decision on the treaties. I differed with their view then and my reading of the draft legislation has done nothing to change my mind.

I will only mention one item today to indicate why I believe there is an important relationship between the proposed implementing legislation and the manner by which our decisions on the treaties are finalized.

The administration proposes in title II, section 202 of its draft that the payment of interest to the U.S. Treasury on the net direct investment of the United States in the canal be discontinued if the Panama Canal Treaty comes into effect. Currently, this payment is approximately $20 million per year. Comptroller General Staats estimates that discontinuance of this payment would result in a total loss to the Treasury of $505 million over the life of the treaty.

I believe that the Congress will and should insist that this payment continue. It will certainly be in our power to do so as we work our will on the implementing legislation, if the Panama Canal Treaty is ratified.

The decision to continue the interest payments will have an impact on the efforts to carry out the spirit and letter of the treaty. Its most evident impact will be to increase the size of the toll rate necessary to compensate for the added costs contemplated in the treaty. And a further increase in toll rates will bring about some reduction in traffic flow.

The latter point is especially significant in terms of Panamanian expectations as to financial benefits to be expected from the treaties. As is well known, Panama is to receive $0.30 per canal ton transiting the canal. Any reduction in traffic flow reduces the amount Panama will receive under this provision. In order to avoid any misunderstanding with Panama on this matter, it seems to me eminently reasonable, if the treaty

is ratified, to avoid an exchange of the instruments of ratification until such time as the implementing legislation has been enacted setting forth precisely what will be the situation regarding the interest payment to the Treasury.

Other demands on canal revenues imposed by congressional action on the implementing legislation, such as an instance that the added civil service retirement costs required by the treaty provisions—an estimated $7.5 million to $8.4 million per year—be paid for out of canal revenues, would have a similar effect on assumptions integral to the treaty. We should be very circumspect about allowing false expectations to flourish about the likely impact of mere ratification of the treaties.

In order to avoid the debilitating effects of unfulfilled Panamanian expectations, I have come to the conclusion that if the Panama Canal Treaty is ratified, the exchange of the instruments of ratification should not take place until enactment of the relevant implementing legislation. Therefore, I am today submitting a reservation to that effect. I believe it is a reasonable method of avoiding problems downstream that would seriously weaken the capacity of the United States and Panama to cooperate in the effective management of the canal over the next 22 years.

Mr. President, I send to the desk the reservation.

The PRESIDING OFFICER. The reservation will be received and printed, and will lie on the table.

EXHIBIT 1

A BILL TO IMPLEMENT THE PANAMA CANAL TREATY OF 1977 AND RELATED AGREEMENTS, AND FOR OTHER PURPOSES

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this Act to provide legislation necessary to or desirable for the implementation of the Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama and of the related agreements accompanying that Treaty.

SECTION 2. DEFINITIONS AND GENERAL PROVISIONS.

(a) As used in this Act, references to the Panama Canal Treaty of 1977 and related agreements mean the Panama Canal Treaty between the United States of America and the Republic of Panama signed September 7, 1977, and the agreements relating to and implementing that Treaty signed on the same date.

(b) The Canal Zone Code is hereby redesignated the Panama Canal Code.

(c) Except as otherwise provided in, or where inconsistent with, the provisions of this Act, the following words and phrases are amended as follows wherever they appear in the Panama Canal Code and other laws of the United States, unless in context the changes are clearly not intended, or unless such words and phrases refer to a time prior to the effective date of this Act, as defined in Section 502 (herein called "the effective date"):

(1) "Panama Canal Company" to read "Panama Canal Commission".

(2) "Company" to read "Commission" wherever the word "Company" has reference to the Panama Canal Company.

(3) "Canal Zone Government" to read "Panama Canal Commission".

(4) "Governor" or "Governor of the Canal Zone" to read " Panama Canal Commission" wherever the reference is to the Governor of the Canal Zone.

(5) "President" to read "Administrator" wherever the word "President" has reference to the president of the Panama Canal Company.

(6) "Government of the Canal Zone", or "Government", wherever the reference is to the Government of the Canal Zone, to read "United States of America".

(7) "Canal Zone waters" and "waters of the Canal Zone" to read "Panama Canal waters" and "waters of the Panama Canal", respectively.

(8) "Canal Zone Merit System" to read "Panama Canal Employment System".

(9) "Canal Zone Board of Appeals" to read "Panama Canal Board of Appeals".

(d) Reference to the Canal Zone in provisions of the Panama Canal Code or other laws of the United States which apply to transactions, occurrences, or status after (treaty effective date) shall be deemed to be to areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(e) The President shall, within two years after the Panama Canal Treaty of 1977 enters into force, submit to the Congress proposed legislation which would—

(1) amend or repeal provisions of law which in their present form are applicable only during the transition period prescribed in Article XI of that Treaty, and

(2) incorporate the remaining provisions of the Panama Canal Code into the United States Code, proposing any changes thereto considered advisable in light of the experience as of that time under that Treaty.

TITLE I—PANAMANIAN RELATIONS AND SECURITY MATTERS

SECTION 101. UNITED STATES-PANAMA JOINT COMMITTEES; SEA LEVEL CANAL STUDY

(a) The President shall appoint the representatives of the United States to the Joint Commission on the Environment to be established under paragraph 2 of Article VI of the Panama Canal Treaty of 1977, and to any joint committee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of that Treaty.

(b) Upon the completion of any joint study between the United States and the Republic of Panama concerning the feasibility of a sea level canal in the Republic of Panama pursuant to paragraph 1 of Article XII of the Panama Canal Treaty of 1977, the text of the study shall be transmitted by the President to the President of the Senate and to the Speaker of the House of Representatives.

(c) No construction of a sea level canal by the United States in the Republic of Panama shall be undertaken except with express Congressional authorization after submission of the study by the President as provided in subsection (b).

(d) The President shall designate and the Secretary of State shall coordinate the participation of the representatives of the United States to the Consultative Committee between the United States and the Republic of Panama to be established under paragraph 7 of Article III of the Panama Canal Treaty of 1977.

SECTION 102. AUTHORITY OF THE AMBASSADOR

(1) The Ambassador to the Republic of Panama shall have full responsibility for the coordination of the transfer to the Republic of Panama of those functions that are to be assumed by the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(2) The Administrator of the Panama Canal Commission shall not be subject to the direction or supervision of the United States Ambassador to the Republic of Panama, but the Administrator shall keep the Ambassador fully and currently informed with respect to all activities and operations of officers and employees of the Commission.

SECTION 103. SECURITY LEGISLATION

(a) Sections 34 and 35 of title 2 of the Panama Canal Code are repealed.

(b) Section 1 of title II of the Act of June 15, 1917 (50 U.S.C. § 191), is amended by (1) striking the second paragraph of that section, and by (2) striking the term "the Canal Zone,".

(c) Section 2 of the Act of November 15, 1941 (50 U.S.C. § 191b), is repealed.

(d) Section 1 of title XIII of the Act of June 15, 1917 (50 U.S.C. §195), is amended by striking the term "the Canal Zone and".

(e) Section 1 of the Act of August 9, 1954 (50 U.S.C. § 196), is amended by striking the term "including the Canal Zone,".

SECTION 104. ARMS EXPORT CONTROL

Section 38 of the Arms Export Control Act (22 U.S.C. § 2778) is amended by striking out subsection (d) thereof.

SECTION 105. PRIVILEGES AND IMMUNITIES

The Secretary of State shall from among persons recommended by the Panama Canal Commission determine, and shall maintain and from time to time furnish to the Government of the Republic of Panama, the list of those officials and other persons who shall enjoy the privileges and immunities accorded under Article VIII of the Panama Canal Treaty of 1977.

SECTION 106. TERMINATION OF CANAL ZONE GOVERNMENT; TRANSFERS OF RECORDS

(a) Sections 1, 2, 3, 31, 32, 33, 333, and 334 of title 2 and sections 5081–5092 of title 6 of the Panama Canal Code are repealed.

(b) The Panama Canal Commission, other agencies or departments, and United States courts in the Republic of Panama are authorized to transfer any of their records, or copies thereof, including records acquired from the Canal Zone Government or Panama Canal Company such as vital statistics records, to other agencies, departments or courts of the United States and, under the coordination and with the approval of the Ambassador, to the Government of the Republic of Panama.

TITLE II—PANAMA CANAL COMMISSION

CHAPTER 1. COMMISSION: FISCAL MATTER

SECTION 201.—(a) Section 61 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 61. Continuation, purposes, offices, and residence of the Commission. (a) For the purpose of managing, operating, and maintaining the Panama Canal and its complementary works, installations and equipment, and of conducting operations incident thereto, in accordance with the Panama Canal Treaty of 1977 and related agreements, the Panama Canal Commission is established as a body corporate and as an agency and instrumentality of the United States, and is declared to be the successor to the Panama Canal Company.

"(b) The principal office of the Commission shall be located in the Republic of Panama in one of the areas made available for the use of the United States under the Panama Canal Treaty of 1977 and related agreements, but the Commission may establish agencies or branch offices in such other places as it deems necessary or appropriate in the conduct of its business. Within the meaning of the laws of the United States relating to jurisdiction of venue in civil actions, the Commission is an inhabitant and resident of the District of Columbia, and of the eastern judicial district of Louisiana."

(b) Subsection (a) of section 62 of title 2 of the Panama Canal Code is amended by substituting the words "Panama Canal Company" for "Company" and the words "Panama Canal Commission" for "Panama Canal Company".

SECTION 202.—(a) Subsection (e) of section 62 of title 2 of the Panama Canal Code is repealed.

(b) Subsection (f) of section 62 of title 2 of the Panama Canal Code is amended by substituting the words "compute its capital surplus account" for "account for its surplus", and by deleting the words "in determining the base for the interest payments required by subsection (e) of this section".

(c) Section 70 of title 2 of the Panama Canal Code is amended by deleting the words "in determining the base for interest payments required by section 62(e) of this title", and by inserting the term "including operating expenses and payments required by Article III(5) and Article XIII(4) (a), (b) and (c) of the Panama Canal Treaty of 1977," after the term "working capital requirements,".

(d) Section 72 of title 2 of the Panama Canal Code is amended by deleting the words "pursuant to section 62(e) of this title".

SECTION 203.—(a) Subsection (g) of section 62 of title 2 of the Panama Canal Code is amended to read as follows:

"(g) The Panama Canal Commission shall pay directly from Canal operating revenues to the Republic of Panama those payments required under pragraph 4 of Article XIII of the Panama Canal Treaty of 1977. In determining the adequacy of operating revenues for the purpose of payments to Panama under paragraph 4(c) of that Article, such operating revenues of a given fiscal period shall be reduced by all expenditures of that period including: (i) amounts paid or payable for operations and maintenance, inventory, goods, services and that portion of unfunded liabilities paid or currently payable; (ii) payments to Panama under paragraphs 4(a) and 4(b) of that Article and under paragraph 5 of Article III of the Treaty; (iii) amounts payable into a capital reserve account programmed to fund requirements for plant replacement, expansion and improvements; (iv) amounts payable into programmed reserve accounts established prior to the effective date of an increase in tolls for the purpose of matching revenues with expenses during the period projected for a given toll rate to remain in effect; and (v) the accumulative sum from prior years (beginning with the year in which the Panama Canal Treaty of 1977 enters into force) of any excess of such expenditures of the Commission over operating revenues.

(b) Title I of the Act of November 27, 1973 (87 Stat 636) is amended by striking out the heading "Payment to the Republic of Panama" and all that follows under that heading.

SECTION 204.—Section 62 of title 2 of the Panama Canal Code is amended by adding a new subsection (h) reading as follows:

"(h) Payments by the Commission to the Republic of Panama for providing public services in accordance with paragraph (5) of Article III of the Panama Canal Treaty of 1977 shall be treated for all purposes as an operating cost of the Commission.

SECTION 205.—Subsection (a) of section 63 of title 2 of the Panama Canal Code is amended to read as follows:

"(a) A board of directors shall manage the affairs of the Panama Canal Commission. The President of the United States shall appoint the members of the board in accordance with paragraph 3 of Article III of the Panama Canal Treaty of 1977, and neither this chapter nor any other law prevents the appointment and service as a director, or as an officer of the Commission, of an officer or employee of the United States, or of a person who is not a national of the United States. Each director so appointed shall, subject to paragraph 3 of Artilce III of the Panama Canal Treaty of 1977, hold office at the pleasure of the President, and, before entering upon his duties, shall take an oath faithfully to discharge the duties of his office."

SECTION 206.—Subsection (c) of section 63 of title 2 of the Panama Canal Code is amended to read as follows:

"(c) The directors shall hold meetings as provided by the bylaws of the Panama Canal Commission. A quorum for the transaction of business shall consist of a majority of the directors of which a majority of those present are citizens of the United States."

SECTION 207.—Section 64 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 64. ADMINISTRATOR AND DEPUTY.—The President of the United States shall appoint the Administrator and Deputy Administrator of the Panama Canal Commission. The Administrator shall, subject to the direction and under the supervision of the Board, be the chief executive officer of the Commission. The Administrator and Deputy Administrator shall hold office at the pleasure of the President."

SECTION 208.—Paragraph (3) of subsection (a) of section 65 of ttile 2 of the Panama Canal Code is amended to read as follows:

"(3) Sue and be sued in its corporate name, except that—

"(A) its amenability to suit is limited by the immunities provided by Article VIII of the Panama Canal Treaty of 1977, and otherwise by law;

"(B) salaries or other moneys owed by the Commission to its employees shall not be subject to attachment, garnishment or similar process, except as otherwise expressly provided by the laws of the United States; and

"(C) it is exempt from any liability for prejudgment interest."

SECTION 209.—The opening clause of subsection (a) of section 66 of title 2 of the Panama Canal Code is amended to read as follows:

"(a) Subject to the Government Corporation Control Act (31 U.S.C., sec. 841 et seq.), and to the Panama Canal Treaty of 1977 and related agreements, the Panama Canal Commission may:"

SECTION 210.—Sections 67 and 73 of title 2 of the Panama Canal Code are repealed. Section 68 of that title is amended to read as follows:

"SEC. 68.—ASSETS AND LIABILITIES.—(a) Property and other assets of the Panama Canal Company and of the Canal Zone Government which are not transferred to other United States Government agencies or to the Republic of Panama, or otherwise disposed of, shall be the property and assets of the Panama Canal Commission from and after the effective date, and except as otherwise provided by law, the Commission shall assume the liabilities of the Panama Canal Company and Canal Zone Government then outstanding.

"(b) The Commission may depreciate the Panama Canal, its complementary works, installations and equipment, and all other property and assets of the Commission, and may amortize over the life of the Panama Caanl Treaty of 1977 the right to use certain assets such as housing made available to the United States under that Treaty and related agreements.

"(c) The assets and liabilities referred to

in this section shall be deemed to have been accepted and assumed by the Commission without the necessity of any act on the part of the Commission except as otherwise stipulated by section 62 of this title."

SECTION 211.—(a) The introductory phrase to Section 1331 of title 2 of the Panama Canal Code is amended by striking out the word "President" and by inserting in lieu thereof the word "Commission".

(b) Paragraph (1) of section 1331 of title 2 of the Panama Canal Code is amended by striking out the words "harbors and other waters of the Canal Zone" and by inserting in lieu thereof the words "waters of the Panama Canal and areas adjacent thereto including the ports of Balboa and Cristobal".

(c) Paragraph (4) of section 1331 of title 2 of the Panama Canal Code is amended by striking out the words "waters of the Canal Zone" and by inserting in lieu thereof the words "waters of the Panama Canal and areas adjacent thereto including the ports of Balboa and Cristobal".

SECTION 212.—FUNDS AND ACCOUNTS.—(a) Section 231 of title 2 of the Panama Canal Code is repealed.

(b) Section 232 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 232.—FURNISHING OF SERVICES; REIMBURSEMENTS.

"(a) The Department of Defense shall reimburse the Panama Canal Commission for amounts expended by the Commission in maintaining defense facilities in standby condition for the Department of Defense.

"(b) Notwithstanding any other law, appropriations of the Department of Defense, or such other agency or agencies as may be designated for this purpose by the President, are made available for conducting educational and health care activities, including kindergartens and college, formerly carried out by the Canal Zone Government, and for providing the services related thereto. Amounts so expended for furnishing services to employees of other agencies and their dependents, less amounts payable by such persons, shall be fully reimbursible to the agency furnishing the services. The appropriations or funds of the agency bearing the cost of the compensation of the employee concerned are made available for such reimbursements. In addition, the appropriations or funds of agencies conducting operations in the Republic of Panama are made available for provisions of health care services to elderly or disabled persons who were eligible for such services prior to the effective date."

(c) Section 233 of title 2 of the Panama Canal Code is amended by striking the terms "Canal Zone Government or the Panama Canal Company" and by inserting in their place the term "Panama Canal Commission".

(d) Section 234 of title 2 of the Panama Canal Code is amended by striking the term "Canal Zone" and by inserting in its place the term "Panama Canal Commission".

(e) Section 235 of title 2 of the Panama Canal Code is amended by striking the term "Canal Zone Government and the Panama Canal Company" and by inserting in its place the term "Panama Canal Commission".

SECTION 213. PUBLIC PROPERTY AND PROCUREMENT

(a) Section 371 of title 2 of the Panama Canal Code is repealed.

(b) Section 372 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 372.—TRANSFERS AND CROSS-SERVICING BETWEEN AGENCIES.—(a) In the interest of economy and maximum efficiency in the utilization of Government property and facilities, there are authorized to be transferred between departments and agencies, with or without exchange of funds, all or so much of the facilities, buildings, structures, improvements, stock and equipment of their activities located in the Republic of Panama as may be mutually agreed upon by the departments and agencies involved and approved by the President of the United States or his designee. With respect to transfers without exchange of funds, transfers to or from the Panama Canal Commission are subject to section 62 of this title, as amended.

"(b) The Panama Canal Commission and other agencies of the United States may enter into cross-servicing agreements for the use of facilities, furnishing of services, or performance of functions."

CHAPTER 2. TOLLS

SECTION 230.—Section 411 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 411. PRESCRIPTION OF MEASUREMENT RULES AND TOLLS.—(a) The Panama Canal Commission may prescribe, and from time to time change:

"(1) the rules for the measurement of vessels for the Panama Canal; and

"(2) subject to section 412 of this title, the tolls that shall be levied for the use of the Canal.

"(b) The Commission shall give three months' notice, by publication in the Federal Register, of proposed changes in basic rules of measurement or in rates of tolls, during which period a public hearing shall be conducted. Changes in basic rules of measurement and changes in rates of tolls shall be subject to and shall take effect upon the approval of the President of the United States, whose action in such matters shall be final."

SECTION 231.—In order to insure that the rates of tolls in effect on the effective date are adequate to meet the requirements of section 412 of title 2 of the Panama Canal Code, as amended by section 232 of this Act, the Panama Canal Company is authorized, in advance of that date, to change the rates, effective on the effective date, such change to be subject to the approval of the President whose action in the matter shall be final. If and to the extent that time permits, the Company shall give three months' notice, by publication in the Federal Register, of such proposed changes in rates of tolls, during which period a public hearing shall be conducted. This section shall become effective upon the date of enactment of this Act.

SECTION 232.—BASES OF TOLLS.—(a) Subsection (b) of section 412 of title 2 of the Panama Canal Code is amended to read as follows:

"(b) Tolls shall be prescribed at rates calculated to cover as nearly as practicable all anticipated costs of maintaining and operating the Panama Canal, together with the facilities and appurtenances related thereto, including depreciation of assets, amortization of use rights, and the payments to Panama pursuant to paragraphs 4(a) and 4(b) of Article XIII of the Panama Canal Treaty of 1977. In determining the rates of tolls, there may also be taken into account unrecovered past costs, funding required to establish or maintain a capital reserve account programed to fund requirements for plant replacement, expansion, and improvements, and the necessity of establishing reserves for the purpose of matching revenues with expenses during the period projected for a given toll rate to remain in effect."

(b) Subsection (c) of section 412 of title 2 of the Panama Canal Code is amended to read as follows:

"(c) Vessels operated by the United States, including vessels of war and auxiliary vessels, and ocean-going training ships owned by the United States and operated by State nautical schools, shall pay tolls."

(c) Subsection (d) of section 412 of title 2 of the Panama Canal Code is amended by deleting the words "of articles XVIII and XIX of the convention between the United States and Panama concluded on November 18, 1903, and", by inserting a comma in place of the period at the end of the subsection, and by adding thereafter "and of Articles II, III, and VI of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, between the United States of America and the Republic of Panama, signed September 7, 1977."

CHAPTER 3. CLAIMS

SECTION 260.—Chapter 11 of title 2 of the Panama Canal Code is amended as follows:

(a) The title of the chapter is amended to read, "Claims Arising from Operation of Canal."

(b) Section 271 of title 2 of the Panama Canal Code is repealed.

(c) The headings of subchapters I and II are deleted.

(d) Section 291 of title 2 of the Panama Canal Code is amended as follows:

(1) The period at the end of the first sentence is changed to a comma, and the following language is added: "unless it is established that the injury was not proximately caused by the negligence or fault of any of its officers or employees acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal."

(2) In the fourth sentence, the words "the side" are amended to read "any portion of the hull."

(e) Section 293 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 293.—MEASURE OF DAMAGES.

"(a) In determining the amount of the award of damages for injuries to a vessel for which the Panama Canal Commission is determined to be liable, there may be included:

"(1) actual or estimated cost of repairs;

"(2) charter hire actually lost by the owners, or charter hire actually paid, depending upon the terms of the charter party, for only the time the vessel is actually undergoing repairs, on drydock or otherwise;

"(3) maintenance of the vessel and wages of the crew, if they are found to be actual additional expenses or losses incurred outside of the charter hire, for only the time the vessel is actually undergoing repairs, on drydock or otherwise; and

"(4) except as prohibited by subsection (b) of this section, or by any other provision of law, other expenses which are definitely and accurately shown to have been incurred necessarily and by reason of the accident or injuries.

"(b) Agent's fees or commissions, general average expenses, attorney's fees, bank commissions, port charges of other incidental expenses of similar character, or any items which are indefinite, indeterminable, speculative, or conjectural may not be allowed.

"(c) The Commission shall be furnished such vouchers, receipts, or other evidence as may be necessary in support of any item of a claim. If a vessel is not operated under charter but by the owner directly, evidence shall be secured if available as to the sum for which vessels of the same size and class can be chartered in the market. If the charter value cannot be determined, the value of the use of the vessel to its owners in the business in which it was engaged at the time of the injuries shall be used as a basis for estimating the damages for the vessel's detention; and the books of the owners showing the vessel's earnings about the time of the accident or injuries shall be considered as evidence of probable earnings during the time of detention. If the books are unavailable, such other evidence shall be furnished as may be necessary."

(f) Section 294 of title 2 of the Panama Canal Code is amended by deleting the word "or" in paragraph (5), by renumbering the present paragraph (6) as paragraph (7), and by inserting a new paragraph (6) reading

as follows: "(6) time necessary for investigation of marine accidents; or".

(g) Section 296 of title 2 of the Panama Canal Code is amended by deleting the words "United States District Court for the District of the Canal Zone" in the first sentence and inserting in lieu thereof the words "United States District Court for the Eastern District of Louisiana".

(h) The present section 297 of title 2 of the Panama Canal Code is designated as subsection (a), and a new subsection (b) is added to read as follows:

"(b) Lack of knowledge on the part of the master, officers, crew or passengers that an accident giving rise to a claim under this chapter has occurred does not exclude noncompliance with the requirements of this section."

(i) A new section 298 of title 2 of the Panama Canal Code is added, to read as follows:

"SEC. 298.—TIME FOR PRESENTING CLAIM AND COMMENCING ACTION.—A claim against the Commission under this chapter shall be forever barred unless it is presented in writing to that agency within two years after such claim accrues or unless action is begun within one year after the date of mailing of notice of final decision on the claim by the Commission."

(j) A new section 299 of title 2 of the Panama Canal Code is added, to read as follows:

"SEC. 299.—BOARD OF LOCAL INSPECTORS.

"(a) There is established a Board of Local Inspectors of the Panama Canal Commission which shall perform, in accordance with regulations prescribed by the Commission,—

"(1) the investigations called for by section 297 of this chapter; and

"(2) such other duties in matters of a marine character as it may be assigned by the Commission.

"(b) The Commission shall, by regulation, designate the members of the Board and establish procedures by which the Board carries out its functions.

"(c) In conducting the investigations provided for by subsection (a) of this section, members of the Board may summon witnesses, administer oaths and require the production of books and papers necessary thereto."

TITLE III—EMPLOYEES AND POSTAL MATTERS

CHAPTER 1. EMPLOYMENT SYSTEM

SECTION 301.—(a) Sections 101, 102, 122, 123, 147 and 154 of title 2 of the Panama Canal Code are repealed.

(b) Section 103 of title 2, of the Panama Canal Code is amended by striking the term "Canal Zone Government, Panama Canal Company" and inserting in lieu thereof the term "Panama Canal Commission", and by redesignating that section as section 122 of that title and code.

SECTION 302.—Section 141 of title 2 of the Panama Canal Code is amended as follows:

(a) The definition of the word "department" is amended to read as follows:

"'department' means (i) the Panama Canal Commission, and (ii) an executive agency (within the meaning of section 105 of title 5 of the United States Code) which makes an election under section 142(b) of this chapter;"

(b) The definition of the word "position" is amended to read as follows:

"'position' means those duties and responsibilities of a civilian nature under the jurisdiction of a department which are performed in the Republic of Panama."

SECTION 303.—Section 142 of title 2 of the Panama Canal Code is amended by redesignating subsection (b) thereof as subsection (c), and by striking the caption and subsection (a) thereof and inserting in their place the following:

"SECTION 142. PANAMA CANAL EMPLOYMENT SYSTEM.

"(a) The Panama Canal Commission shall conduct its wage and employment practices in accordance with a Panama Canal Employment System which shall be established in accordance with—

"(1) the principles established in the Panama Canal Treaty of 1977 and related agreements, and with the provisions of this chapter and other applicable law; and

"(2) regulations promulgated by, or under the authority of, the President in accordance with this chapter and taking into account any recommendation of the Panama Canal Commission.

"(b) The head of an executive agency other than the Panama Canal Commission may elect in whole or in part to have the Panama Canal Employment System made applicable to personnel of his agency in the Republic of Panama."

SECTION 304.—Notwithstanding other provisions of this chapter, the provisions of subchapter III of chapter 7 of title 2 of the Panama Canal Code establishing the Canal Zone Merit System, and the administrative regulations promulgated thereunder, shall continue in effect until such time as the Panama Canal Employment System has been established pursuant to section 303 of this Act.

SECTION 305.—Section 144 of title 2 of the Panama Canal Code is amended by deleting subsection (d) thereof. Section 146 is amended by deleting subsection (d) thereof. Section 146 is amended to read as follows:

"SEC. 146. RECRUITMENT AND RETENTION REMUNERATION.

(a) In addition to basic compensation, additional remuneration in such amounts as the head of the department concerned determines, may be paid as overseas recruitment and retention differentials to—

(1) persons employed by the Panama Canal Company, Canal Zone Government or a department in the Canal Zone prior to the effective date;

(2) persons thereafter recruited outside of Panama for a position in the republic of Panama; and

(3) Medical doctors employed by the Department of Defense or Panama Canal Commission if in the judgment of the head of the department concerned, the recruitment and retention of such employees is essential.

(b) Employees who fall into more than one of the three categories described in subsection (a) of this section may qualify for additional remuneration under only one of those categories.

(c) Additional remuneration prescribed under this section may not exceed by more than 25 percent the rate of basic compensation for the same or similar work performed in the continental United States by employees of the Government of the United States."

SECTION 306.—Title 2 of the Panma Canal Code is amended by adding a new section 147 to read as follows:

"SEC. 147.—TRANSFER OF FEDERAL EMPLOYEES TO PANAMA CANAL COMMISSION.—The head of any Federal agency, including the United States Postal Service, is authorized to enter into agreements for the transfer or detail of that agency's employees, serving under permanent appointment, to the Panama Canal Commission. Under regulations prescribed by the Civil Service Commission, any employee so transferred or detailed shall, upon completion of his tour of duty with the Commission, be entitled to reemployment with the agency from which he was transferred or detailed without loss of pay, seniority or other rights or benefits to which he would have been entitled had he remained on the rolls of that agency."

SECTION 307.—Section 149 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 149.—MERIT AND OTHER EMPLOYMENT REQUIREMENTS

(a) Subject to this chapter, the President may, from time to time and taking into account any recommendation of the Panama Canal Commission, amend or modify the provisions of the Panama Canal Employment System, including provisions relating to selection for appointment, reappointment, reinstatement, re-employment, and retention, with respect to positions, employees, and individuals under consideration for appointment to positions, established by regulations under section 142 of this chapter.

"(b) The Panama Canal Employment System shall:

"(1) subject to and as limited by the Panama Canal Treaty of 1977 and related agreements, be based on the merit of the employee or individual and upon his qualifications and fitness to hold the position concerned;

"(2) conform generally to policies, principles, and standards for the competitive civil service of the Government of the United States; and

"(3) include provision for appropriate interchange, between the Panama Canal Employment System and the competitive civil service of the Government of the United States, of citizens of the United States employed by the Government of the United States.

SECTION 308.—Section 155 of title 2 of the Panama Canal Code is amended by redesignating subsection (b) thereof as subsection (c), and by inserting in lieu of subsection (a) therof the following:

"(a) The President shall issue regulations necessary and appropriate to carry out the provisions and accomplish the purposes of this subchapter and, in the event of any election under section 142(b), coordinate the policies and activities under this subchapter of the departments involved.

"(b) In order to assist in carrying out his coordination responsibility under subsection (a) and in implementing the provisions of the Panama Canal Treaty of 1977 and related agreements relating to recruitment, examination, determination of qualification standards and similar matters, the President may establish, as the successor to the Canal Zone Central Examining Office, an office which shall be an entity within the Panama Canal Commission."

SEC. 309. Subsection (a) of section 201 of title 2 of the Panama Canal Code is amended by deleting the words "Governor of the Canal Zone and President of the Panama Canal Company, or as Lieutenant Governor of the Canal Zone and Vice President of the Panama Canal Company," and inserting in lieu thereof the words "Administrator or Deputy Administrator of the Panama Canal Commission."

Chapter 2.—CONDITIONS OF EMPLOYMENT, PLACEMENT, AND RETIREMENT.

SEC. 321. Title 2 of the Panama Canal Code is amended by adding a new section 202 reading as follows:

"SEC. 202. TRANSFERRED EMPLOYEES. With respect to employees of the Panama Canal Company or Canal Zone Government who are transferred to employment with the Panama Canal Commission or other United States Government agencies in the Republic of Panama, the following terms and conditions of employment shall be generally no less favorable, from and after the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977, than the terms and conditions of employment with the Panama Canal Company and Canal Zone Government immediately prior to that date:

Wage rates; tropical differential; premium

pay and night differential; reinstatement and restoration rights; injury and death compensation benefits; leave and travel, except as modified to provide equity with other employees within the agency to which the employee is transferred; transportation and repatriation benefits; group health and life insurance; reduction in force rights; an employee grievance system, and the right to appeal adverse and disciplinary actions as well as position classification actions; veteran's preference eligibility; holidays; saved pay provisions; and severence pay benefits."

SEC. 322. Title 2 of the Panama Canal Code is amended by adding a new section 203 reading as follows:

"SEC. 203. PLACEMENT. (a) A United States citizen who, immediately preceding the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 was an employee of the Panama Canal Company or Canal Zone Government, who separates or is scheduled to separate on that date or anytime thereafter throughout the life of the Panama Canal Treaty of 1977 for any reason other than misconduct or delinquency, and who is not placed in another appropriate position with the United States Government in the Republic of Panama shall, upon the employee's request, be accorded appropriate placement to vacancies with the United States Government in the United States."

"(b) A United States citizen who, immediately preceding the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 was an employee of an agency of the United States Government in the Canal Zone other than the Panama Canal Company or Canal Zone Government, whose position is eliminated as the result of implementing the Panama Canal Treaty of 1977, and who is not placed in another appropriate position with the United States Government in the Republic of Panama shall, upon the employee's request, be accorded the placement assistance provided for in subsection (a)."

"(c) The United States Civil Service Commission shall develop and administer a Federal Government-wide placement program for all eligible employees who request placement assistance under this section."

SEC. 323. Title 2 of the Panama Canal Code is amended by adding a new section 204 to read as follows:

"SEC. 204. EDUCATIONAL TRAVEL BENEFITS.—Dependents of United States citizen employees of the Panama Canal Commission who are eligible for educational travel benefits under regulations issued by the Commission shall be entitled to one round trip per year for undergraduate studies in the United States until they reach their 23rd birthday."

SEC. 324. ADJUSTMENT OF COMPENSATION.—United States citizen employees of the Panama Canal Commission shall be paid an allowance to offset the increased cost of living that may result from the withdrawal of the eligibility of such employees and their dependents to use military postal services, sales stores and exchanges five years after the date of entry into force of the Panama Canal Treaty of 1977. The amount of the additional compensation shall be determined by the Panama Canal Commission.

SEC. 325. EARLY RETIREMENT ELIGIBILITY. SEC. 8336 of title 5 of the United States Code is amended:

(1) by redesignating subsection (c) as subsection (c)(1) and adding the following new paragraph "(2) A law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977, who is separated from the service prior to January 1, 2000, and, upon separation, meets the age and service requirements in paragraph (1), or who is separated within 2 years prior to meeting the age and service requirements in paragraph (1) is entitled to an annuity."

(2) by redesignating subsection (h) as subsection (k) and inserting the following new subsections "(h), (i), and (j)"

"(h) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama, who is separated from the service prior to January 1, 2000—

(1) involuntarily, as a result of the implementation of the Panama Canal Treaty of 1977, except by removal for cause on charges of misconduct or delinquency, after completing 20 years of service;

(2) voluntarily after completing 25 years of service or after becoming age 50 and completing 20 years of service; or

(3) involuntarily, as a result of the implementation of the Panama Canal Treaty of 1977, except by removal for cause on charges of misconduct or delinquency, or voluntarily within 2 years prior to meeting the age and/or service requirements in paragraph (2) is entitled to an annuity if he—

(A) was employed by the Canal Zone Government or the Panama Canal Company immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977; and

(B) has been continuously employed by the Panama Canal Commission or by an Executive agency conducting operations in the Canal Zone or the Republic of Panama since the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 or its entry into force."

"(i) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama, who is separated from the service as a result of the implementation of the Panama Canal Treaty of 1977, prior to January 1, 2000—involuntarily, except by removal for cause on charges of misconduct or delinquency—

"(1) after completing 20 years of service; or

"(2) within 2 years prior to meeting the age and/or service requirements in paragraph (2) of subsection (h) of this section is entitled to an annuity if he—

"(A) was employed in the Canal Zone by an Executive agency other than the Panama Canal Company or the Canal Zone Government immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977; and

"(B) has been continuously employed by the Panama Canal Commission or an Executive agency conducting operations in the Canal Zone or the Republic of Panama since the exchange of instruments of ratification of the Panama Canal Treaty of 1977 or its entry into force.

"(j) For the purpose of subsections (h) and (i) of this section, 'Executive agency' includes the Administrative Office of the United States Courts and the Smithsonian Institution."

SEC. 326. EARLY RETIREMENT COMPUTATION. Section 8339 of title 5 of the United States Code is amended—

(1) by inserting in subsection (f), immediately after "subsections (a)-(e)", the following: "and (n)";

(2) by inserting in subsection (i), immediately after "subsections (a)-(h)", the following: "and (n)";

(3) by inserting in subsections (j) and (k)(1), immediately after "subsections (a)-(i)" each time it appears, the following: "and (n)";

(4) by inserting in subsection (l), immediately after "subsections (a)-(k)", the following "and (n)";

(5) by inserting in subsection (m), immediately after "subsections (a)-(e)", the following "and (n)"; and

(6) by adding at the end thereof the following new subsections "(n), (o), and (p)":

"(n) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of the Panama Canal Treaty of 1977, who continues in employment with the Panama Canal Commission, or with another Executive agency in the Republic of Panama is computed with respect to the period of that service performed on a continuous basis after the entry into force of the Panama Canal Treaty of 1977 by multiplying—

(A) 2½ percent of the employee's average pay by so much of such service as does not exceed 20 years; plus,

(B) 2 percent of the employee's average pay multiplied by so much of such service as exceeds 20 years."

"(o) The annuity computed under subsection (n) of this section for an employee who was employed as a law enforcement officer or firefighter shall be increased by $8 for each full month of such service in the Republic of Panama after the entry into force of the Panama Canal Treaty of 1977. This increase in annuity shall not be paid with respect to service performed after completion of 20 years as a law enforcement officer or firefighter."

"(p) The annuity computed under this subchapter for an employee who was employed as a law enforcement officer or firefighter by the Panama Canal Company or the Canal Zone Government immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977, who does not qualify for retirement under section 8336(c) of this title shall be increased by $12 for each full month of such service, prior to the entry into force of the Panama Canal Treaty of 1977. This increase in annuity shall not be paid with respect to service performed after completion of 20 years as a law enforcement officer or firefighter."

SEC. 327. COURT, CANAL ZONE CIVILIAN PERSONNEL POLICY COORDINATING BOARD, AND RELATED EMPLOYEES.—For the purposes of sections 202, 203, and 204 of title 2 of the Panama Canal Code, as amended by sections 321, 322, and 323 of this Act, and sections 325-326 of this Act, the district judge, the clerk, the court reporter, and other employees of the United States District Court for the District of the Canal Zone, the United States Attorney for the District of the Canal Zone and the Assistant United States Attorneys and their clerical assistants, and the United States Marshal for the District of the Canal Zone and his deputies and clerical assistants; the Executive Director of the Canal Zone Civilian Personnel Policy Coordinating Board, the Manage, Central Examining Office, and their deputies and clerical assistants shall be treated the same as employees of the Panama Canal Commission.

SEC. 328. (a) Chapters 81 (Compensation for Work Injuries), 83 (Retirement), 87 (Life Insurance), and 89 (Health Insurance) of title 5 of the United States Code are inapplicable to persons who are not citizens of the United States, who are hired by the Panama Canal Commission after the effective date and who are covered by the Social Security System of the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b) In section 8701 of title 5 of the United States Code, the definition of "employee" in subsection (a) is amended by revising paragraph (B) to read as follows:

"(B) an employee who is not a citizen or national of the United States and whose permanent duty station is outside the United

States, unless such person was an employee for the purpose of this chapter on the day before the effective date by virtue of service with a Federal agency in the Canal Zone.

(c) In section 8901 of title 5 of the United States Code, the definition of employee in subsection (1) is amended by revising paragraph (ii) to read as follows:

"(ii) an employee who is not a citizen or national of the United States and whose permanent duty station is outside the United States unless such person was an employee for the purpose of this chapter on the day before the effective date by virtue of service with a Federal agency in the Canal Zone."

SEC. 329. NON-U.S. CITIZEN RETIREMENT UNDER SPECIAL TREATY PROVISIONS.—(a) Under such regulations as the President may prescribe, there shall be paid to the Social Security System of the Republic of Panama, out of funds deposited in the Treasury of the United States to the credit of the Civil Service Retirement Fund under section 8334(a)(2) of title 5 of the United States Code, such sums of money as may be necessary to aid in the purchase of a retirement equity in that System for each person who is separated from employment with the Panama Canal Company, the Canal Zone Government, or the Panama Canal Commission, as the result of the implementation of the Panama Canal Treaty of 1977 and related agreements, and becomes employed under the Social Security System of the Republic of Panama through the transfer of a function or activity to the Republic of Panama from the United States or through a job placement assistance program, provided such person—

(1) has been credited with at least five years of Federal service under the United States Civil Service Retirement System;

(2) is not eligible for an immediate retirement annuity, and does not elect a deferred annuity under the United States Civil Service Retirement System; and

(3) elects to withdraw the entire amount of his contributions to the United States Civil Service Retirement System and transfer it to the Social Security System of the Republic of Panama pursuant to the special regime referred to in paragraph 3 of Article VIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

(b) The sums of money made available under subsection (a) shall not exceed, in any case, the amount of the employee contribution withdrawn from the fund and paid over to the Panamanian Social Security System.

(c) (1) Pursuant to Paragraph 2(b) of Annex C to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, the President of the United States, or his designee, is authorized to pay out of the general funds of the United States Treasury, in accordance with such regulations as the President or his designee may prescribe, such sums of money as may be necessary to purchase, or to supplement the purchase of, a retirement equity in the Social Security System of the Republic of Panama for the benefit of each employee of the United States Forces in the Republic of Panama—

(A) who is not a citizen of the United States of America;

(B) who was employed prior to and is employed upon the effective date of the Panama Canal Treaty of 1977 by an instrumentality of the United States Government in the Republic of Panama (including, in the case of employment prior to such date, the former Canal Zone);

(C) who, for any period of his or her employment with that instrumentality of the United States Government prior to the effective date of the Panama Canal Treaty of 1977 was not covered, on account of such employment, by the Civil Service Retirement System of the United States of America or another retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama; and

(D) whose period of employment referred to in subparagraph (C) above was of such a nature that he cr she would have been covered at that time by the Social Security System of the Republic of Panama had such law been applicable.

(2) The retirement equity referred to in subpragraph (c)(1) above will cover retroactively, from the effective date of the Panama Canal Treaty of 1977, all periods of employment of such persons with United States Government instrumentalities in the Republic of Panama (including the former Canal Zone) during which such persons were not covered by the Civil Service Retirement System of the United States of America or any other retirement system poviding benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama and during which such persons' employment was of such a nature that he or she would have been covered by the Social Security System of the Republic of Panama had such law been applicable.

SEC. 330. (a) Section 6322(a) of title 5 of the United States Code is amended by deleting the words "the Canal Zone or", by inserting a comma in place of the period after "the Trust Territory of the Pacific Islands" at the end of the same sentence, and by adding thereafter "or the Republic of Panama."

(b) Subchapter III of Chapter 59 of title 5 of the United States Code, pertaining to Overseas Differentials and Allowances, is inapplicable to employees assigned to work in the Republic of Panama for the Panama Canal Commission or an executive agency which makes an election under section 142(b) of title 2 of the Panama Canal Code.

(c) References to the Canal Zone in the following sections of title 5 of the United States Code shall henceforth be deemed to refer to areas in the Republic of Panama used or regulated by the United States pursuant to the Panama Canal Treaty of 1977 and related agreements:

(1) section 5595(a)(2)(iii);

(2) section 5724a(a); and

(3) section 8102(b).

(d) Section 1(b) of the Act of April 14, 1966 (20 U.S.C. § 903(c)) and section 6(a) of the Act of July 17, 1959 (20 U.S.C. § 904(a)(2)) are inapplicable to teachers who are employed by the Canal Zone Government school system immediately prior to the effective date and are transferred to the Department of Defense Overseas Dependent School System.

Chapter 3.—POSTAL MATTERS

SEC. 341. POSTAL SERVICE. (a) The postal service established and governed by chapter 73 of title 2 of the Panama Canal Code shall be discontinued upon the effective date.

(b) The provisions of chapter 73 relating to postal-savings deposits, postal-savings certificates, postal money orders, and the accounting for funds shall continue to apply for the purpose of meeting the obligations of the United States concerning outstanding postal savings and money orders and disposition of funds.

(c) The Panama Canal Commission shall take possession of and administer the funds of the postal service and shall assume its obligations. The Commission and the United States Postal Service are authorized to enter into agreements for the transfer of funds or property and the assumption of administrative rights or responsibilities, with respect to the outstanding obligations of the postal service.

(d) Mail addressed to the Canal Zone from or through the continental United States may be routed by the United States Postal Service to the military post offices of the United States Forces in the Republic of Panama. Such military post offices shall provide the required directory services and shall accept such mail to the extent permitted under the Panama Canal Treaty of 1977 and related agreements. The Panama Canal Commission is authorized and directed to furnish personnel, records and other services to said military post offices to assure wherever appropriate the proper distribution, rerouting, or return of said mail.

(e)(1) The words, "Except as provided in the Canal Zone Code, the", in the second sentence of section 403(a) of title 39 of the United States Code are revised to read, "The";

(2) The words "each post office in the Canal Zone postal service," in section 3402(a) of title 39 of the United States Code are revised to read "each military post office of the United States Forces in the Republic of Panama" and section 3402(b) of title 39 of the United States Code is deleted;

(3) Section 3682(b)(5) of title 39 of the United States Code is amended by striking the words "the Canal Zone and"; and

(4) Section 3401(b) of title 39 of the United States Code is amended by inserting the word "or" before the words "the Virgin Islands" and by striking the words "or the Canal Zone."

TITLE IV—COURTS AND RELATED FUNCTIONS

SEC. 401. CONTINUATION OF CODE AND OTHER LAWS.

(a) Except as otherwise provided in this Act, the provisions of the Panama Canal Code, as amended, and other laws applicable in the Canal Zone prior to the entry into force of the Canal Zone prior to the entry into force of the Panama Canal Treaty of 1977 by virtue of the territorial jurisdiction of the United States in the Canal Zone shall continue in force only for the purpose of the exercise of the authority vested in the United States by that Treaty and related agreements.

(b) None of the provisions or laws referred to in subsection (a) shall henceforth be construed as regulating, or providing authority to regulate, any matter as to which the United States may not exercise jurisdiction under the Panama Canal Treaty of 1977 and related agreements.

SEC. 402. JURISDICTION DURING TREATY TRANSITION PERIOD. (a) The Congress of the United States finds that Article XI of the Panama Canal Treaty of 1977 prescribes certain special provisions governing the jurisdiction of the United States in the Republic of Panama during a transition period of thirty months beginning upon the date the Panama Canal Treaty of 1977 enters into force.

(b) Notwithstanding inconsistent provisions of the Panama Canal Code or any other law, the jurisdiction of the district court and magistrates' courts established pursuant to title 3 of the Panama Canal Code shall be limited as provided by Article XI of the Panama Canal Treaty of 1977.

(c) For the purposes of the exercise of the aforesaid jurisdiction, the terms "United States citizen employees," "members of the United States Forces," "civilian component," and "dependents" shall be construed as they are defined in the Panama Canal Treaty of 1977 and related agreements. Similarly, the term "areas and installations made available for the use of the United States" shall be construed to mean (1) the Canal operating areas and housing areas described in Annex A to the Agreement in Implementation of Article III of that Treaty, (2) the Ports of Balboa and Cristobal described in Annex B to that Agreement, and (3) the Defense Sites and Areas of Military Coordination described in Annex A to the Agreement in Implementation of Article IV of that Treaty.

SEC. 403. DIVISIONS AND TERMS OF DISTRICT COURT. (a) The United States District Court for the District of the Canal Zone is authorized to conduct its affairs at such places within the areas made available for the use of the United States under the Panama Canal Treaty of 1977 and related agreements, and at such times, as the district judge may designate by rule or order.

(b) Sections 2 and 3 of title 3 of the Panama Canal Code are repealed.

SEC. 404. TERM OF CERTAIN OFFICES. Notwithstanding the provisions of sections 5, 41, 45 and 82 of title 3 of the Panama Canal Code, the term of office of a district judge, magistrate, United States attorney or United States marshal appointed after the date of enactment of this Act shall extend for a period of 30 months beyond the date the Panama Canal Treaty of 1977 enters into force, and be subject to such extension of time as may be provided for disposition of pending cases by agreement between the United States and the Republic of Panama pursuant to the last sentence of paragraph 7 of Article XI of the Panama Canal Treaty of 1977.

SEC. 405. RESIDENCE REQUIREMENTS. Sections 5(d), 7(d), 41(d), and 45(d) of title 3 of the Panama Canal Code, the second sentence of section 42 of that title, and the second sentence of section 82(c) of that title, which require that certain court officials reside in the Canal Zone, are repleaed.

SEC. 406. (a) Section 6 of title 3 of the Panama Canal Code is amended to read as follows:

"SEC. 6. SPECIAL DISTRICT JUDGE. The chief judge of the judicial circuit of which the district court is a part may designate and assign a special district judge, to act when necessary:

(1) during the absence of the district judge;

(2) during the district judge's disability or disqualification, because of sickness or otherwise, to discharge his duties, or

(3) when the office of district judge is vacant.

(b) Each such designation and assignment by the chief judge shall be made in accordance with chapter 13 of title 28 of the United States Code, which shall be deemed to apply for such purposes.

SEC. 407. MAGISTRATES' COURTS. (a) The two magistrates' courts established pursuant to the date upon which the Panama Canal Treaty of 1977 enters into force shall continue in operation for 30 months from that date unless discontinued during that period as otherwise provided by this section.

(b) During the period referred to in subsection (a), one or both magistrates' courts, together with the positions of magistrate and constable corresponding thereto, may be abolished by the President or his designee if in his judgment the workload is insufficient to warrant continuance of either or both courts. If one of the courts is so abolished, the remaining magistrate's court shall exercise the jurisdiction that otherwise would have been exercised by the abolished court and shall take custody of and administer all its records.

(c) If both magistrates' courts are abolished pursuant to subsection (b), the following provisions shall thereafter apply:

(1) The district court shall exercise the jurisdiction of the magistrates' courts.

(2) All records of the magistrates' courts shall be deemed records of the district court.

(3) A criminal action that otherwise would have come within the original jurisdiction of the magistrates' courts shall be instituted in the district court by a complaint executed pursuant to section 3701 of title 6 of the Panama Canal Code, and the law and rules applicable in the district court shall thereafter apply. All other criminal actions shall be instituted in the district court by the filing in each case of an information pursuant to chapter 213 of title 6 of the Panama Canal Code.

(4) The requirement of and procedures for preliminary examinations under section 172 of title 3 and sections 3801–3806 of title 6 of the Panama Canal Code shall not apply.

SEC. 408. Section 543 of title 3 of the Panama Canal Code is amended to read as follows:

"SEC. 543. OATH. Before receiving a certificate the applicant shall take and subscribe in court an appropriate oath prescribed by the district judge."

SEC. 409. TRANSITION AUTHORITY. Except as expressly provided to the contrary in this Act, in any other statute, in the Panama Canal Treaty of 1977 and related agreements, or by executive order, any authority necessary to the exercise during the transition period of the rights and responsibilities of the United States specified in Article XI of the Panama Canal Treaty of 1977 shall be vested in the Panama Canal Commission.

SEC. 410. SPECIAL IMMIGRANTS. (a) Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) relating to the definition of special immigrant, is amended—

(1) by striking out "or" at the end of subparagraph (C);

(2) by inserting after subparagraph (D) the following new subparagraphs:

"(E) an immigrant who is an employee of the Panama Canal Company or Canal Zone Government, who is resident in the Canal Zone on the date of the exchange of instruments of ratification of the Panama Canal Treaty of 1977, and who has performed faithful service for one year, or more, and his accompanying spouse and children; or,

"(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who prior to the date of entry into force of the Panama Canal Treaty of 1977 has been honorably retired from United States Government employment in the Canal Zone (or former Canal Zone) with a total of fifteen years, or more, of faithful service or (ii) who, on the date of entry into force of the Panama Canal Treaty of 1977, has been faithfully employed by the United States Government in the Canal Zone (or former Canal Zone) for fifteen years or more and who subsequently is honorably retired from such employment."

(b) Section 212(d) of such Act (8 U.S.C. 1182(d)), relating to waivers of conditions of inadmissability to the United States, is amended by adding after paragraph (8) the following new paragraph:

"(9) The provisions of paragraphs (7) and (15) of subsection (a) shall not be applicable to any alien who is seeking to enter the United States as a special immigrant under subparagraphs (E) or (F) of section 101 (a)(27)."

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. HEALTH DIRECTOR; HOSPITALS. (a) In chapter 57 of title 5 of the Panama Canal Code, references to "hospitals", to the "Health Bureau", and to the "health director", shall be deemed to be, respectively, to the hospitals operated by the United States in the Republic of Panama after the effective date, to the organizational unit operating such hospitals, and to the senior official in charge of such hospitals.

(b) In section 4784 of title 6, section 2 of title 7, and sections 32, 35–38 of title 8 of the Panama Canal Code, references to the health director shall be deemed to be to the senior official in charge of the hospitals operated by the United States in the Republic of Panama after the effective date.

SEC. 502. DISINTERMENT, TRANSPORTATION, AND REINTERMENT OF REMAINS. (a) In accordance with reservation 3(B) to the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, adopted on March 16, 1978, appropriations are made available to reimburse those agencies referred to in subsection (c) of this section, for—

(1) the costs incurred for disinterring the remains of United States citizens from Mount Hope Cemetery in the Canal Zone and transporting them to and reinterring them in Corozal Cemetery in the Canal Zone, before the date of entry into force of the aforementioned treaty; and

(2) the costs incurred for disinterring and transporting to the United States, not later than thirty months after the date of entry into force of the aforementioned treaty, if the next-of-kin so requests, any remains of United States citizens interred in Mount Hope or Corozal Cemeteries, for reinterment at places designated by the next of-kin, including national cemeteries where authorized.

(b) The costs referred to in subsection (a)(2) of this section include those incurred for disinterment, preparation, cremation, transportation, and reinterment, but do not include those incurred for caskets, urns, funeral home services, vaults, plots or crypts, which shall be borne by the next-of-kin.

(c) Except as hereafter provided in this subsection, the Panama Canal Company, the Panama Canal Commission or such other agency as the President may designate shall disinter, transport and reinter, or arrange for the reinterment of, the remains of United States citizens referred to in subsections (a)(1) and (a)(2) of this section. The Panama Canal Company shall not disinter the remains of any United States citizen interred in Mount Hope Cemetery in the Canal Zone whose next-of-kin notifies the Company in writing, not later than three months after the date of exchange of the instruments of ratification of the aforementioned treaty, that such remains should not be disinterred.

SEC. 503. EFFECTIVE DATE. Except as otherwise provided in sections 231, 321, 322, 325, 404 and 502 of this Act, the provisions of this Act, shall take effect on ——.

SECTION-BY-SECTION ANALYSIS

INTRODUCTION

This draft legislation would implement several aspects of the responsibilities and role of the United States under the Panama Canal Treaty of 1977 and related agreements. It includes the establishment of the Panama Canal Commission as a corporate agency of the United States to operate the Canal as a self-sustaining entity. It would provide regimes for the Commission's tolls, employees and fiscal management, modify existing law to comport with the jurisdiction of the United States during the 30-month transition period under Article XI of the Treaty, and cover other matters relating to implementation of the new relationship between the United States and the Republic of Panama.

Section 2. Definitions and General Provisions.—

The Bill would amend or repeal various provisions of the Canal Zone Code (redesignated as the "Panama Canal Code") and other laws necessary or desirable to implement the new treaty and related agreements. However, most of the Panama Canal Code, consisting of eight titles published in three volumes, would remain in force for purposes of the jurisdiction of the United States during the 30-month transition period following the entry into force of the Treaty six months after exchange of instruments of ratification (Article XI of the Treaty). It is provided, in Section 2 of the Bill, that before the end of the transition period, other follow-up legislation would continue or amend provisions needed for the rest of the Treaty period taking into account experience during the

transition period, would repeal provisions applicable only during the transition period, and would incorporate the remainder of the Panama Canal Code into the United States Code.

Section 2 also provides definitions which would amend certain proper names appearing in the present Canal Zone Code and other laws of the United States. The term "Panama Canal Commission" is substituted for the terms "Panama Canal Company," "Canal Zone Government," and "Governor of the Canal Zone" for purposes of applying existing law after the Treaty enters into force, unless other parts of this Bill provide otherwise. This will permit the new Panama Canal Commission to assume those existing authorities (1) of the present Panama Canal Company and (2) of the Canal Zone Government which the U.S. will exercise under the Treaty.

The term "Government of the Canal Zone", however, would be replaced by the term "United States of America". Unlike "Canal Zone Government" which is the name of a governmental unit, "Government of the Canal Zone" is the generic term for the local governmental authority in the present Canal Zone. To the extent that this authority could be exercised under the Treaty, it will inhere in the United States. Finally, insofar as laws of the United States which refer to the Canal Zone apply to events occurring after the effective date of the new Treaty, the phrase "Canal Zone" is redefined to refer to areas and installations used or regulated by the United States pursuant to the Treaty.

TITLE I—PANAMANIAN RELATIONS AND SECURITY MATTERS

Section 101. United States-Panama Joint Committees; Sea Level Canal Study.—

Subsection (a) provides that the President shall appoint the U.S. representatives to two of the joint committees with Panama provided in the Treaty, namely, the Joint Commission on the Environment and any joint committee subsequently designated to study the possibility of a sea-level canal in Panama. With respect to such a sea-level canal study, subsection (b) requires that the study be transmitted to the Congress and subsection (c) precludes construction of a sea-level canal by the United States in Panama unless expressly authorized by Congress after submission of such a study.

Subsection (d) would require the President to designate and the Secretary of State to coordinate the participation of the U.S. representatives to the Consultative Committee to be established under Article III(7) of the Panama Canal Treaty. As provided in the Treaty, this Committee would provide a diplomatic forum for discussion and advice on issues of primary importance; general tolls policy, policies to increase Panamanian participation in the Canal's operation, and international policies on matters concerning the Canal. It is contemplated that other affected Federal agencies will participate in this consultative process under the coordination of the Secretary of State.

Section 102. Authority of the Ambassador.—

Section 102 provides that the United States Ambassador to the Republic of Panama has full responsibility for coordinating the transfer of functions which are assumed by the Republic of Panama under the Treaty. The Administrator of the Panama Canal Commission is exempted from the direction and supervision of the Ambassador, but is required to keep the Ambassador informed of all activities and operations of the Commission. Under existing law (22 U.S.C. § 2680a) the United States Area Military Commander in Panama is similarly exempted from the direction and supervision of the Ambassador.

Section 103. Security Legislation.—

Sections 34 and 35 of title 2 of the Canal Zone Code which deal, respectively, with the authority of the President and of the Governor of the Canal Zone over certain military activities within the Canal Zone, would be repealed by Section 102(a) of the Bill to reflect the termination of the Canal Zone and of the office of the Governor. After the effective date of the Treaty, authority over the U.S. forces in Panama will be exercised in accordance with the normal chain of command.

Subsections (b) through (e) would make inapplicable, as no longer appropriate after the loss of territorial jurisdiction, certain provisions of title 50 of the United States Code concerning the regulation or seizure of foreign vessels in time of national emergency. Repeal of these provisions merely reflects the termination of the Canal Zone and does not impair the authority of the U.S. under Article IV of the Treaty to protect and defend the Canal.

Section 104. Arms Export Control.—

This section would repeal section 38(d) of foreign vessels in time of national emerthe licensing requirements of that Act applicable in the Canal Zone. This licensing authority would no longer be within U.S. jurisdiction under the Treaty.

Section 105. Privileges and Immunities.—

Article VIII of the new Treaty authorizes the United States to designate up to twenty officials of the Panama Canal Commission who, with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. This section would vest in the Secretary of State the authority to make such designation from among persons recommended by the Panama Canal Commission, and to furnish a list to Panama as required by the Treaty.

Section 106. Termination of Canal Zone Government; Transfer of Records.—

The provisions that would be repealed by this section would be inappropriate under the new Treaty arrangements. Sections 1, 2, and 3 of title 2 of the Canal Zone Code concern the designation of the Canal Zone, the acquisition of land to be made part of the Canal Zone in addition to the 1903 grant, and the creation of towns and subdivisions in the Canal Zone. Section 31 establishes the Canal Zone Government and states its functions, section 32 provides for the appointment of the Governor, and section 33 states his powers and duties. Sections 333 and 334 authorize the Governor of the Canal Zone to issue and revoke property licenses within and without Canal Zone town sites.

Sections 5081 through 5092 of title 6 of the present Canal Zone Code provide authority to the Canal Zone Government to extradite persons to the Republic of Panama. With the termination of the Canal Zone Government, these sections would be repealed.

Subsection (b) authorizes the transfer of records, or their copies, including those of the Canal Zone Government, Canal Zone courts and Panama Canal Company, to other U.S. agencies and courts. Under the coordination and with the approval of the U.S. Ambassador to Panama, needed records or copies could also be transferred to the Republic of Panama for the purpose of carrying out their jurisdiction or functions under the Treaty.

TITLE II—PANAMA CANAL COMMISSION AND OTHER AGENCIES

Chapter 1—Commission; Fiscal Matters

This chapter relates principally to the organization of the Panama Canal Commission, its financial management, and its functions and authorities. The Commission would be established as the successor to the Panama Canal Company, would assume the assets and liabilities of the Company, and would be subject to most of the statutory provisions which now govern the Company, including its powers as a government corporation and is authority to borrow funds up to a fixed ceiling from the Treasury. In addition to the provisions of this chapter, the transition is effected to a large extent by the definitions in section 2 of the bill, which provide that references in the Canal Zone Code (redesignated as the "Panama Canal Code") to the "Panama Canal Company" would be amended to read the "Panama Canal Commission".

Section 201. Establishment; Purposes; Location of Offices.—

Subsection (a) of this section would amend section 61 of title 2 of the Canal Zone Code which presently states the purposes, and establishes the offices and residence of the Panama Canal Company. As revised by this section, the Panama Canal Commission is substituted for the Panama Canal Company and declared to be the successor to the Company. References to the civil government of the Canal Zone are deleted, as are references to the Canal Zone as a geographical area. The Commission would be a resident of the eastern judicial district of Louisiana rather than the Canal Zone, as well as the District of Columbia, for the purpose of federal laws relating to jurisdiction or venue in civil actions. Subsection (b) provides a conforming amendment to section 62(a) of the Canal Zone Code, which would have the effect of continuing the U.S. direct investment in the present Panama Canal Company on the books of the new Commission.

Section 202. Payment of Interest to U.S. Treasury; Repeal of Requirement.—

Subsection (e) of section 62 of title 2 of the Canal Zone Code, which requires the present Panama Canal Commission to pay into the United States Treasury interest on the net direct investment of the United States in the Canal, would be repealed by section 202(a) of this bill. The elimination of the interest obigation has been recommended in order to balance the policy objectives of keeping the Commission self-sustaining and avoiding an uneconomic increase in tolls. The conforming amendments in subsections (b), (c), and (d) of section 202 delete other references to the payment of interest. Subsection (b) also clarifies that the surplus referred to in section 62(f) is a "capital surplus account", a means for accounting for undistributed earnings accumulated to date, and not the type of annual operating surplus from which Panama would receive an additional payment under Article XIII(4)(c) of the Treaty.

Dividends to U.S. Treasury.—Subsection (c) of section 202 would amend section 70 of title 2 of the Canal Zone Code, which requires the present Panama Canal Company to pay any operating surplus into the U.S. Treasury, by indicating that the phrase "working capital requirements" includes operating expenses and payments to Panama under the Treaty. This amendment will require the Commission to pay as dividends to the Treasury any surplus not required to be paid to Panama under Article XIII (4)(c) of the Treaty.

Section 203. Expenditures and Payments to Panama.—

Subsection (g) of section 62 of title 2 of the Panama Canal Code would be amended to authorize and direct the new Commission to pay, directly to Panama from Canal operating revenues, the payments required under paragraph 4 of Article XIII of the Treaty. At present, annuity payments to Panama are made through a special State Department appropriation which is repealed by Section 203(b). (The Panama Canal Company reim-

burses the United States Treasury for $519,000 of the total annuity of $2.3 million paid by the Department of State.)

The amended subsection (g) would also provide a method for determining whether the Canal operating revenues in any year produce a surplus sufficient to pay all or part of the contingent $10 million, payable under Article XIII(4)(c) of the Treaty from any excess of Canal operating revenues over expenditures of the Commission. Revenues of a given fiscal period would first be reduced by all expenditures of that period including: (i) amounts paid or payable for operations and maintenance, inventory, goods, services and that portion of unfunded liabilities paid or currently payable; (ii) payments to Panama under paragraphs 4(a) and 4(b) of Article XIII and paragraph 5 of Article III; (iii) amounts payable into a capital reserve account established to fund plant replacement, expansion, and improvements; (iv) amounts payable into reserve accounts established in order to match revenues and expenses during the projected period of a given toll rate; and (v) amounts necessary to recover past deficits.

This formula is intended to insure that the contingent payment to Panama will be made only after all costs of operating the Canal have been met.

Section 204. Public Service Payments to Panama.—

At present, the Panama Canal Company is required to treat as an operating cost the net costs of operation of the Canal Zone Government. A new subsection (h) added to section 62 of title 2 of the Panama Canal Code would similarly require the Panama Canal Commission to treat as an operating cost payments to Panama for providing certain public services in the Canal operating areas and housing areas (police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection) as required by paragraph 5 of Article III of the Treaty. The Treaty fixes the amount of this payment at $10 million annually, and provides that every three years the costs involved in furnishing the services are to be re-examined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

Section 205. Board of Directors of Commission.—

Subsection (a) of section 63 of title 2 of the Panama Canal Code, concerning the Board of Directors of the Panama Canal Commission, would be amended to conform to the new Treaty provision. Article III of the Treaty provides that the Board will have nine members, four of whom are Panamanians and five of whom are nationals of the United States. Under this revised subsection, all members of the Board would be appointed by the President of the United States and hold office at his pleasure, except as limited by Article III(3)(b) of the Treaty.

Section 206. Quorum of Board of Directors.—

Subsection (c) of section 63 of title 2 of the Panama Canal Code would be amended to provide that a quorum for transaction of business of the Board of Directors of the Commission shall consist of a majority of the directors of which a majority of those present are citizens of the United States. The present provision states that a majority constitutes a quorum. The proposed new statement of a quorum would assure that for the transaction of business the United States members would retain their majority.

Section 207. Administrator and Deputy.—

Section 64 of title 2 of the Canal Zone Code, which provides that the Governor of the Canal Zone shall serve, ex officio, as president of the Panama Canal Company, would be amended to reflect the fact that the office of the Governor would be discontinued by section 105 of the bill. The amended section provides that the Administrator and the Deputy Administrator will be appointed by the President of the United States. The new Treaty provides that the Administrator be a United States national until 1990 and that he be a Panamanian national thereafter. The Deputy would be a Panamanian national until 1990 and a United States national thereafter.

Section 208. Suits against Commission.—

Section 65 of title 2 of the present Canal Zone Code states the general powers of the Panama Canal Commission and this amendment to paragraph (3) of subsection (a) restates the sue-and-be-sued clause so as to provide that the amenability of the Commission to suit is limited by the immunities provided by Article VIII of the Treaty or otherwise by law. Article VIII of the Treaty provides that the Commission as an agency of the United States Government is immune from the jurisdiction of the Republic of Panama. The suability of the Commission would also be limited by a provision that the Commission, under the general rule applicable to judgments against the United States Government, is exempt from any liability for prejudgment interest. Monies owed by the Commission to its employees are protected against attachment or garnishment except as otherwise provided by law.

Section 209. Applicability of Government Corporation Control Act.—

Section 66 of title 2 of the present Canal Zone Code, which states the specific powers of the Panama Canal Company, would be amended to provide that the exercise of such powers would be subject to the new Treaty and related agreements, which limit activities and functions of the new Panama Canal Commission. Thus, the enumerated power in the present section 66 may be exercised only to the extent permitted under the Treaty.

Section 210. Commission Property and Assets; Depreciation and Amortization.—

This section would repeal sections 67, 68, and 73 of the present Canal Zone Code which reflect the transfer of assets and functions from the former Panama Railroad Company to the Panama Canal Company. These provisions would have no further relevance under the Treaty.

A new section 68 would be added to the Panama Canal Code, providing that the Commission, as successor to the Canal agencies, would take over the assets and liabilities of the Panama Canal Company, and those of the Canal Zone Government that have not been transferred to other U.S. agencies or to Panama or otherwise disposed of. The assets and liabilities would be deemed to have been accepted and assumed by the Commission under subsection (c) without the necessity of any act on its part. Subsection (b) of the new section 68 would permit the Commission to depreciate the assets to which it would succeed, in particular the Canal and its complementary works, installations, and equipment. The Commission could also amortize its right to use certain assets made available under the Treaty, in particular the employee housing that Panama will make available for use by the Commission under the Treaty.

Borrowing Authority.—No special provision is needed to continue with the Commission the present borrowing authority of the Panama Canal Company under section 71 of title 2 of the Canal Zone Code. This is accomplished by section 2 of the bill which amends the term "Panama Canal Company" to read "Panama Canal Commission".

Section 211. Regulations Regarding Navigation, Passage and Pilotage.—

Section 1331 of title 2 of the redesignated Panama Canal Code would be amended to preserve the basic authority of the United States to prescribe regulations governing the navigation of the waters of the Panama Canal and areas adjacent thereto including the ports of Balboa and Cristobal, the passage and control of vessels through the Panama Canal or any part thereof including the locks and approaches thereto, and pilotage in the Canal or the approaches thereof through adjacent waters. Under this restatement of present law, the U.S. would exercise its regulatory authority in accordance with provisions of the new Treaty and related agreements.

Section 212. Furnishing of Services; Reimbursement.—

Section 231 of title 2 of the Canal Zone Code would be repealed because it refers to funds of the Canal Zone Government, which is being discontinued. Section 232 would be amended to continue the arrangement under which the Panama Canal Commission would be reimbursed for amounts expended by the Commission in maintaining defense facilities in stand-by condition for the Department of Defense.

It is contemplated that the schools and health care facilities now operated by the Canal Zone Government will be operated by the Department of Defense since the Panama Canal Commission is not authorized by the new Treaty to continue these facilities. The amended section 232 would make the appropriations of the Department of Defense (or any other agency that might be designated by the President to perform the functions) available for conducting such educational and health care activities, including kindergartens and college which are now part of the Canal Zone Government system. The amounts expended by the agency furnishing services to employees of other agencies and their dependents, less amounts payable by such persons, would be fully reimbursable, as at present. The funds of agencies of the United States in Panama, including the new Panama Canal Commission, would be made available for such reimbursements related to their employees and dependents. The agencies also would be authorized to pay for health care services provided to certain elderly or disabled persons, primarily disability relief recipients, Civil Service annuitants who retired prior to 1970, and a relatively few elderly persons receiving domiciliary care at Corozal Hospital. This provision would recognize the moral responsibility of the United States to continue past practices in this regard.

Section 213. Public Property and Procurement; Transfers and Cross Servicing.—

This section would repeal section 371 of title 2 of the present Canal Zone Code which refers to the acquisition of equipment, buildings, and structures by the Canal Zone Government, which is being discontinued under the new Treaty. This section would also amend section 372 of title 2 of the Canal Zone Code, by deleting material concerning the Canal Zone Government and continuing existing provisions for transfers of property and facilities between departments and agencies that would be located in Panama. The Panama Canal Commission and other agencies would also be expressly authorized to enter into cross-servicing agreements for the use of facilities, furnishing of services, or performance of functions.

Chapter 2—Tolls

This chapter amends the present provisions applicable to the determination of tolls charged for vessels transiting the Panama Canal, in order to conform to the requirements under the new Treaty.

Section 230. Measurement Rules; Changes in Rates.—

This section would amend section 411 of title 2 of the present Canal Zone Code concerning the prescription of measurement rules and tolls. The present provisions would remain the same except that, in order to pro-

vide a more timely response to changing economic conditions, the required period for notice of proposed changes would be reduced from six months to three months.

Section 231. Setting of Rates Under New Treaty.—

This section would recognize the fact that the increased financial obligations of the Commission imposed by the annuity provisions of the new Treaty would begin on the effective date of the Treaty and that increased rates of tolls should be put into effect on that same date so that revenues will be sufficient to meet these obligations. This section would take effect on the date of enactment of this legislation and would authorize the present Panama Canal Company to review and change the rates of tolls, as necessary, effective on the Treaty effective date. The changes would be subject to the approval of the President. The section would require that, if and to the extent that time permits, the Panama Canal Company would give three months' notice and conduct a public hearing in the usual manner.

Section 232. Bases of Tolls.—

This section would amend the tolls formula in subsection (b) of section 412 of title 2 of the Canal Zone Code. Section 232 is intended to assure that tolls will be set at a level sufficient to provide for the operation of the Canal on a self-sustaining basis.

Tolls would continue to be prescribed at rates calculated to cover, as nearly as practicable, all anticipated costs of maintaining and operating the Canal, together with the facilities and appurtenances related thereto, including depreciation of assets, amortization of use rights, and payments to Panama pursuant to paragraphs 4(a) and 4(b) of Article XIII and paragraph 5 of Article III of the new Treaty. Paragraph 4(a) provides for payment to Panama of 30 cents per Panama Canal net ton for each vessel transiting the Canal for which tolls are charged, with a periodic adjustment for inflation (based on changes in the United States wholesale price index for total manufactured goods during biennial periods).

Paragraph 4(b) provides a fixed annuity of $10 million to be paid to Panama out of Canal operating revenues. Paragraph 4(c) of Article XIII requires an additional annual amount of up to $10 million to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission, including the amounts paid to Panama pursuant to paragraphs 4(a) and 4(b). The payment under paragraph 4(c), to be made only if earned, is not included in the tolls formula.

In determining the rate of tolls, the Commission may also take into account unrecovered past costs, capital requirements, and the necessity of matching revenues with expenses during the projected period of a given toll rate.

Subsection (c) of section 412 of title 2 would be amended to require vessels operated by the United States, including warships and other military vessels, to pay direct tolls for transiting the Canal. The present law provides that if the President does not require such vessels to pay tolls (and he has not so required), the tolls shall nevertheless be computed and the amounts thereof offset against the obligations of the Panama Canal Company to the United States Treasury. This, in effect, has resulted in the indirect payment of tolls for United States vessels by the Treasury. The proposed legislation would convert the present system of computing toll credits and offsetting them against payments to the Treasury to a system of direct payment of tolls by U.S. vessels.

Subsection (d) of section 412 of title 2 of the Canal Zone Code which provides that the levy of tolls is subject to the provision of cetrain treaties, would be amended to delete the reference to the 1903 Treaty with Panama, which is abrogated by the new Treaty, and to include appropriate references to the new Neutrality Treaty. The provision implementing the 1914 treaty with Colombia prescribing free passage of the Canal for Colombian war ships would be continued.

Chapter 3—Claims

Section 260. Measure of Damages; Time for Filing; Board of Local Inspectors.—

This section would make a number of changes in chapter 11 of title 2 of the present Canal Zone Code dealing with claims for injuries to persons or property. Section 271 of title 2 of the Canal Zone Code would be repealed because it deals with the authority of the Governor in claims arising from civil government. The civil government functions would terminate on the Treaty effective date. The Panama Canal Commission would have its own authority to settle claims after that date.

Section 291 of title 2 of the Canal Zone Code, relating to claims for injuries to vessels in the locks of the Canal, would be amended to include the element of negligence as a condition of the liability of the Commission, as is the case in section 292 concerning injuries outside the locks. In cases under section 291, as revised, the Commission would have the burden of showing its freedom from negligence. A clarifying amendment to section 291 would also be made by substituting the words "any portion of the hull" for the words "the side."

Section 293 of title 2 of the Canal Zone Code, dealing with the types of damages recoverable from the Commission in vessel accident claims, would be revised to confirm the long-standing administrative construction of those damage provisions, that was affected by a court decision in 1973 concerning liability for charter hire, expenses for maintenance of the vessel, and wages of the crew, for the time the vessel is undergoing repairs. Subsection (b) would be amended specifically to cover other questions that have arisen with reference to general average expenses, attorneys' fees, bank commissions and port charges.

Section 294 of title 2 of the Canal Zone Code, specifying delays for which the Panama Canal Commission would not be responsible would be amended by the addition of a new item, time necessary for investigation of marine accidents, which was previously covered by administrative regulation.

Section 296 of title 2 of the Canal Zone Code would be amended by providing that actions on vessel accident claims against the Commission would be brought in the United States District Court for the Eastern District of Louisiana rather than the court in the Canal Zone, since on the Treaty effective date the local court would lose jurisdiction over new civil cases.

Section 297 of title 2 of the Canal Zone Code requires that, prior to the departure of a vessel involved in an accident or injury giving rise to claim, an investigation by the competent authorities has been completed and the basis for the claim has been laid before the Panama Canal Company. This section would be amended to state expressly that lack of knowledge that an accident giving rise to a claim has occurred does not excuse noncompliance with the requirements.

A new section 298 would be added to title 2 of the redesignated Panama Canal Code establishing a statute of limitations, patterned after that contained in the Federal Tort Claims Act, for vessel accident suits against the Panama Canal Commission. A claim would be required to be presented in writing within two years and action brought within one year after notice of final decision on the claim by the Commission. This new provision would probably reduce the number of actions that have to be filed on claims under negotiation, and should be beneficial in terms of time and expense both to the Commission and to claimants in view of the distance between the Canal and the court in Louisiana.

A new section 299 would be added to title 2 of the Canal Zone Code establishing a board of local inspectors, comprised of officials of the Panama Canal Commission, which would conduct the investigation of vessel accidents. At the present time the board is part of the Canal Zone Government, which would be discontinued on the effective date of the Treaty.

TITLE III—EMPLOYEES AND POSTAL MATTERS

Chapter 1—Employment Systems

This chapter would redesignate the present Canal Zone Merit System as the Panama Canal Employment System, and provide for a number of changes consistent with the requirements and purposes of the Panama Canal Treaty of 1977. Many existing provisions would be continued through the definitional change in sections 2 and 302 of the Bill.

Section 301. Repealers and Changes in Canal Zone Code.—

This section would repeal sections 101, 102, 122, 123, 147 and 154 of title 2 of the present Canal Zone Code, and redesignate section 103 as section 122. Section 101 concerns appointment and compensation of employees of the Canal Zone Government, which is being discontinued pursuant to the Treaty. Section 102 provides an exemption from certain laws relating to dual compensation for "teachers in the public schools of the Canal Zone" who are also employed in night schools or vocation schools or programs. The provisions are not considered applicable to the circumstances that would obtain under the new Treaty. Former section 103, concerning deduction from compensation of amounts due from employees for supplies or services, would be redesignated as section 122.

Section 123 concerning hours of work for telegraph operators and train dispatchers is inconsistent with other law and in any event would no longer be needed because under the new Treaty Panama would undertake operation of the railroad. Section 147 authorizes designation of positions which for security reasons must be occupied by a citizen of the United States. Under the new Treaty arrangements this provision would no longer be appropriate. Section 154 requiring training programs to be applied uniformly to employees regardless of citizenship would be inconsistent with the provisions of the Treaty concerning increased employment and training of Panamanians.

Section 302. Definitions.—

Section 141 of title 2 of the redesignated Panama Canal Code defines terms for the purpose of the wage and employment practices provisions of the Code. The definitions of "department" and "position" are revised to delete references to the Canal Zone. The term "department" is also redefined to mean (1) the Panama Canal Commission, and (2) an executive agency which makes an election under the revised section 142(b) (see, analysis to section 303). The term "executive agency" has the same meaning as in 5 U.S.C. § 105.

Section 303. Panama Canal Employment System.—

Section 142(a) of title 2 of the present Canal Zone Code prescribes the general standards governing the system of wage and employment practices governing the Panama Canal Company, the Canal Zone Government and all other U.S. agencies in the present Canal Zone. In place of this general Canal Zone system, section 142(a) would be revised and divided into two parts. First, subsection (a) would require the Panama Canal Com-

mission to conduct its wage and employment practices in accordance with the Panama Canal Employment System. The latter system, like the present Canal Zone Merit System, would be established in accordance with applicable Treaty requirements, provisions of law, including in particular section 149 of title 2 of the Panama Canal Code (see, analysis to section 307), and regulations promulgated by or under the authority of the President. The views and recommendations of the Panama Canal Commission with respect to any proposed regulation would have to be sought and taken into account. This would give the Commission a voice in the formulation of applicable employment standards, particularly those affected by the Panama Canal Treaty of 1977.

Subsection (b) would give other executive agencies (as defined in 5 U.S.C. § 105) in Panama which have their present employment practices governed by the Canal Zone Merit System, the option of electing in whole or in part either to continue under the Panama Canal Employment System, or to adopt their own employment system, e.g., the system otherwise applicable to the agency's employees worldwide.

Section 304. Continuation of Canal Zone Merit System.—

This section would continue the Canal Zone Merit System beyond the Treaty effective date if necesary and until such time as the Panama Canal Employment System is established under section 303 of this Bill. This will permit both continuity and an orderly transition in employment practices.

Section 305. Overseas Recruitment and Retention.—

Section 144 of title 2 of the redesignated Panama Canal Code, concerning compensation, is amended by deletion of subsection (d) which establishes a ceiling of 25% on the additional compensation authorized by section 146. Section 146 is then revised to conform to the new Treaty provisions concerning additional remuneration that may be paid as overseas recruitment and retention differentials (a) to persons already employed on the Treaty effective date, and (b) to persons thereafter recruited outside of Panama for a position in Panama. Section 146 is also revised to provide for the possibility of granting additional remuneration in the form of an overseas recruitment and retention differential to medical doctors employed by the Department of Defense and Panama Canal Commission. The present section authorizes a tax allowance intended to equalize the take-home basic compensation of United States citizens and non-United States citizens and an overseas "tropical" differential, with an overall ceiling of 25%. The proposed revision would allow payment in such amounts as the head of the agency concerned determined should be paid as overseas recruitment and retention differentials. Without this authority to pay incentive differentials, the Panama Canal Commission, as well as other United States Government agencies in the Republic of Panama, might have difficulty in recruiting and retaining both United States and non-United States citizens, particularly in certain critical skills, which are necessary for the continued effective operation of the Canal and essential support activities.

Section 306. Transfer of Federal Employees to Commission.—

This section would authorize heads of federal agencies to enter into agreements to transfer or detail their employees to the new Panama Canal Commission for periods of up to five years. Affected employees would be entitled to reempolyment with their original agencies without loss of those pay, seniority or rights or benefits to which they would have been entitled had they remained with such agencies. This provision would help implement Article X(5) of the Treaty, which requires the United States to rotate, with certain exceptions, at a maximum of five-year periods, U.S. citizens and other non-Panamanians hired after the Treaty effective date.

Section 307. Merit and Other Employment Requirements.—

This would amend section 149 of title 2 of the redesignated Panama Canal Code, relating to the merit standard and other employment system requirements. Subsection (a) would authorize the President by regulation to amend or modify the Panama Canal Employment System consistent with section 142(a) as amended by section 303 of this Bill. As in the latter section, the views and recommendations of the new Panama Canal Commission would have to be sought and taken into account.

Subsection (b) combines the subsections (b) and (c) of the present section 149, and makes revisions required by the Treaty. In particular, the merit standard for personnel decisions would be limited by the requirements in Article X of the Treaty establishing certain preferences for Panamanians. Apart from such limitations, however, the merit standard would continue to apply. As with the present Canal Zone Merit System, the Panama Canal Employment System would be required to conform generally to policies, principles and standards established under the Civil Service Act, and could provide for interchange of U.S. citizen employees between this employment system and the competitive civil service.

Section 308. Regulations; Examining Office.—

This section would amend section 155 of title 2 of the present Canal Zone Code, which now authorizes the President to coordinate and promulgate regulations concerning the employment practices of departments and agencies in the Canal Zone. As amended, the section would require interagency coordination only in the event that an executive agency other than the Panama Canal Commission elected to participate in the Panama Canal Employment System under section 142(b) as revised by section 303 of this Bill.

Subsection (b) as amended would authorize the President to establish, in conjunction with the Panama Canal Employment System, a central examining office like the one presently in the Canal Zone. However, such an office would be required to be a part of the Panama Canal Commission and to perform functions relating to recruitment, examination and determination of qualification standards in accordance with the Panama Canal Treaty and related agreements, particularly Article X of the Treaty.

Section 309. Compensation of Military, Naval or Public Health Service Personnel Serving Commission.—Section 201 of title 2 of the Canal Zone Code concerns the compensation of persons in the military, naval or public health services who serve with the Canal Zone Government or Panama Canal Company. The proposed amendment would delete references to the Governor of the Canal Zone and President of the Panama Canal Company and to the Lieutenant Governor of the Canal Zone and Vice President of the Panama Canal Company and substitute references to the Administrator and Deputy Administrator of the Panama Canal Commission.

Chapter 2—Conditions of Employment, Placement, and Retirement

This chapter prescribes special provisions relating to present employees of the Panama Canal Company, Canal Zone Government and other agencies in the Canal Zone, and relating to employees who, under the Treaty and related agreements, are to receive rights or benefits under the Social Security System of the Republic of Panama.

Section 321. Transferred Employees.—This section would add a new section 202 to title 2 of the Canal Zone Code, requiring that, pursuant to Article X(2)(b) of the Treaty, specified terms and conditions of employment applicable to employees of the Canal Zone Government and the Panama Canal Company who are transferred to employment with the Panama Canal Commission be generally no less favorable than those applied to them prior to the Treaty. This protection would also be extended to employees transferred to other U.S. agencies in Panama.

Section 322. Placement.—This section would add a new section 203 of title 2 of the Canal Zone Code, according appropriate placement assistance including priority placement to vacancies with the United States Government in the United States, for United States citizen employees of the Canal Zone Government and Panama Canal Company who on or any time after the Treaty effective date separate from employment for any reason other than misconduct or delinquency and are not placed in other appropriate positions with the United States Government in Panama. Subsection (b) extends the placement assistance contained in subsection (a) to employees of other U.S. agencies in Panama whose positions are eliminated as a result of implementation of the Treaty. Subsection (c) directs the Civil Service Commission to develop and administer a placement program for all eligible employees who request assistance.

Section 323. Educational Travel Benefits.—This section would add a new section 204 to title 2 of the Canal Zone Code, which would entitle dependents of United States citizen employees of the Panama Canal Commission who are eligible for educational travel benefits, to one round trip each year for undergraduate studies in the U.S. until they reach their 23rd birthday. This benefit to employees is fair and is important to Canal management because it provides incentives for employees to stay in their jobs under the new Treaty arrangements.

Section 324. Adjustment of Compensation for Loss of Benefits.—

The privilege granted by the Treaty to United States citizen employees of the Panama Canal Commission to use the military postal services, sales stores, and exchanges will terminate in five years. Because the loss of these privileges is expected to result in an increased cost of living for the employees, this section would provide that they shall be paid offsetting additional compensation when that occurs.

Sections 325 and 326. Early Retirement Eligibility; Computation.—

Employees of the Panama Canal Company, Canal Zone Government, Panama Canal Commission and any Executive agency in the Canal Zone, who are involuntarily separated or scheduled to be separated as a result of implementation of the Treaty will be eligible to retire if they have 18 years service and are 48 years old. Persons employed by the Panama Canal Company or the Canal Zone Government prior to the exchange of instruments of ratification of the Treaty or prior to its effective date, including such employees who are transferred to the Panama Canal Commission or an Executive agency in the Republic of Panama, and who have at least 18 years of service and are 48 years old or who have 23 years of service at any age elect to voluntarily retire if they do not wish to continue Federal employment in the Republic of Panama. There will be no reduction in the computation of the annuity because of the age at which an employee retires.

Employees of the Panama Canal Company or Canal Zone Government who continue employment with the new Panama Canal Commission or other Executive agency in the Republic of Panama will have their an-

nuity computed at 2½% for each full year they continue in such employment after the effective date of the Treaty up to a maximum of 20 years.

Law enforcement officers and firefighters with at least 18 years of service as law enforcement officers or firefighters and who are at least 48 years of age when separated will have their annuities computed at 2½% for each year of such service (up to 20 years). Employees who separate prior to completing 18 years of law enforcement or fire service and reaching 48 years of age will have their annuities increased by $12 for each month of law enforcement or fire service (not to exceed 20 years) prior to the effective date of the Treaty. Law enforcement officers and firefighters will receive an additional annuity of $8 for each month of such service after the entry into force of the Treaty until they have served a total of 20 years as law enforcement officers or firefighters.

Section 327. Employees of Related Organizations.—

This section is necessary to extend to the court and related employees mentioned in this section the same benefits that the preceding sections would provide for Panama Canal Commission employees. The court and related employees have always been so treated in matters such as these and the policy should continue. Under the Treaty, the court and related functions would be discontinued after the 30-month transitional period.

Section 328. Applicability of Benefits to Non-citizens.—

This section would effect technical amendments to conform certain provisions of personnel law to the new Treaty provisions concerning non-United States citizen employees of the Panama Canal Commission hired after the Treaty effective date who would be covered by the social security system of the Republic of Panama. See, Article VIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977. The amendments would make inapplicable to such persons the provisions of title 5 of the United States Code dealing with compensation for work injuries, retirement, life insurance, and health insurance. Coverage under such provisions would continue for non-United States citizen federal employees who had such coverage immediately prior to Treaty effective date.

Section 329. Non-U.S. Citizen Retirement.—

Subsections (a) and (b) relate to persons separated from employment with the present Canal agencies or the Panama Canal Commission, as a result of the implementation of the new Treaty and related agreements, who become employed under the Social Security System of the Republic of Panama through the transfer of a function or activity or through a job placement assistance program. This provision would implement Article VIII(3) of the Agreement in Implementation of Article III of the Panama Canal Treaty, and would apply regardless of the employee's nationality. In the cases specified in this section, the United States would pay matching funds to the social security system of Panama to aid in the purchase of a retirement equity in the Panama system. The matching funds would come from the United States Civil Service Retirement Fund.

Subsection (c) would implement the requirements of paragraph 2 to Annex C of the Agreement in Implementation of Article IV of the Panama Canal Treaty. That provision requires that non-U.S. citizen employees not covered by the Civil Service Retirement System, and employees paid by nonappropriated fund instrumentalities, be covered by the Panamanian social security system with contributions from U.S. employer agencies. It also requires the United States to request legislation to pay each such employee a retirement similar to that of the Panamanian social security system. Subsection (c) implements these requirements by authorizing the purchase of a retirement equity or supplement for such employees under the Panamanian social security system. The provision will serve to provide retirements to nonappropriated fund employees working at Department of Defense installations (e.g., cafeteria and hospital workers), pursuant to the Treaty. As understood during the Treaty negotiations, the provision would apply retroactively to cover service prior to the Treaty effective date.

Section 330. Technical Amendments.—

This section would make technical amendments necessary to continue the present applicability of provisions concerning leave for jury service, severance pay, relocation expenses and workmen's compensation of federal employees, and to continue the inapplicability of the general law pertaining to overseas differentials and allowances.

Chapter 3—Postal Matters

Section 341. Postal Service.—

This section would provide for the discontinuance of the Canal Zone postal service, as required by the Treaty, but would authorize the Panama Canal Commission to pay outstanding postal savings and money orders and otherwise to handle the liquidation of the service. Since it can be anticipated that mail from the United States and elsewhere will continue to be addressed to the Canal Zone for an indefinite period until the military postal services and the Panama postal service become fully used by senders of mail, the section would provide a procedure intended to assist, to the extent practicable, in the proper routing and distribution of such mail through the military post offices. Subsection (e) contains technical amendments necessary to reflect the discontinuance of U.S. postal service in the Canal Zone.

TITLE IV—COURTS AND RELATED FUNCTIONS

Section 401. Continuation of Code and Other Laws.—

This general provision would expressly continue existing law, including large portions of the redesignated Panama Canal Code, for the purpose of preserving the authority that is to be retained by the United States during the 30-month transitional period provided in Article XI of the Treaty. However, this continuation of laws could not be construed as regulating, or providing authority to regulate, matters as to which the United States may not exercise jurisdiction under the Treaty.

Section 402. Jurisdiction during Transition Period.—

This section, after stating a finding that the Treaty prescribes special provisions governing the jurisdiction of the United States during a 30-month transition period, would limit the jurisdiction of the United States courts in Panama as provided by Article XI of the Treaty. Subsection (c) incorporates Treaty definitions of certain terms used in Article XI relating to the jurisdiction of the United States during the transition period.

Section 403. Division and Terms of District Court.—

This section would recognize changed circumstances under the Treaty by repealing provisions establishing geographical subdivisions of the district court within which the court must hold terms. The court would be authorized to designate its places and times for holding terms.

Section 404. Term of Certain Offices.—

This section would reduce the terms of office of the district judge (eight years), United States Attorney (eight years), United States Marshal (eight years), and magistrate (four years), to the period ending thirty-six months after the exchange of instruments of ratification, in the case of any appointment made after enactment of this Bill. The courts and court personnel would no longer function after the 30-month transition period.

Section 405. Residence Requirements.—

This section would repeal present requirements that a district judge, clerk of the court, United States Attorney, Assistant United States Marshal, magistrate and constable shall reside in the Canal Zone.

Section 406. Special District Judge.—

This section would authorize the chief judge of the appropriate judicial district to designate and assign a special district judge to act during the absence, disability or disqualification of the district judge, or when the office of district judge is vacant. At present the President is authorized to appoint a special district judge under similar circumstances, but not in the case where there is merely a vacancy. Experience has shown the need for provision for designation of a special judge whenever the position is vacant, and vesting this authority in the chief judge of the judicial circuit would conform to present practice both in the Canal Zone and in the United States.

Section 407. Magistrates' Courts.—

At the present time there are two magistrates' courts and a district court in the Canal Zone. Under the new Treaty, the courts will continue for only a 30-month transition period, and their jurisdiction will be greatly limited by Article XI of the Treaty. All civil jurisdiction would be gone except for cases pending on the Treaty effective date. Criminal jurisdiction would be reduced to pending cases, and for the most part, to offenses committed by United States citizen personnel. Because it may develop that the workload may be reduced to such a point that it would be feasible to discontinue one of both magistrates' courts, this section would authorize the President or his designee to do so, leaving the district court to exercise all jurisdiction if both magistrates' courts were abolished.

Section 408. Oath.—

This section would supersede a provision of the Canal Zone Code prescribing the text of the oath to be taken by an applicant to the bar of the district court. The prescribed text would no longer be appropriate in some respects and the revised section would authorize the district judge to prescribe an appropriate oath.

Section 409. Transition Authority.—

For the purpose of exercising the authority of the United States under Article XI during the transition period, this section provides that such authority, except as provided in this Bill, other laws, the Treaty or by executive order, shall be vested in the Panama Canal Commission.

Section 410. Special Immigrants.—

This section would permit the immigration into the United States of certain non-United States citizen employees of the United States Government in the Canal Zone. Section 410 would extend special immigrant status to Panama Canal Company and Canal Zone Government employees residing in the Canal Zone on the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 who have performed faithful service for one year or more, and to employees of the United States Government in the Canal Zone who have 15 years or more of faithful service and are honorably retired prior to the date of entry into force of the Treaty, or who have been faithful employees for 15 years or more on that date and who subsequently retire honorably. Subsection (b) would exempt special immigrants admitted under this section from certain requirements of present law relating to physical health and proof that the immigrant would not become a public charge.

This proposal arises from a desire to provide retired employees and employees pres-

ently living under U.S. jurisdiction in the Canal Zone with an opportunity to immigrate to the United States if they so choose. Many of these persons have been historically affiliated with the United States presence and have not become fully assimilated into Panamanian society. The bulk of those eligible for immigration will be persons retired from their employment with the United States Government.

TITLE V—MISCELLANEOUS PROVISIONS

Section 501. Health Director; Hospitals.—This section would make technical amendments to various provisions of the present Canal Zone Code which now make references to the hospitals, health bureau, and health director of the Canal Zone Government. Since the Canal Zone Government would be discontinued and the health care facilities would be operated by an agency other than the Panama Canal Commission, the references are clarified to fit the new situation. The various provisions concern hospitalization of the mentally ill, autopsies, disposition of bodies, and litigation involving pre-marital examinations. There would probably be little application of these provisions after the Treaty effective date, but there is a potential application in connection with pending cases during the transition period.

Section 502. Disinterment, Transportation, and Reinterment of Remains.—

This section would make appropriations available to the Panama Canal Company, Panama Canal Commission, and other designated United States Government agencies for the costs incurred for the disinterment, transportation, and reinterment of United States citizens buried at Mount Hope and Corozal Cemeteries. The purpose of this section is to implement the reservation to the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal which authorizes the expenditure of funds for the removal, transportation, and reinterment of the remains of these United States citizens.

Section 503. Effective Date.—

Certain provisions of the Bill including section 231 concerning the advance establishment of new rates of tolls; sections 321, 322 and 325 concerning rights to benefits, priority placement and retirement annuities of present employees of the Panama Canal Company and Canal Zone Government; section 404 concerning the terms of offices of certain court personnel appointed after the date of enactment of this Bill, become effective on a date other than the general effective date of the Bill. The latter date cannot be presently specified in advance of Senate approval of the Treaties, and the exchange of instruments of ratification.

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

Mr. BROOKE. I yield.

Mr. BAKER. Mr. President, I have listened with great care to the remarks of the Senator from Massachusetts, and I am sympathetic to his point of view. As a matter of fact, it will come as no surprise to the Senator from Massachusetts to know, as my friend and colleague from North Carolina (Mr. HELMS), who is also on the floor, knows, that early on in this debate on the treaties, and in part as a result of the concern of the Senator from North Carolina and others as well, I insisted that the administration advise us, the Members of the Senate, of the nature of the implementing legislation that would accompany these treaties.

After a great deal of effort and a number of contacts and exchanges of letters, proposals for implementing legislation were submitted. I am aware, of course, that we cannot be sure that this is the final and last form of that legislation, as the Senator from Massachusetts points out. But it was a step forward, and I am pleased with we were able to get at least that far.

I would also think it may be unprecedented, that is, the business of the administration submitting the implementing legislation in advance of the consideration of the treaties by the Senate. I am doubly pleased, though, that it occurred, because when I am queried by many, and by some Members of the other body, as to whether the House has a role in this matter or not, my answer is always:

Of course, the House has a role, because there are a thousand details, no doubt, which must be attended to by legislation, certainly by a package of implementing legislation.

So I reiterate, I have listened with great interest to the description of the reservation the Senator from Massachusetts will propose to condition or posit the ratification documents on the enactment of legislation. It is a matter which deserves the serious consideration of the Senate. I think the Senator from Massachusetts has done a service to this body by bringing this matter to us in this way, and I assure him I will give it the most serious consideration.

Mr. BROOKE. I thank the distinguished minority leader. I have discussed with him in the past, he will recall, my serious concern about the lack of implementing legislation. We could conceivably pass the treaties and then, as has been pointed out by the distinguished minority leader, the House in exercising its responsibility and the Senate exercising its responsibility, could drastictically change the implementing legislation or maybe refuse to pass it. If passage did not occur for some time we would be in an embarrassing position. Therefore, since the very beginning I have been calling for a final draft of proposed implementing legislation. We were assured last fall that we would get that implementing legislation.

Then later on down the road, I was told that the reason we were not going to get the implementing legislation was because the House did not want to consider action on it at this time.

That is not our concern. That is the concern of the House of Representatives. I cannot conceive of why the House did not want to even look at it at that time. At some time in the near future it may have to take action on implementing legislation or the treaties are not going to be worth very much. Obviously, we would not have necessary appropriations for one thing, which would be essential, or any of the other items which would be contained in the implementing legislation.

Then a little further down the road the administration said:

Well, we will send you the proposed implementing legislation, but it will be subject to revision. We do not stand on it as we will send it up to you.

Well, it is not very reassuring, for the administration to say, "We are just going to send you something which is sort of a model but it can be changed, and drastically changed."

Finally, and still further down the road, we received this package, which I am now introducing into the RECORD, of what they will likely propose, but with the caveat, still, that it is subject to revision by OMB.

Presumably, this is the last word of the State Department and the administration on the subject. I do not think, now that there is a unanimous-consent agreement to vote on the second Panama Canal Treaty, as I understand it, on the 18th of April, that they will go any further than they have gone. Therefore, I felt compelled to introduce this reservation at this time.

I am pleased that the minority leader has taken the floor and voiced his opinion about it and will give very serious consideration to it. I think this is a very important matter which must be resolved and should be resolved prior to a vote on ratification of the second treaty. I am grateful, as I have said, that the minority leader feels this way. I urge my other colleagues to look closely at this reservation, because I think it certainly merits their consideration. I believe it could help us avoid great troubles downstream. I do not want to forecast great troubles, but I would think this would be one way of avoiding great troubles later on. I hope Senators will take this matter seriously. Again I thank the distinguished minority leader.

Mr. HELMS. Will the Senator yield?

Mr. BROOKE. Yes.

Mr. HELMS. I, too, commend the able and distinguished Senator from Massachusetts. As the distinguished minority leader has indicated, he and I have discussed this subject on many occasions. He has been pressing the administration for some sort of information. I shall support the Senator's reservation with enthusiasm, because it is the very least we can do.

Statements have been made on this floor repeatedly that this giveaway, If I may characterize it as such, of the Panama Canal will not cost the people of the United States anything. The Senator has just pulled one thread from the fabric, the $20 million a year interest which will be lost for 22 years, or whatever.

Mr. BROOKE. And there are many other threads which can be pulled.

Mr. HELMS. Exactly. This was discussed at great length in the Armed Services Committee when Governor Parfitt appeared. I questioned him at great length. I had hoped that somewhere along the line Senators would be willing to go back and review that testimony.

The truth is, as the Senator has eloquently stated, that this proposition will, indeed, cost the people of the United States a lot of money.

I commend the Senator. I offer him my assistance in trying to promote support for his reservation.

Mr. BROOKE. Mr. President, I express my gratitude to the distinguished Senator from North Carolina. I am well aware of his very lengthy questioning

in the Armed Services Committee on this point. I think we, and the American people, have been misled as to what the cost of this is going to be. I have heard people say, "Give them the canal, but do not make us pay for it." The answer has always been, "We are not paying anything. We are not going to pay a dime. It is not going to cost us a dime."

Well, it is going to cost us far more than a dime. I think at least we ought to make the American people fully aware as to what the cost will be, to the best of our ability. The Senator has well described the interest payments issue as pulling just one thread from the fabric. There are many other threads which, in the remaining days as this debate moves along, we will bring forth to show, as best we can, exactly what the potential cost will be to the American taxpayer. If the passage of the treaty is what we want to do, that is one thing, but at least we ought to know what the cost of our decisions to do so will be.

For one, I do not want to be voting on any treaty and subsequently having thrown back at me the false statement that I had said it would not cost a penny, especially if the cost proved to be $1 billion, or conceivably more than that.

I again thank the Senator from North Carolina who did the hard questioning. I think too many of our colleagues did not read the exchange, did not read the answers.

In one of the early debates on the floor which I had with the Foreign Relations Committee personally, with Senator JAVITS, for example, he admitted that there were going to be some costs to this. He said the record was complete and then changed this statement and said the record was replete. I remember it, because it was quite different.

But they did not have all the facts. They, themselves, at the time on their hearings, believed that there should be proposed implementing legislation to review. I think they believed at that time that they would get it before ratification. The fact is we still do not have it. Therefore, the necessity of filing this reservation.

Again I thank my colleague from North Carolina, and I thank my distinguished minority leader for joining with me.

Mr. SARBANES. Will the Senator yield?

Mr. BROOKE. Yes.

Mr. SARBANES. I do not think it was ever the expectation of members of the committee that we would have implementing legislation in the sense of having it enacted as that would mean the Congress working its own will.

I supported, and I think it makes a contribution, that the administration should submit if not the absolute and final version, something that is so far along the path in terms of what their ideas are, in terms of what the implementing legislation should contain, that we are able to see the structure that they at least are anticipating.

Obviously, we, the Congress, can go on, with respect to the implementing legislation, and do as we choose with it. We could completely change it.

The final package of the administration has no signficance in terms of being what will happen other than giving us the best reading we can obtain on what the administration's views are as to what the shape of the legislation should be.

Mr. BROOKE. And which is important.

Mr. SARBANES. I concede it is important. I think the last submission which has just come to us, even though there is the caveat of further final OMB clearance, in my view I receive as representing the considered judgment of the administration as to what should be in the legislation and, therefore, providing us with a basis to which to react in terms of making our own judgments as we look at it in terms of how that affects or may affect the treaty, or how we may want to change the implementing legislation.

In the committee we supported the effort to obtain that submission. I do not think that was coupled with a notion that the submission would actually be passed by the Congress. After all, the Congress has wide-ranging responsibilities to deal with some matters in extended detail.

Mr. BROOKE. I thank my colleague. Like many others in this body, I have not had the opportunity to commend him for the very fine job he has been doing throughout the debate.

Mr. SARBANES. I appreciate the Senator's comment.

Mr. BROOKE. I certainly realize that we would have the opportunity to change any proposed implementing legislation that the administration would send to the Congress. On the other hand, that is the administration's view, that is the administration's decision, that is the administration's proposal. That is what we will work on. That will be our working paper, though obviously, we will be able to amend, delete, or whatever we choose to do in both Houses of the Congress and it will end in some kind of conference on it, I am sure.

Still, the caveat, to me, is a very significant one. It is subject to revision. The administration is not saying, "This is what you are really going to get in the final proposal. You might get something different from that in the final proposal." I think it is important to note this.

I also would like, frankly, as I have indicated, to see us have the enactment of the implementing legislation prior to exchange of the instruments of ratification. I think that is important. But we differ on that and I do not think this is the time to engage in a lengthy debate on that subject.

At any rate, I do feel compelled now to introduce this reservation. I think not only the opponents of the treaties, because I think it goes beyond that, but I hope the proponents as well as the opponents, will look carefully at the reservation and its significance, both to us and to Panama. I feel that without introducing it, I would be remiss and I think the Senate would be denied an opportunity to work its will on a very significant part of this entire issue.

I thank my distinguished colleague from Maryland.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF CERTAIN SENATORS ON TOMORROW AND RESUMING CONSIDERATION OF PANAMA CANAL TREATY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the prayer, the following Senators be recognized each for not to exceed 15 minutes, Senators BELLMON, SCHMITT, and PAUL G. HATFIELD, after which the Senate will resume consideration of the treaty.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. HARRY FLOOD BYRD, JR., be recognized for not to exceed 15 minutes at the conclusion of the three orders previously entered for tomorrow.

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

ORDER FOR RECESS UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 11 o'clock a.m. tomorrow.

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

Mr. ROBERT C. BYRD. This would mean, Mr. President, that the Senate would resume consideration of the treaty circa 12 o'clock noon tomorrow.

Mr. President, I yield the floor.

RECESS TO 11 A.M. TOMORROW

Mr. SARBANES. Mr. President, in accordance with the order previously entered, I move that the Senate, in executive session, stand in recess until the hour of 11 a.m. tomorrow morning.

The motion was agreed to; and, at 6:15 p.m., the Senate, in executive session, recessed until tomorrow, Thursday, April 6, 1978, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate, April 5, 1978:

DEPARTMENT OF DEFENSE

Gen. David C. Jones, U.S. Air Force, to be Chairman of the Joint Chiefs of Staff, serving in the grade of general, pursuant to title 10, United States Code, section 142.

Adm. Thomas Bibb Hayward, U.S. Navy, to be Chief of Naval Operations, pursuant to title 10, United States Code, section 5081.

Gen. Lew Allen, Jr., U.S. Air Force, to be Chief of Staff of the U.S. Air Force, pursuant to title 10, United States Code, section 8034.