the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This paragraph shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intend to evade tax.

"(3) ELECTION.—Any election under this section shall be made at such time and in such manner as the Secretary may prescribe.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section."

(b) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS.—Section 6503 of such Code (relating to suspension of running of period of limitations) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) EXTENSION OF TIME FOR PAYMENT OF TAX WHERE TAXPAYER HAS PAID CERTAIN TUITION.—The running of the period of limitations for the collection of any tax payable in installments under section 6168 shall be suspended for the period during which there are any unpaid installments of such tax."

(c) DISREGARD OF EXTENSION OF TIME FOR PAYMENT OF TAX.—Any election by an individual to pay tax in installments under section 6168 of the Internal Revenue Code of 1954 shall not be taken into account for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program of educational assistance or under any State or local program of educational assistance financed in whole or in part with Federal funds.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 62 of such Code is amended by adding at the end thereof the following new item:

"Sec. 6168. Extension of time for payment of tax where taxpayer has paid certain tuition."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after August 1, 1978.

SEC. 3. STUDY

The Secretary of the Treasury or his delegate and the Secretary of Health, Education, and Welfare or his delegate shall each conduct a study of the operation and effects of section 6168 of the Internal Revenue Code of 1954 (as added by this Act), and prepare and transmit to the Congress, during the first quarter of calendar 1980 and during the first quarter of calendar 1982, a report containing the results of such study with respect to the period elapsing before such quarter during which such section 6168 was in effect. Each report transmitted to the Congress under the preceding sentence shall be published in the Federal Register.

Amend the title so as to read: "A bill to amend the Internal Revenue Code of 1954 to provide a deferral of income taxes where the taxpayer pays certain tuition."

SENATE—*Tuesday, April 18, 1978*

(Legislative day of Monday, February 6, 1978)

The Senate met at 7:30 a.m., on the expiration of the recess, in executive session, and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

PRAYER

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

Almighty God, who in former times didst lead our fathers, we bow in Thy presence once more to offer ourselves—souls, minds, and bodies, in Thy service, knowing that when we first love Thee we best serve our country. Give us clean hands and pure hearts. Deliver us from sham and pretense and hypocrisy. Conquer our weariness. Refresh our spirits. Keep our motives pure, our purposes worthy of a great and good people. In these days which try men's souls may we submit ourselves to Thee, discern what is Thy will and do it. With Thy benediction upon us may we face what we must face this day with clear thinking, honest dealing, and the inner assurance we have done our best to do justly, love mercy and walk humbly with our God, in whose holy name we pray. 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 18, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable QUENTIN N. BURDICK, a Senator from the State of North Dakota, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

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

SPECIAL ORDERS

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may yield my 15 minutes under the order to Mr. DECONCINI.

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

Mr. ROBERT C. BYRD. Mr. President, I ask Mr. DECONCINI if he will yield a couple of minutes to me.

Mr. DECONCINI. Yes, I yield.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, as in legislative session, the legislative Journal be approved to date.

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

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there is one joint resolution on the calendar which, I understand, is cleared. I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 672.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, that item is cleared on our calendar, and we have no objection to proceeding to its consideration at this time.

WHITE HOUSE CONFERENCES ON THE ARTS AND ON THE HUMANITIES

The joint resolution (H.J. Res. 649) to authorize the President to call a White House Conference on the Arts, and to authorize the President to call a White House Conference on the Humanities, was considered, ordered to a third reading, read the third time, and passed.

● Mr. HASKELL. Mr. President, today I am pleased to join with my colleagues in support of House Joint Resolution 649 which creates a White House Conference on the Arts and the Humanities.

The purpose of the Conference will be to develop recommendations relating to the appropriate growth of the arts and humanities in all parts of the Nation.

I am a representative from a part of this country that was once considered by inhabitants east of St. Louis to be a barren outpost for those seeking cultural endeavors.

Opera houses and repertory theaters born in western gold rush towns and frontier farming communities were not always recognized as significant contributors to America's budding cultural and artistic reputation.

Today we all recognize the strength and variety of our artistic accomplishments and resources throughout the Nation. Colorado is particularly grateful for the Federal assistance we have received in recent years for a broad spectrum of artistic activities. Federal funds have assisted us in the continuation of our cultural traditions as well as in the initiation of new artistic expressions. Coloradans may enjoy activities ranging from mountain arts and crafts fairs to the superior Denver symphony now at home in the new and architecturally innovative Boettcher Concert Hall in downtown Denver.

House Joint Resolution 649 provides for State conferences from which delegates will be sent with their recommendations to the National Conference.

Colorado will be proud to host such a conference and will endeavor to explore and examine meaningful ways to support and develop the arts and the humanities throughout the Nation.●

Mr. KENNEDY. Mr. President, today we are considering a resolution which

calls for separate White House Conferences on the Arts and Humanities. As a member of the Senate Subcommittee on Education, Arts and Humanities, I am especially pleased to lend my support to this measure.

In recent years, public interest in the arts has grown at a tremendous rate. In communities all over the country, audiences and arts groups have increased dramatically, demonstrating vividly that the arts are no longer supported only by a small elite, but by a broad, cross section of enthused Americans. Unfortunately, however, available financial and moral support have not always been sufficient to help that interest thrive.

We long ago recognized that if the arts are to flourish in our society, the active support and participation of our Federal, State, and local governments are necessary. The White House conferences we are considering today will help define what public role should be developed to deal with the Nation's cultural issues. The Conferences will focus public attention on what supportive action—in both the public and private sector—is necessary and appropriate, by serving as forums where priorities in cultural policy can be examined and from which new recommendations and fresh insights can emerge. Of particular importance, the resolution before us today calls for preliminary State conferences which will assure the nationwide and diverse participation of those concerned with the arts and humanities—artists, community cultural groups, educators, local arts administrators, and other interested individuals.

President Kennedy said:

If we can make our country one of the great schools of civilization . . . then on that achievement will surely rest our claim to the ultimate gratitude of mankind . . . I am certain that, after the dust of centuries has passed over our cities, we will be remembered not for our victories or defeats in battle or politics, but for our contributions to the human spirit.

The White House Conference on the Arts and Humanities will demonstrate the importance our Nation places on its cultural life and I urge my colleagues to give it their support.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BAKER. 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. 95-736), 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

House Joint Resolution 649, as amended, calls upon the President to convene a White House Conference on the Arts and a White House Conference on the Humanities both to be held in 1979.

The President would appoint a National Conference Planning Council for each of the White House Conferences. The task of the two Councils would be to direct the planning of the two Conferences.

Each Department and agency of the Federal Government shall provide such cooperation and assistance to the Councils, including the assignment of personnel, as may be necessary.

Grants may be made to each State, upon application, to assist the State in the cost of conducting the Conferences within the State. In order to receive a grant, however, the State must assure broad and maximum public participation.

The Councils will submit reports on the Conference to the President and to Congress no later that 180 days following the dates on which the final Conferences, to be held in Washington, D.C., are called. The reports will include recommendations for any legislative actions necessary to implement the recommendations in the reports.

BACKGROUND

The National Foundation on the Arts and the Humanities Act established, in 1965, the National Endowment for the Arts and the National Endowment for the Humanities to encourage and support cultural activities in the United States. Since that time Federal assistance for the arts and the humanities through these two agencies has grown considerably. During their first year, the Endowments each received an appropriation of $2.5 million to carry out their programs. Now in their 13th year, the Arts Endowment is funded at $123.5 million (appropriations for fiscal year 1978) and the Humanities Endowment has a funding level of $121 million (appropriations for fiscal year 1978).

While Federal support for the arts and the humanities has expanded, public interest in and enthusiasm for cultural programs have risen. Witnesses testifying on the legislation under consideration spoke of the growth in audiences at plays and concerts, the extension of informal education programs at libraries and universities and the increased numbers of Americans visiting museums as examples of the expanding interest in cultural activities in the United States.

During its hearings, the committee noted that in addition to support from the National Endowment for the Arts and the Humanities, assistance was also provided for the arts and humanities from programs of other Federal such as those of the Office of Education, the Art in Architecture program of the General Services Administration, the activities of the Institute of Museum Services, and others.

The effect of this support is considerable; however, the committee found that there are many issues concerning the future of the arts and the humanities in American life that remain to be discussed and analyzed. A White House Conference on the Arts and a White House Conference on the Humanities should, the committee believes, give concerned individuals the opportunity to exchange ideas about and propose approaches to dealing with these issues.

TREATY BETWEEN THE UNITED STATES AND THE REPUBLIC OF BOLIVIA—REMOVAL OF INJUNCTION OF SECRECY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the injunction of secrecy be removed from the Treaty between the United States of America and the Republic of Bolivia on the Execution of Penal Sentences which was signed at La Paz on February 10, 1978 (Executive G, 95th Congress, second session), transmitted to the Senate by the President on Friday, April 14, 1978; and ask that the treaty be considered as having been read the first time, that it be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The message from the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and Bolivia on the Execution of Penal Sentences which was signed at La Paz on February 10, 1978.

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

The Treaty would permit citizens of either nation who had been convicted in the courts of the other country to serve their sentences in their home country; in each case the consent of the offender as well as the approval of the authorities of the two Governments would be required.

This Treaty is significant because it represents an attempt to resolve a situation which has inflicted substantial hardships on a number of citizens of each country and has caused concern to both Governments. The Treaty is similar to those with Mexico and Canada, to which the Senate gave advice and consent last year. I recommend that the Senate give favorable consideration to this Treaty at an early date.

JIMMY CARTER.

THE WHITE HOUSE, *April 14, 1978.*

THE PANAMA CANAL TREATY

Mr. ROBERT C. BYRD. Mr. President, the final hour of debate on the Resolution of Ratification for approval of the treaties will begin at 5 p.m. today.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that if there is any time prior to 5 o'clock that is available for debate, in other words, if time has been saved prior to that time, prior to the hour of 5, so that a few minutes exist, in addition to the 1 hour, that those minutes be equally divided and placed under the control of Mr. LAXALT and Mr. SARBANES.

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

Mr. ROBERT C. BYRD. Mr. President, has the final hour of debate today, which will run between 5 and 6 o'clock, been divided, and, if so, how?

The ACTING PRESIDENT pro tempore. The first 15 minutes are allotted to the proponents of the treaty, the next 30 minutes are allotted to the opponents, and the final 15 minutes to the proponents.

Mr. ROBERT C. BYRD. I thank the Chair and I thank the distinguished Senator for yielding to me.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Arizona (Mr. DECONCINI) is recognized, as in legislative session, for not to exceed 30 minutes.

Mr. ROBERT C. BYRD. Mr. President, I have taken 2 minutes of the Senator's time, but I yielded him 15 minutes in the beginning.

CLARIFICATION OF AN ASPECT OF SENATE DEBATE ON PANAMA CANAL TREATIES

Mr. DECONCINI. Mr. President, I ask this Chamber's indulgence for a few moments to help clarify an aspect of the Senate debate on the Panama Canal treaties that has become, in my view, extremely distorted.

An amazing amount of controversy has surrounded the language I asked the Senate to add to the resolution of ratification on the Neutrality Treaty. The language, which has become known as the DeConcini amendment, is meant to clarify certain rights that the United States retains under the new arrangement that will govern the Panama Canal.

What puzzles me, Mr. President, is that suddenly the public debate has focused on whether it is appropriate for the United States to retain the right to keep the canal open regardless of the reasons that may lead to its closure. Frankly, I believed that there was no disagreement in principle on this point. I believed that it was accepted by the Panamanians, that it was accepted by the administration, and that it was accepted by the Foreign Relations Committee and the Senate leadership. It has come as quite a shock to me that this is apparently not the case.

Let me be more specific, Mr. President. On February 3, the Senate Foreign Relations Committee ordered its report on the Panama Canal treaties to be printed and distributed to Members of the Senate to aid them in their consideration of the treaties. Since only Senator GRIFFIN dissented from the report and appended minority views, I must assume—as I believe all of us assumed—that the rest of the Foreign Relations Committee agreed with the report.

As it turns out, Mr. President, a number of Senators who are fairly senior members of that committee have publicly raised serious questions about the principle behind the DeConcini amendment. The reason why this is perplexing, Mr. President, is that the Senate Foreign Relations Committee report on the treaties endorsed that principle.

On page 6 of the "star print," the committee begins its discussion of the so-called leadership amendments to the treaty. After stating that the committee recommended the adoption of the "leadership amendments," it goes into a statement of the intention behind those amendments.

The report states:

> The meaning of these amendments is plain. The first amendment relates to the right of the United States to defend the Canal . . . It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act as it deems proper against *any* threat to the canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

How much plainer could the report of the Foreign Relations Committee be? One thing is certain, however. The Foreign Relations Committee—and, again, I assume that includes all its members save Senator GRIFFIN—asserts broader rights than were asserted in the DeConcini amendment. In other words, the Foreign Relations Committee report goes beyond the rights asserted by my simple clarification.

Perhaps, it could be argued that these rights asserted by the Foreign Relations Committee are partially eliminated by the second paragraph of the "leadership amendment" which reasserts the American intention not to intervene in the internal affairs of Panama. Here again, the Foreign Relations Committee report makes it clear that such is not the case. Referring to the paragraph I just quoted, the report says:

> The above-described rights are not affected by the second paragraph of the amendment, which provides that the United States has no 'right of intervention . . . in the internal affairs of Panama,' and which prohibits the United States from acting 'against the territorial integrity or political independence of Panama.'

The report goes on to be more specific. It states that:

> The prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first.

It then asserts that:

> Even if a conflict were somehow to arise between the two paragraphs, because the United States has the right to act against "any . . . threat directed against the Canal", there is no question that the first would prevail. The rights conferred therein are stated in absolute terms and must therefore be construed as controlling.

It is interesting, Mr. President, that the principle endorsed by the Foreign Relations Committee is now being called into question. The impression in some segments of the media is that these American rights are novel inventions of the DeConcini amendment.

Quite frankly, although I am flattered by the attention of the media during the last few days, I believe it is quite unwarranted. What I proposed in the DeConcini amendment was merely a clarification of the principle articulated by the Foreign Relations Committee. It was my feeling—and the feeling of a number of my colleagues—that the "leadership amendment" was not sufficiently clear. Regardless of what the intent of the amendment was, the actual words seemed to be subject to a variety of interpretations. Because it was merely a clarification and not a change in American policy—policy apparently agreed to, according to the Foreign Relations Committee report, by the Panamanians themselves—none of the parties involved, including the administration or the Senate leadership had much difficulty accepting my amendment to the instrument of ratification.

It was only after the amendment was accepted overwhelmingly by the Senate that the controversy arose. Reports from Panama have indicated that the amendment ran counter to the meaning and intent of the treaty, and the Panamanian Goverment took the unusual step of circulating a note among the members of the United Nations implying that the rights asserted by the DeConcini amendment were possibly outside the scope of the United Nations Charter.

In response to the Panamanian reaction, the administration, the Senate leadership, and individual members of the Foreign Relations Committee have suggested that it is imperative that the DeConcini amendment be somehow moderated or modfied, or the treaty would either become unacceptable to the Panamanians or to certain members of the Senate who do not want to be associated with the notion that the United States has the right to act independently to keep the canal open.

It seems to me, Mr. President, that the only truly legitimate area of debate is whether the wording of the DeConcini amendment is or is not necessary to achieve the objectives described by the Foreign Relations Committee and which I have extensively quoted. It seems to me that those objectives are not in question. The American people and the majority of Senators believe that we have those rights and that they are both legitimate and sanctioned by the Panamanian Government. It is unfortunate that so much time has been expended debating an issue which should not be in contention.

Let me, Mr. President, restate my concerns. What led me to introduce—and what I believe led the Senate to accept—my reservation was a sense that the "leadership amendment" was somewhat unclear on a number of points, most especially those relating to American rights to keep the canal open if the threat to it were internal rather than external. Now, it should be noted, once again, that this right is asserted by the Foreign Relations Committee as inherent in the leadership amendment, and is endorsed by them. Thus, the question is whether the actual treaty and amendment language makes this right sufficiently clear.

At the time that I introduced my amendment, I made the following statement:

> I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation. My amendment to the resolution of ratification is precautionary only; and it is based on the long history of American stewardship of the canal. It recognizes the very special relationship that the Panama Canal has to American security. I certainly hope, Mr. President, that if this right is attached to the treaty it will never need to be exercised. Yes, it is important that the American people know that should the need arise, the United States has sufficient legal sanction to act.

Those, Mr. President, were my words at the time the amendment was introduced and acted upon. They continue to be my sentiments today. Furthermore, I know there is nothing in my reservation that goes beyond the words of the Foreign Relations Committee, and I believe those words reflect the intent of the Congress. My only quarrel today as well as in the past has been what I perceive as

ambiguity in the drafting of the leadership amendment. The Foreign Relations Committee report believes that the leadership amendment accomplishes the stated objectives; I do not. However, I assert no new right, but neither will I accept any changes in those words that derogate from the rights we have clearly established in our action on the Neutrality Treaty.

I thank the Chair, I yield back the remainder of my time, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. 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.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business.

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

ORDER FOR RECOGNITION OF CERTAIN SENATORS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow Mr. JAVITS, Mr. PERCY, Mr. STAFFORD, and Mr. MATHIAS each be recognized for not to exceed 15 minutes following the prayer.

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

Mr. ROBERT C. BYRD. Mr. President, that will be after the recognition of Mr. MORGAN, for whom an order has already been entered for tomorrow.

(Routine morning business transacted and additional statements submitted are printed later in today's RECORD.)

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, without prejudice to the orders for Senators to be recognized.

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. ROBERT C. BYRD. 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.

Under the previous order, the Senator from Indiana (Mr. LUGAR) is recognized for not to exceed 15 minutes.

S. 2931—URBAN HOMESTEADING LEGISLATION

Mr. LUGAR. Mr. President, strong neighborhoods, conservation of urban housing stock, pride of homeownership, improved Federal-local relationships are among the goals of many Americans who are seeking strong alternative policies for our cities.

One alternative comes from the success of a HUD experiment, the urban homesteading program. This program, which has encouraged ongoing, self-help housing programs, has enjoyed a 3-year history of success. It provides an inexpensive, lasting method for restoring housing stock and improving blighted neighborhoods and engendering a pioneer spirit among individual homesteaders with the opportunity for homeownership.

In urging the expansion of the urban homesteading program, I seek to boost a program that I know from personal experience is practical and successful. As mayor of Indianapolis, I initiated an urban homesteading program. The Indianapolis program chose three neighborhoods: Forest Manor, Brookside, and Fountain Square. Each of the neighborhoods were good neighborhoods weakened by housing abandonment. The city of Indianapolis recognized the strength of those neighborhoods and was able to use the urban homesteading program to attack successfully the abandonment problem.

The program in Indianapolis has worked well, but it can work better. It needs to be expanded. It needs to have a more certain source of rehabilitation funds, and it needs to include properties that are not owned by HUD. S. 2931 addresses all of those problems and provides attractive incentives for cities of all sizes to participate in the urban homesteading program.

The Nation's cities need homeowners establishing roots in neighborhoods. This has become increasingly difficult as median home prices have risen above $54,000. Housing prices have risen twice as fast as incomes. Low- and middle-income families have diminishing hopes for buying houses in today's market. Young families find it difficult, if not impossible, to accumulate enough savings for downpayments and "point" requirements.

Urban homesteading offers an opportunity for young, lower income families to purchase homes. The experience so far has shown that the average homesteader is young, 33.5 years old, and has an income significantly below that of the typical homebuyer. Homesteader incomes averaged $12,300 for the 23 demonstration cities.

Homeownership is an important ingredient for healthy neighborhoods and the urban homesteading program has been able to provide that homeownership. It has provided renovation and stability in deteriorating neighborhoods. Sound concept and effective administration have led to the success of the urban homesteading program. Nevertheless, there still are difficult problems to be resolved if this helpful program is to be expanded and enhanced.

The urban homesteading program can and should be expanded. There is enthusiasm across the Nation for the program. Currently 39 cities participate in the HUD program, but another 61 have applied for participation or have begun the application procedure. Many of these cities run non-HUD urban homestead programs, but have only been able to establish small, limited programs due to difficult obstacles facing implementation.

Not only is there institutional support from the cities for the program, but thousands of individuals have shown their support. When the first demonstration cities advertised for urban homesteaders, the cities received over 22,000 applications for 881 properties. In city after city there is growing enthusiasm for this program that has shown success with problems that have sometimes seemed intractable.

The urban homestead program as currently administered transfers abandoned houses acquired by HUD through foreclosures to local governments. The local government locates families who are willing to rehabilitate the abandoned houses and to live in the houses for at least 3 years. These homesteaders receive the houses for as little as one dollar and are responsible for the rehabilitation and the cost of the rehabilitation.

Mr. President, today I, along with Senators BROOKE, GRIFFIN, HEINZ, and GARN introduce S. 2931 to help solve some of the very difficult problems that have confronted urban homesteaders and the cities that have utilized this program.

This bill will expand the present program to include Veterans' Administration foreclosures, city-owned foreclosures, and predictable levels of funding for rehabilitation and administration.

This expansion is vital if we are to capitalize upon the success of this program and to make this a significant housing program nationwide.

As of January 1978, HUD and VA had inventories of over 20,000 houses suitable for homesteading. S. 2931 would provide funds for 3,500 HUD and VA transfers per year. By increasing the funding under this section from an average of $5,000 per property to $7,500 per property, more of this bulging inventory of abandoned housing can be renovated economically.

Administrative costs for urban homestead programs can be a problem for already strained city budgets. Successful programs demand close attention to every aspect of home renovation and financing. Participating cities have had to utilize their already overburdened community development entitlements to finance these costs. This bill provides grants of up to $60,000 per year per city to spur the establishment of more than 100 new programs in cities across the country.

As important as the HUD and VA properties are to the homestead program, the most important abandonments are those that could be or have been acquired already by city tax foreclosures. There are more than 300,000 abandoned houses that could be converted to safe and sound housing for low- and moderate-income families. There are many obstacles to the successful renovation of these houses, but cities have shown remarkable creativity and diligence in overcoming these obstacles. To aid cities in acquiring those properties and to avoid undue loss of tax revenues, S. 2931 will pay back taxes and other legitimate liens on properties ac-

quired for homesteading. Payments up to $5,000 per property could be paid after proper certification has been made to HUD.

Finally, this bill addresses the most important obstacle confronting urban homesteading programs—predictable, adequate rehabilitation funding. Such funds are essential to a successful program. S. 2931 provides $148 million of additional section 312 loan authority which is to be used to provide an $8,000 reservation for each urban homestead.

This reservation of rehabilitation funds provides a linkage between the successful urban homesteading program and the successful section 312 loan program. Since 1964, the section 312 loan program has provided $450 million in loans for rehabilitation of housing in blighted neighborhoods. Loans have been initiated, not grants, for rehabilitation, and these loans have been repaid on a sound basis. Out of the $450 million of outstanding loans, HUD has declared only $128,000 worth of the loans as uncollectable, only $128,000 in bad loans in spite of HUD's admission that little has been done to service the loans or to insure repayment.

Under this new legislation, a city would establish an urban homestead program. If it transferred 20 houses in the first year, it would be entitled to $160,000 in section 312 funds. As an incentive to arrange private sector funding, cities could transfer their reserved funds to other suitable section 312 purposes on a dollar-for-dollar basis. For instance, if an urban homestead house needed $8,000 worth of repairs and the city was able to locate $4,000 in private loans, then the city could utilize $4,000 of the section 312 loan reservation for another urban homestead unit or for a regular section 312 loan. Predictable financing encourages urban homesteading. Permitting the transfer of the section 312 loan reservation encourages private financing of inner city rehabilitation.

The cumulative effect of this bill will be to expand the urban homesteading program from a budget request level of less than 2,000 units per year of HUD-owned transfers to 18,500 units per year of HUD, VA, and city-owned properties. The program will expand from participation by 39 cities currently to participation by 150 cities.

This bill is important for the Nation, for the cities, and for individual families. As housing costs continue to rise, individual initiative will grow in importance as families search for alternatives to suburban tract houses which they cannot afford. The best Federal housing policy will be one which encourages this individual initiative for prospective homeowners to do much of their own construction and renovation in cities.

The Federal Government does not have the resources or the ability to solve the Nation's housing problems on its own. One of its best roles will be to facilitate housing development and rehabilitation by individuals taking pride in homeownership of houses that would otherwise be abandoned and would contribute to a loss of hope in cities.

Mr. President, I ask unanimous consent that a list of cities currently participating in the urban homestead program be printed in the RECORD following these remarks; and, second, that a list of cities which have applied or expressed interest in participating in the urban homestead program be printed in the RECORD following these remarks.

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

CITIES CURRENTLY PARTICIPATING IN THE URBAN HOMESTEAD PROGRAM

Phoenix, Ariz., Compton, Calif., Los Angeles, Calif., Oakland, Calif., Wilmington, Del., Atlanta, Ga., Decatur, Ga., Chicago, Ill., East St. Louis, Ill., Joliet, Ill., Rockford, Ill., Gary, Ind., Indianapolis, Ind. and South Bend, Ind.

Baltimore, Md., Boston, Mass., Springfield, Mass., Minneapolis, Minn., Kansas City, Mo., St. Louis, Mo., Omaha, Nebr., Jersey City, N.J., Newark, N.J. and Plainfield, N.J.

Freeport, N.Y., Hempstead, N.Y., Islip, N.Y., Nassau County, N.Y., New York, N.Y., Rochester, N.Y., Cincinnati, Ohio, Cleveland, Ohio, Columbus, Ohio, Dayton, Ohio, Toledo, Ohio, Philadelphia, Pa., Dallas, Tex., Tacoma, Wash., and Milwaukee, Wis.

CITIES WHICH APPLIED FOR OR EXPRESSED INTEREST IN PARTICIPATING IN THE URBAN HOMESTEAD PROGRAM

Lafayette, La., Buffalo, N.Y., Youngstown, Ohio, Inkster, Mich., Cordele, Ga., Memphis, Tenn., Grand Rapids, Mich., Louisville, Ky., Washington, D.C., Huntington, N.Y., Waco, Tex., Chattanooga, Tenn., Pontiac, Mich., Romulus, Mich., Columbia, Mo., Stockton, Calif., Houston, Tex., Fort Wayne, Ind., Las Vegas, Nev., New Haven, Conn., Camden, N.J., St. Paul, Minn., Flint, Mich., Menlo Park, Ga., Ft. Worth, Tex., Muskegon, Mich., Riverside, Calif., Pomona, Calif., Brunswick, Ga., Ann Arbor, Mich., Saginaw, Mich., Waukegon, Ill., and East Chicago Heights, Ill.

King County, Wash., Detroit, Mich., Tampa, Fla., Orlando, Fla., Clearwater, Fla., St. Petersburg, Fla., Orange County, Fla., Sanford County, Fla., Augusta, Ga., Columbus, Ga., Ft. Lauderdale, Fla., Pittsburgh, Pa., Harrisburg, Pa., Chester, Pa., Lancaster, Pa., Reading, Pa., Los Angeles County, Calif., Hartford, Conn., Bridgeport, Conn., Portland, Oreg., Seattle, Wash., Inglewod, Calif., New Brunswick, N.J., Brown County, Ohio, Ironton County, Lorain, Ohio, Euclid, Ohio, and Cuyahoga County, Ohio.

Mr. LUGAR. 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. 2931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 810 of the Housing and Urban Development Act of 1974 is amended—

(1) by redesignating subsection (g) as subsection (j)); and

(2) by inserting after subsection (f) the following:

"(g) The Secretary is authorized to make a grant of not to exceed $60,000 to each unit of general local government, State, or designating agency participating in the urban homesteading program under this section to cover administrative costs incurred by that unit of general local government, State, or designated agency in carrying out its urban homesteading program.

"(h) The Secretary is authorized to make grants to facilitate the homesteading of properties acquired by communities as a result of abandonment, tax foreclosure, or otherwise. The amount of any grant under this subsection to any unit of general local government, State, or designated agency for any fiscal year shall not exceed the product of $5,000 and the number of properties described in the preceding sentence which are made available to the urban homesteading program during that year. The aggregate amount of grants under this subsection shall not exceed $75,000,000.

"(i) The Secretary is authorized to acquire from the Administrator of Veterans' Affairs title to any property held by the Administrator which is suitable for inclusion in the urban homesteading program, and to reimburse the Administrator in an amount to be agreed upon by the Administrator and the Secretary for each such property.".

(b) Subsection (j) of such section, as redesignated, is amended by adding at the end thereof the following: "In addition, to carry out subsections (g) and (h), there are authorized to be appropriated not to exceed $110,000,000 for fiscal year 1979.".

SEC. 2. Section 312(d) of the Housing Act of 1964 is amended by adding at the end thereof the following: "In addition, there are authorized to be appropriated for fiscal year 1979 not to exceed $148,000,000, which shall be available solely for loans of $8,000 for each property conveyed in connection with an urban homesteading program under section 810 of the Housing and Community Development Act of 1974. Any amount available to a unit of general local government, State, or designated agency under the preceding sentence but not used for such purpose shall be available for not to exceed one year for the rehabilitation of other properties in accordance with this section.".

Mr. GRIFFIN. Mr. President, today I join with Senators LUGAR, BROOKE, and HEINZ in introducing the Urban Homesteading Act Amendments of 1978—a measure designed to expand opportunities for homeownership now denied to many thousands of Americans.

It was 29 years ago that Congress first set forth the national housing goal of "a decent home in a suitable living environment for every American family."

In reality, of course, no act of Congress was required to establish such a goal—because the aspiration for a better place to live is deeply engrained in the American character.

A vital part of that goal and aspiration is the dream of homeownership. It is a dream which has now become a reality for two-thirds of all American families.

But for many families among the other third—those who aspire to homeownership but have been unable to afford or achieve it—having a place of their own remains at best a distant dream.

And the dream becomes more distant year by year as the costs of homeownership continue to climb at alarming rates:

The median price of all new homes sold in the last quarter of 1977 reached $51,600, up 13.4 percent in just 1 year.

The median price of existing homes sold in the same period was $44,340, an increase of 14.1 percent from the previous year.

Home values in major metropolitan areas have been increasing almost twice as fast as the incomes of their owners.

The startling conclusion is that most people who now own their own homes could not afford to buy them at today's prices. And too many of the families who are on the outside looking in, face staggering obstacles in achieving homeownership.

Paradoxically, however, even as the costs of homeownership continue to climb, our Nation faces a severe problem of deterioration and abandonment in its housing stock:

Nationwide, it is estimated that over 300,000 homes stand vacant and abandoned.

The U.S. Department of Housing and Urban Development, now the Nation's largest landlord, owns over 28,000 abandoned properties.

Almost 6,000 of these properties are located in my own State of Michigan.

In the city of Detroit alone—not counting empty lots or homes scheduled to be demolished—HUD owns approximately 2,000 dwellings that are vacant and barricaded.

In 1974, drawing on the experience of a number of forward-looking local governments which had initiated programs of their own, Congress established a nationwide urban homesteading demonstration program.

The demonstration program as currently administered works like this:

HUD transfers abandoned houses from its inventory to selected participating cities.

The local government then locates families who are willing to "homestead" the abandoned houses, rehabilitate them, and live in them for at least 3 years.

These homesteaders receive the houses for as little as $1 and are responsible for the work and the cost of rehabilitation.

The local government provides technical assistance and essential city services to the homesteaders, many of whom have undertaken the rehabilitation work themselves in the time-honored tradition of "sweat equity."

The urban homesteading demonstration program, although limited at present to only 39 cities, has compiled a 3-year record of remarkable success.

It has provided an inexpensive, lasting method for restoring housing stock and improving blighted neighborhoods. And it has tapped and encouraged a pioneering spirit of self-help among the individual homesteaders to whom it has provided a long-awaited opportunity for homeownership.

Urban homesteading has offered an especially attractive opportunity for young, low- and moderate-income families to own their own homes. The average homesteader is young—33.5 years old—and his average income of $12,300 is significantly below that of most home buyers.

The current urban homesteading program, because it was designated as a demonstration, has been relatively small and limited in scope. Yet if there is one chief complaint about the demonstration, it is that it has not been large enough to meet the demand for the opportunities it offers.

Beyond the 39 cities now participating, another 61 have applied or are applying. In fact, in my own State, none of the nine cities that have sought to participate in the demonstration program—including Detroit, with the Nation's largest inventory of HUD-owned properties—have been chosen.

And when the first demonstration cities advertised for urban homesteaders, the cities were flooded with over 22,000 individual applications for the total of 881 properties that were available.

Based on its success and popularity to date, the urban homesteading program is ripe for expansion. That is the purpose of the bill we introduce today.

The bill, S. 2931, would permit expansion of the present program from 39 cities to as many as 150 cities.

It would allow the transfer of 18,500 homes to homesteaders each year instead of just 2,000, by bringing into the program not only HUD-owned properties but also units owned by the Veterans' Administration and city government.

And to raise the quality of federally owned houses to be transferred to homesteaders under the program, the bill contemplates payments to the insurance reserve fund of $7,500 per property transferred, rather than the present $5,000.

The bill also would make it easier and more attractive for more cities to develop meaningful urban homesteading programs.

For example, administrative costs for homesteading programs can be a problem for already strained city budgets. Successful programs demand close attention to every aspect of home renovation and financing. Participating cities have had to utilize their already overburdened community development entitlements to finance these costs. Accordingly, this bill would provide grants of up to $60,000 per year per city to defray administrative costs.

As important as the HUD and VA properties are to the urban homesteading program, by far the greatest bulk of the Nation's 300,000-plus abandonments are those that could be or have been acquired by city tax foreclosures. To aid cities in acquiring such properties and to avoid undue loss of tax revenues, S. 2931 would provide for payment of back taxes and other legitimate liens on properties acquired for homesteading. Payments up to $5,000 per property could be made after proper certification has been made to HUD.

Finally, this bill addresses the most important obstacle confronting urban homesteading programs—securing the predictable, adequate rehabilitation funding which is essential to a successful program. S. 2931 provides $148 million of additional section 312 loan authority which is to be used to provide an $8,000 reservation for each urban homestead.

This reservation of rehabilitation funds provides a linkage between the successful urban homesteading program and the successful section 312 loan program. Since 1964, the section 312 loan program has provided $450 million in loans for rehabilitation of housing in blighted neighborhoods, of which only $128,000 has been declared uncollectable.

Under the proposed legislation, if a city transferred 20 houses in the first year of its urban homestead program, it would be entitled to a special reservation of $160,000 in section 312 funds. As an incentive to arrange private sector funding, cities could transfer their reserved funds to other suitable section 312 purposes on a dollar-for-dollar basis. For example, if an urban homestead house needed $8,000 worth of repairs and the city was able to locate $4,000 in private loans, then the city could utilize the other $4,000 of the section 312 loan reservation for another urban homestead unit or for a regular section 312 loan. Predictable financing encourages urban homesteading. Permitting the transfer of the section 312 loan reservation encourages private financing of inner city rehabilitation.

Mr. President, a program that is clear and simple in its concept—that takes a resource now being wasted and puts it to productive use—that improves the living environment of our cities and their deteriorating neighborhoods—that encourages self-help and opens doors of opportunity to families who have been on the outside looking in—such a program surely deserves our attention and support.

Indeed, an approach that can accomplish so many things at once becomes more than a program—it becomes a policy that holds great promise for contributing to the solution of many of our Nation's urban ills.

For the words of the ancient Greek poet Alcaeus are as true today as when they were written over 2,500 years ago:

> Not houses finely roofed or the stones of walls well-builded, nay nor canals and dockyards, make the city, but men able to use their opportunity.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

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

SENATOR HAYAKAWA'S VIEW OF AMERICA'S FOREIGN POLICY

Mr. HELMS. Mr. President, regardless of how the distinguished Senator from California (Mr. HAYAKAWA) votes on the treaty later today, I think the American people should have as a matter of record a splendid letter that the Senator wrote to the President of the United States, bearing the date of April 13, in which the able Senator from California discussed a very broad view of the foreign policy of this Nation.

So that this letter will indeed be a matter of record, I ask unanimous consent that it be printed in the RECORD.

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

WASHINGTON, D.C.,
April 13, 1978.

The PRESIDENT,
The White House,
Washington, D.C.

MY DEAR MR. PRESIDENT: Believing as I do in bipartisanship in foreign affairs and believing also that the Panama Canal treaty of 1903 is hopelessly out of date, I have up to now faithfully supported the Canal treaties presently under discussion, despite the fact that I am not satisfied with them in all respects. They are, however, a vast improvement over what now exists; conse-

quently I have continued to support them despite enormous pressure from my home state.

At this juncture, I want you to know how very difficult it is for me to continue to support your foreign policies. I was appalled to learn in the past three days of your decision to postpone (cancel?) the neutron bomb program—a humane weapon (if any war weapon can be said to be humane) in that it makes possible the destruction of enemy troops without at the same time killing tens of thousands of civilians, as was done in Dresden and Hiroshima.

The postponement of the neutron bomb, along with the cancellation of the B–1 bomber program, has at least thrown away a valuable bargaining chip. It has also probably destroyed what technological advantages we had over the Soviets to offset their advantage in manpower, tanks, and proximity to their major target, which presumably is Western Europe.

I have been equally appalled at your support of the guerrilla movements led by Joshua Nkomo and Robert Mugabe and your characterization of the coalition being formed by Ian Smith and Bishop Abel Muzorewa and their allies as "illegal". Illegal under what laws, Mr. President? The world has witnessed with horror the disaster that befalls newly independent African nations when they have insisted on instant "majority rule," which has meant throwing the British out of Nigeria, the Belgians out of the Congo, the Portuguese out of Angola. In instances like these, the immediate result has been chaos and civil war, along with genocide—one tribe systematically exterminating another—a kind of genocide that the United Nations never condemns, or seems to notice.

Whatever may be the faults of Ian Smith and Muzorewa and their allies, they have remained in the country to try to solve its problems by peaceful evolution rather than violent revolution. They have agreed on a plan for the orderly transfer of power from whites to blacks, with shared authority during the transitional period. The plan could work, given moral support by the United States and Great Britain. Why then does the U.S. support Joshua Nkomo, who refuses to join the coalition unless the present Rhodesian army is disbanded and he is invited to re-enter Rhodesia with his own army? Why does the U.S. give aid and comfort to Robert Mugabe, who openly boasts of his Marxism-Leninism and vows to create in Rhodesia a "socialist" society, whatever he may mean by that?

Why is the Administration silent about the more than a billion dollars' worth of military equipment and the 12,000 (15,000?) Cuban troops which are being supplied to Ethiopia by the U.S.S.R.? If a war between Ethiopia and Somalia is none of America's business, it is none of the Soviet Union's business either—and still less Cuba's business.

Why are we anxiously conducting SALT talks with the Soviet Union, while the Soviet Union steadily enlarges its empire: Angola, Ethiopia, Rhodesia next, and military advisers in twenty or more African nations? Why do we find no more to criticize in the Soviets' behavior than their treatment of Sharansky?

And Cambodia! One of the world's great bloodbaths has been going on there ever since the Communist takeover of that unhappy nation. Even the left-wing New York Review of Books was viewing this slaughter with alarm almost a year ago. But the Administration, with all its concern for human rights in friendly countries like Chile and Brazil, appears to be looking the other way.

The greatest objection to the Panama Canal treaties is the charge that the "give away" is a revelation of American weakness—of the decay of national pride and national purpose. I have tried to argue that the new arrangements regarding the Canal show the strength and self-confidence of a great nation that is willing to change an old and unequal treaty in order to treat the Republic of Panama as a partner and equal in the family of nations. But how can I maintain this position, Mr. President, when there is nothing in our foreign policy that shows anything but silence or timid acquiescence in the face of determined Communist aggression?

I await your reply with great anxiety and concern.

Respectfully yours,

SAM HAYAKAWA.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Kansas (Mr. DOLE) is recognized until 8:30 a.m.

THE INTERNATIONAL SCOPE OF REHABILITATION

Mr. DOLE. Mr. President, since coming to the Senate in 1969, it has been my custom to speak annually on April 14 addressing some topic of concern regarding the handicapped. Unfortunately, the Senate was not in session this year on April 14, so I could not deliver this on the customary date. It was on April 14, 1945, that I was injured and began to learn firsthand what it meant to be disabled.

Last year on this date, I introduced a bill to set up teletypewriters in the Capitol for deaf constituents to use when calling their Congressmen. I am pleased that my amendment was accepted to this year's Senate legislative appropriations bill to allow for the purchase of these machines. The sergeant-at-arms is making progress in his arrangements to set up a teletypewriter communications center.

This year, I want to address again a problem in communications, only one which deals not so much with discussion between individuals, but between countries. The World Health Organization estimates there are 400 million disabled persons in the world. If this figure is correct—and some experts say there are even more—it means that 10 percent of the Earth's population is disabled. Because of the enormity of these figures, there is no question but that diagnosis, treatment, and rehabilitation for these individuals is of critical importance.

U.N. DECLARATION

In recognition of the problems involved, in 1975 the United Nations General Assembly approved a "Declaration on the Rights of Disabled Persons." This declaration set forth the basic human rights which handicapped individuals are entitled to. These include the right to respect for human dignity; the right to medical, educational, social, and vocational rehabilitation; the right to employment opportunities; and the right to protection from discrimination.

More recently, the U.N. General Assembly voted to proclaim 1981 as the "International Year for Disabled Persons." Again, the purpose of this declaration is to draw attention to the fact that many handicapped persons are not accorded full citizenship rights, because of their disability.

I support these basic rights, and believe the United States has an obligation to support a worldwide effort to rehabilitate the handicapped. Many years ago, Congress passed the International Rehabilitation Act. It is my understanding that this bill was designed to promote and coordinate rehabilitation research overseas. Regretably, it was never funded.

I am not advocating that the United States should underwrite foreign research, but it has been brought to my attention that there is too little exchange of information between foreign countries on the subject of rehabilitation. There are persons dedicated to this goal, however. One organization, Rehabilitation International, has worked for years promoting the exchange of information in areas involving international rehabilitation efforts.

REHABILITATION INTERNATIONAL

Rehabilitation International serves 62 different countries, and is the only international organization that deals with all aspects of disability and rehabilitation. Rehabilitation International, U.S.A., is based in New York City, and provides international rehabilitation services to the United States, in addition to supporting Rehabilitation International. I am pleased to serve on its board of directors.

Because of my association with RUISA, I am familiar with the successes and difficulties they have encountered when working in the field of rehabilitation. Rhode Island has six standing commissions to deal with rehabilitation from a medical, vocational, educational, social, technical, and administrative approach.

ICTA

Of these commissions, probably none has surpassed the achievements of the commission on technology. Called the International Commission on Technical Aids, Housing and Transportation—ICTA—it has focused its work on developing aids and facilities for use by those with motor disabilities. It also provides information on new developments in science, technology, and technical aids. ICTA is working to promote this exchange of information so that duplication of efforts can be avoided.

In any one country, there will be only a limited market for aids for handicapped consumers. Many experts feel that to stimulate production of technical aids, a worldwide market should be developed. In order to promote the efficient production of rehabilitation devices, there is a clear need for coordination of effort between companies and countries.

BENEFITS TO UNITED STATES

I think it would be beneficial for the United States to participate more actively in such endeavors. While we have amassed a wealth of technology, by no means do we have a corner on the market. It is not just the lesser developed countries which stand to benefit from such an exchange. For instance, Germany is regarded as having developed the most advanced orthopedic devices.

Great Britain has created total hip and knee replacements, which would be of immense help to many persons with lower limb mobility problems, whether they live in the United States or in Africa.

As an example of this type of cooperation, I call attention to the successful development of the myoelectric arm. It is a prosthetic device which uses brain waves to increase the current generated from thought to operate the electrical device which moves the artificial arm. This project has been accomplished since World War II, with the United States, the U.S.S.R., Canada, Austria, Italy, and other countries all contributing to its creation. This is the type of exchange that needs to be carried out.

CENTER INDUSTRIES

Another example which is somewhat closer to me deals with the success story of Center Industries in Sydney, Australia. Center Industries is able to employ severely disabled individuals, because it learned to adapt industrial equipment to fit the capabilities of handicapped persons. In 1972, Australia hosted the 12th World Conference of Rehabilitation International. Jack Jonas, of Wichita, Kans., was one of the delegates, and while there, he visted Center Industries. Jonas was so impressed with their production that he went back to Kansas and started another Center Industries.

Center Industries in Wichita has also been a tremendous success, and attracts visitors from all over the United States, as well as from England, India, Mexico, and other countries. Because of the successfulness of the Wichita employment project, many handicapped workers have been attracted to the city. A new housing project is under construction so that these employees can have accessible housing. The Wichita experience is proving that handicapped persons make good workers. Center Industries is a perfect example of the benefits of shared information.

BEDFORD INDUSTRIES

Also located in Australia is Bedford Industries, which offers an array of rehabilitative services to 800 clients. The main division is situated on 7½ acres of land, where several workshops offer training in 70 different occupations. Training is offered not only for repetitive work skills, but also for professional skills such as marketing, accounting, industrial engineering, social work, and public relations.

Other components of Bedford Industries include a resort hotel for handicapped guests; a public seaside hotel operated by handicapped workers; an independent living center; and Gorge Farm. Gorge Farm is a 200-acre farm where clients are rehabilitated through agricultural and horticultural training. There is a large almond grove and vineyard, plus a purebred sheep breeding ranch on the farm.

Out-of-season fruits and vegetables are grown in hothouses, and the farm sells canned and processed foods under its own label. It is quite an impressive operation.

Elsewhere in the world, the Ghana Society for the Blind operates a home training program for rural blind women who are unable to leave their homes for institutional training. A London-based organization has set up a "toy library" for handicapped children, so that rehabilitative toys can be used constructively by the disabled child at play. The United States and Yugoslavia have worked together on projects using external electrical stimulation. Now, this knowledge is being used to stimulate functional patterns of movement for a number of persons with mobility problems.

CONCLUSION

These are but a few examples of projects being carried on around the world. The results of these experiences need to be shared with other persons and organizations working in the field of rehabilitation, so that more persons can benefit from shared information. In the Congress, we take pride in the fact that legislation affecting the handicapped is one of the few nonpolitical issues we deal with. Even in a global setting, disabilities should transcend national differences, for the handicapped have needs, struggles, and goals in common. I firmly believe that a vigorous effort to synchronize rehabilitation efforts should be made, and hope that the United States will take the lead in a renewed commitment to the area of international rehabilitation.

COMMITTEE MEETINGS

(The following proceedings occurred later in the day.)

Mr. ROBERT C. BYRD. Mr. President, the time has run out for three committees to meet today. Will the Senator yield me 30 seconds?

Mr. SARBANES. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today, to hold hearings on S. 1896, the Hazardous Materials Transportation Act; that the Subcommittee on Environment and Pollution of the Committee on Environment and Public Works be authorized to meet during the session of the Senate today from 11 a.m. until 1 p.m., to hold hearing on oil spill liability legislation; that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider fiscal year 1979 Department of Energy authorization.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Judiciernmental Affairs Committee be authorized to meet during the session of the Senate today to consider S. 991, the Department of Education Act.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Judiciary Committee be authorized to meet until 12 noon during the session of the Senate today to consider the Justice Department authorization bill, which must be reported to the Senate by May 15 under the Budget Act.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate today to consider the military procurement authorization bill, which must be reported to the Senate by May 15 under the Budget Act.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Small Business be authorized to meet from 11 a.m. until 1 p.m. during the session of the Senate today to hold hearings on S. 2259, the Small Business Procurement Expansion and Simplification Act.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Health and Scientific Research Subcommittee of the Human Resources Committee be authorized to meet until 1 p.m. during the session of the Senate today to consider National Science Foundation nurse training and health services extension legislation.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Employment, Poverty, and Migratory Labor Subcommittee of the Human Resources Committee be authorized to meet until 1 p.m. during the session of the Senate today to consider the community services authorization.

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

THE PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will now resume consideration of the resolution of ratification of the Panama Canal Treaty which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Panama Canal Treaty, together with the Annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-Fifth Congress, first session).

The Senate resumed consideration of the resolution of ratification of the Panama Canal Treaty.

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized to call up a reservation on which there will be 30 minutes of debate equally divided between the Senator from Kansas and the manager of the treaty with vote in relation thereto to occur at 10:25 a.m. this morning.

The Senator from Kansas.

UP RESERVATION NO. 33

Mr. DOLE. Mr. President, I send to the desk an unprinted treaty reservation for the resolution of ratification and ask that it be stated.

The ACTING PRESIDENT pro tempore. The reservation will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes unprinted reservation No. 33.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the reservation be dispensed with.

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

The reservation is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof the following: "subject to the following reservation:

"Before the date of exchange of the instruments of ratification of the Treaty, the two Parties shall have agreed that the Panama Canal Commission shall reduce the amount of the annuity payable to the Republic of Panama under paragraph 4(b) of Article XIII of the Treaty by the product of such amount and a fraction, the numerator of which is the number of days during the calendar year the Canal is not navigable and the denominator of which is 365.".

Mr. DOLE. Mr. President, very briefly and very quickly, because the Senator from Kansas knows there is a mountain of work ahead of us today before the final vote on the Panama Canal Treaty, as my colleagues are well aware, article XIII of the Panama Canal Treaty provides, for the Government of Panama, "a fixed annuity of 10 million U.S. dollars to be paid out of canal operating revenues." The reservation I am proposing would simply condition Senate ratification on the following point—that this fixed annual annuity shall cease during any period in which the canal is inoperable. That is, the annuity would be reduced by an amount proportionate to the number of days of the year that the canal is not open for transit.

Mr. President, it would clearly be unfair and irresponsible to guarantee continued payments to Panama during a time in which the canal is closed, since that payment is understood to come from canal toll revenues in the first place. This is a logical reservation on our part, and one that I am sure any rational Panamanian would understand.

There are any number of reasons why the canal could be closed for temporary periods during the next 22 years. It could be a result of a natural catastrophy, such as an earth slide or earthquake. It could be due to a functional breakdown involving the intricate machinery of the lock system. Or it could be the result of intentional sabotage by either internal or external sources. Certainly, we hope none of these conditions develops. But if they should it is likely that the canal would be closed to all traffic for several days, during which time there would be no operating revenues derived from the canal. Why, then, should the Panama Canal Commission be held financially liable by the Government of Panama, just as though the canal was operating as usual?

ECONOMIC BURDEN

In any such instance where the canal should be closed, the United States would almost certainly be expected to bear the major economic burden of reopening the canal. Whether or not this liability would be binding in a legal sense, there is no question that we would feel duty-bound to pay the costs of reopening it for our own defense and economic purposes. Panama certainly would not bear the economic burden.

Furthermore, let me remind my colleagues of all the other economic benefits Panama will continue to receive under the terms of this treaty, regardless of whether or not the canal remains open: Panama receives free title to all real property in the Canal Zone, with an estimated replacement value of $9.8 billion. Panama receives $10 million annually for public services in the former Canal Zone, including police and fire protection, street maintenance, and garbage collection. And, of course, the administration has proposed a separate economic and military assistance package totaling $345 million. So, Panama does quite well, financially, beyond the fixed annuity proposed under article XIII.

It simply does not make sense to promise to continue paying Panama for a passage route that is temporarily nonexistent. The present treaty makes no provision for such a contingency, and both the United States and the Panama Canal Commission must be protected on this point. This reservation may even help discourage any intentional sabotage of the canal. Under the provisions of this proposal, if the canal is shut down for 1 month, the $10 million annuity will be reduced by one-twelfth.

This is fair, this is logical, this is rational, and this is justified. It is something the American people can understand, and the Panamanian people can understand. It does not involve rewriting the treaty, but only attaches a "condition" to our ratification of the treaty.

I trust that there will be appropriate support for the reservation.

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

Mr. SARBANES addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise in opposition to the reservation. In explaining that opposition I want to detail the nature of the payments to be made to Panama.

There are two other payments to Panama that would be directly affected in a very negative way by any disruption of canal activity. One is the payment of 30 cents per Panama Canal net ton which is directly related to the amount of tonnage which moves through the canal. So to the extent that the canal is not functioning that payment would be immediately impacted. The other is the contingency payment, which again is related to producing sufficient revenues in excess of expenditures, to have enough money left over in order to make that payment.

So both of those payments are directly related to the amount of tonnage moving through the canal which is, of course, related to the canal operating to the maximum extent possible.

Under the present arrangement we pay Panama a fixed annuity, and there is no provision under the present arrangement for any discounting of that fixed annuity. That annuity is $2.3 million, but it has not been adjusted in over 20 years for inflationary impact. It is a flat payment that is now made.

The $10 million that we are talking about here that is contained in paragraph 4(b) of article XIII of the treaty is comparable to the fixed annuity now paid to the Republic of Panama.

That figure is well within the capacity of the Panama Canal Commission, or will be well within its capacity. You have a fixed annuity partly to make sure that you do not have total shock or extreme up and down fluctuations in the revenues to be received by Panama since it will be relating its own activities to such revenues.

However the bulk of what they expect to receive from the canal operation will, in fact, be affected by an interruption of service. If there is such a disruption there will be a severe diminution in what they will be receiving as a consequence of the disruption.

To seek to extend that loss even further, to go to the basic $10 million annuity payment, it seems to me, is to overreach in the sense of the balance which this treaty has struck between ourselves and the Republic of Panama.

Furthermore, the amendment as it is worded would result in the discount even if after a closure period you more than made up for what had been lost through intensive operation of the canal for the open period of time. In other words, you could have an earth slide which threw the canal out of operation for a short period of time. You could make that up subsequently. In fact, you might run the canal on such an intensive basis that you had a better year financially even though there had been a closing down for a limited period of time than you might have in a year in which there was no closing down, and yet even though there was such a better year you would have to discount the fixed annuity payment. It would simply be required by the terms of this amendment. If you think about that it is not really a fair arrangement. It, in fact, impedes trying to obtain maximum operation and maximum functioning of the canal.

I want to touch on one other point which was made by the distinguished Senator from Kansas. He said $345 million of separate military and economic assistance would be provided. I emphasize the point that this is simply a proposal on the part of the administration. None of that assistance is provided for by these treaties. In fact that point has been made very clear by amendments to the articles of ratification, both to the Neutrality Treaty and to the Panama Canal Treaty. Such aid, if it is to be given and in the amounts it is to be given, is subject to congressional review and, if we choose to act, subject to congressional action.

So that simply is a proposal that exists separate and apart from the treaties. It is not a proposal that will be implemented or effectuated by the treaties. In fact, the amendments added to the articles of ratification make it very clear that will not be the case.

That is something we can address separately and make our judgments accordingly at the time that we do so.

So for all of those reasons, Mr. President, I oppose the amendment which the Senator from Kansas has proposed, and I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time? If no one yields

time, time runs equally against both sides.

Mr. DOLE. Mr. President, I think the issue here has been presented, I hope, thoughtfully and, I think, it has been answered thoughtfully, and I do not know of any reasons to take additional time. It is not a major issue, but it is one I felt should be addressed.

I have been trying to suggest that maybe somebody else might come over and start the next proposal. But, in the absence of that, I think it is significant that if we just try to isolate $10 million, that in itself is no great amount. But there is a long time between now and the year 2000, and you would get up to a pretty good chunk of money, about $220 million, which is a little more than pocket change even in Washington.

But it is possible, whether it be some internal strife or strike or landslide or earthquake or whatever, of course, and it could be closed for a long period of time and we would continue to pay.

There is a great deal of resentment still in America about the treaty, and even some who favor the treaty itself feel we have been less than—maybe responsible is not the right word—but less than cautious as a business proposition in some of the provisions in the treaty itself.

This Senator would assume that the treaty will pass despite all the rumors and all the posturing and other things that may be going on. It seems to me the votes are here to pass the treaties, and I am just suggesting that if that is the case then we should be as certain as we can that we are not going to be asked to make payments when the canal is not in operation.

But having said that and having made the case, the Senator from Kansas is willing to suggest the absence of a quorum out of my time. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

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

Mr. DOLE. Mr. President, will the Senator from Maryland yield?

Mr. SARBANES. I yield to the Senator.

Mr. DOLE. I assume at some appropriate time the yeas and nays will be ordered on all the amendments; is that correct?

Mr. SARBANES. I think we obtained unanimous consent yesterday that it should be in order at any time to order the yeas and nays, and I think at an opportune time we will do that.

Mr. President, I ask unanimous consent that it be in order to proceed to the Thurmond amendments.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

UP RESERVATION NO. 34

Mr. DOLE. Mr. President, on behalf of the distinguished Senator from South Carolina (Mr. THURMOND) I send an unprinted amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk proceeded to read the amendment.

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

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

The amendment is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following reservation:

"The President shall not exchange the instrument of ratification of the Treaty if, after the date of adoption of this resolution of ratification, the Republic of Panama includes in its instrument of ratification of the Treaty or of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal a reservation which must be accepted by the United States of America to become binding on the United States of America or any amendment to either Treaty, unless the Senate of the United States of America has given its advice and consent to such amendment or such reservation."

Mr. DOLE. I only say as a matter of preliminary explanation that the amendment is being called up for the distinguished Senator from South Carolina in order to expedite the business before the Senate. It is my understanding that the distinguished Senator from Maryland will speak in opposition to the reservation, and by the time that is concluded the distinguished Senator from South Carolina will be present to speak in favor of it.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. SARBANES. Mr. President, I understand that the able and distinguished Senator from South Carolina will be here shortly and will speak to his amendment.

In anticipation of some of his arguments—although I must confess I am sufficiently respectful, of his powers of argument and persuasion to recognize I cannot fully anticipate his arguments—I would like to point out that under American law and practice there is no way that another country could, in effect, make amendments or reservations of any substance to the instruments of ratification and, therefore, in effect, change the treaty which the Senate has advised and consented to it without those changes having to be returned to the Senate for its further advice and consent.

That requirement of Senate advice and consent, which is necessary with respect to all treaties, would in fact be missing under a procedure whereby the other party, the other country, attached substantive changes to the instruments of ratification. The only way the United States then could enter into a changed arrangement from what had received the advice and consent of the Senate would be for the Senate to again have the matter under consideration, and to advise and consent to it including such changes.

For that reason, it seems to me that this amendment is clearly not necessary.

There are a number of examples throughout our history of cases in which treaties were returned to the Senate for its advice and consent in the light of substantive changes which the other party sought to make in the instruments of ratification through substantive reservations, amendments, or understandings. Of course, that is the standard practice and fully protects the position of the Senate with respect to the treaty-making power, and therefore enables the Senate to fully protect the interests of the Nation.

For that reason, I would oppose the amendment to the articles of ratification which has been called up by the distinguished Senator from Kansas on behalf of the distinguished Senator from South Carolina.

Mr. President, since the distinguished Senator from South Carolina is now here, I will reserve the remainder of my time on this amendment, and yield the floor so that the Senator may have an opportunity to speak directly to his proposed amendment.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. THURMOND. I thank the able Senator from Kansas (Mr. DOLE) for calling up my amendment.

Mr. President, this reservation would make clear to the President to the United States that this treaty must be resubmitted to the Senate under certain conditions.

The condition referred to in the reservation would include the addition to the treaty by Panama of any amendment or reservation binding on the United States.

Mr. President, it is my understanding that the addition of an amendment by Panama would require the resubmission of the treaty to the Senate. But whether or not a reservation added by Panama would require its resubmission is apparently at the discretion of the President.

In looking back over the debate during the close of action on the Neutrality Treaty a number of the membership gave great weight to several reservations passed by the Senate. In view of the weight given reservations by this body, it seemed the wisest step to have the Senate simply affix to the treaty a condition that it be resubmitted if Panama adds a reservation.

Of course, Panama is free to act as it chooses on any reservations, amendments, or understandings this body might add to the treaties.

However, as matters stand now the President and others with whom he may choose to consult could decide whether or not to resubmit the treaties if Panama adds a reservation binding on the United States.

They may feel the reservation is not of sufficient importance for resubmission, whereas there may be many in the Senate who would disagree.

Therefore, to avoid any such conflict, I propose to add a reservation requiring the President to resubmit the treaties if a reservation or reservations are added by Panama and are binding on the United States.

In this manner the Senate can evaluate the reservation and decide if it has changed the treaty in a meaningful way, and if so, whether that change is sufficient to require further Senate action.

This approach will remove from the President the burden of having to decide

what to do and possibly making a decision which would not serve the cause of good relations with Panama.

Mr. President, there should be no objection to this reservation, as it is binding only on the United States and does not require any action by Panama.

I urge my colleagues to evaluate it carefully, and once having done so, I believe it can be fully supported by all.

I would be surprised, Mr. President, if those proposing these treaties would not accept this reservation. It is a reasonable reservation, it should be accepted, and I hope that it will be.

The PRESIDING OFFICER (Mr. MORGAN). Who yields time?

Mr. CHURCH. Mr. President, this reservation, proposed by the Senator from South Carolina (Mr. THURMOND), is utterly unnecessary. Should Panama, by any action it takes, attempt to effect any substantive change in the treaty, the question of whether or not that substantive change is acceptable must necessarily be considered by the President and by the U.S. Senate. So the reservation is superfluous. It constitutes nothing more than a reiteration of the existing state of the law with respect to the ratification treaties.

The Senate, in connection with its ratification of the Neutrality Treaty a month ago and while considering the pending treaty, adopted certain amendments to the articles of ratification. Some of these amendments have the effect of conditioning the Senate's consent, if that consent is granted by this afternoon's final vote upon the acceptance of those amendments by the Government of Panama. That acceptance would take the form of the instrument of ratification that is exchanged with the United States.

Just as Panama must decide whether or not they will accept the conditions that the Senate has attached to the resolution of ratification, so the United States, through its constitutional process, would have to accept or reject any substantive change made by the Government of Panama. Since our Constitution requires the Senate to consent to any treaty before it takes full force and effect, it necessarily follows that any substantive change that might be proposed by the Government of Panama would come back to the Senate for its advice and consent.

I have received from the administration not only a confirmation of that statement of the law, but also a commitment on the part of the administration to submit any such reservation to the Senate in accordance with the law. The letter comes from the Office of the Legal Adviser of the Department of State. It is addressed to the Honorable JOHN J. SPARKMAN, the chairman of the Senate Commitee on Foreign Relations. It is signed by Herbert J. Hansell, the Legal Adviser, Department of State, and is dated April 18, 1978. It confirms what I said with reference to the law and the procedures that will be followed in the event that Panama were to adopt a reservation to this treaty.

I ask unanimous consent, Mr. President, that the full text of this letter be printed at this point in the RECORD.

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

EXHIBIT 1

THE LEGAL ADVISER,
DEPARTMENT OF STATE,
Washington, April 18, 1978.

Hon. JOHN J. SPARKMAN,
Chairman, Senate Foreign Relations Committee, U.S. Senate.

DEAR MR. CHAIRMAN: This will confirm our prior advice to you that under United States law, substantive amendments and reservations to the Panama Canal Treaties put forth by Panama that would affect United States rights or obligations under the Treaties cannot be accepted by the United States unless approved by the President and the Senate.

The American Law Institute, in the Restatement of the Law (Second) of the United States Foreign Relations Law, at page 423, states:

"If the other state has made a reservation at signature or at ratification prior to the President's transmittal of the treaty to the Senate, in all likelihood the Senate will have official notice of the reservation in the message of transmittal and take it fully into account in acting on the treaty. The situation may arise, however, in which the Senate has given its consent to the treaty before the other state makes its reservation. In such a case Senate consent to the acceptance of the reservation is required."

I trust the foregoing provides the information you desire.

Very truly yours,

HERBERT J. HANSELL.

Mr. CHURCH. For that reason the reservation proposed is objectionable. I see no purpose to be served in arguing the matter, since, on its face, it is clear that what the Senator proposes to do would happen automatically if the Government of Panama made any substantive change in the treaty.

Mr. President, it is pointless for the Senate to adopt this reservation, and I would hope that the Senate will reject it.

The PRESIDING OFFICER. Who yields time?

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

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

Mr. THURMOND. Mr. President, how much time remains on this reservation, and then how much time is there on the next reservation? The next item is an understanding.

The PRESIDING OFFICER. There is a total of 1 hour on both.

Mr. THURMOND. Mr. President, I would just like to make the point that the Senate has adopted two amendments and four or five reservations, but Mr. Torrijos will not hold a plebiscite so his people can address those changes which the leadership says change the treaty.

We feel in this matter the President having the discretion of whether to submit it back here is going too far. We think if there is any change, it should be submitted back to the Senate.

The distinguished Senator from Alabama had something to say. Was it on this reservation or on the understanding to be taken up next?

Mr. ALLEN. I would like to address my remarks to the amendment having to do with the requirement that the Senate pass on any reservation.

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator.

Mr. ALLEN. Will the Senator yield 10 minutes?

Mr. THURMOND. I do not believe I have that much time.

Mr. ALLEN. Very well, 5 minutes.

Mr. President, I support the reservation of the distinguished Senator from South Carolina (Mr. THURMOND).

The procedure after the Senate approves the treaty, if it does—and that is by no means a certainty at this time as I feel there is an excellent chance that the treaty will be defeated by the vote this evening—in the event the Senate does approve the treaty, the reservation of the distinguished Senator from South Carolina (Mr. THURMOND) would require that if Panama in the exchange between the heads of state of the two countries should put reservations in their note of ratification qualifying their acceptance of the Senate's reservations, then the reservations of Panama would have to be submitted to the Senate for approval.

This is only logical, it is only fair, it is only in accord with regular procedure and other. The Senate of the United States has the right to advise and consent with respect to treaties, and then if Panama should seek to nullify the reservations which the Senate of the United States has placed in the resolution of ratification, the Senate would be deprived of its right and duty to advise with respect to the treaty. It could nullify the action of the Senate.

If Torrijos does not submit the treaty to another plebiscite—and clearly, he should, because it has been changed greatly—if he accepts the resolution of ratification with its possibly 10 or more reservations but he qualifies his acceptance by adding reservations of his own, the President should not be allowed to accept those reservations without the consent of the Senate. Otherwise, the Senate would be circumvented in the discharge of its duty and its obligation. So this is a reasonable reservation. It would require submission to the Senate for its approval of any reservations that Panama might add to their note of ratification.

Mr. President, speaking generally on the treaties, we were assured that these treaties were necessary for the conduct of a good neighbor policy with Panama; that if we did not approve these treaties there would be demonstrations and riots in Panama. But we find that just the opposite is the case. We find that they are rioting and demonstrating in Panama in prospect of these treaties being approved by the Senate. So it is an anomalous situation. What was supposed to create an era of good feeling between the United States and Panama is turning into just the opposite. It is quite clear, Mr. President. that these treaties are opposed by the majority of the people of the United States and they are opposed by a majority of the people of Panama. Yet we are being called upon the approve these treaties.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ALLEN. I thank the Chair and I thank the distinguished Senator from South Carolina for yielding.

The PRESIDING OFFICER. Who yields time?

UNDERSTANDING NO. 16

Mr. THURMOND. Mr. President, I just have 19 minutes remaining now. I wish to call up the understanding I have offered and I ask for its immediate consideration. It is understanding No. 16.

The PRESIDING OFFICER. The clerk will state the understanding. The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes an understanding numbered 16.

Mr. THURMOND. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The understanding is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following understanding, which is to be made a part of the instrument of ratification of the Treaty:

"The United States of America, in exercising its right under paragraph 2(d) of Article III to establish and modify tolls for the use of the Panama Canal—

"(1) shall examine the economic effects of any proposed toll increase on each of the ports of the United States of America, and on each type of commodity transported to or from such port; and

"(2) shall prescribe systems and levels of such tolls which will minimize any disproportionate effect on the commerce of any port of the United States of America, on any regional group of ports, or on a particular type of commodity.".

Mr. THURMOND. Mr. President, this understanding relates to the need for the commission to evaluate the effects of tolls on U.S. ports and commodities.

This understanding, which requires no action by Panama and in fact should be highly acceptable to them, reads as follows:

The United States of America, in exercising its right under paragraph 2(d) of Article III to establish and modify tolls for the use of the Panama Canal—

"(1) shall examine the economic effects of any proposed toll increase on each of the ports of the United States of America, and on each type of commodity transported to or from such port; and

(2) shall prescribe systems and levels of such tolls which will minimize any disproportionate effect on the commerce of any port of the United States of America, on any regional group of ports, or on a particular type of commodity.

Mr. President, what is the economic situation relating to the canal today? Although the canal opened 63 years ago, canal toll rates did not increase until 1974. During those 60 years toll rates actually declined, as no adjustment was made even for inflation. The higher canal costs were met because traffic through the canal was rising faster than expenses. That is no longer the case.

Canal traffic has declined 6 percent annually for the past 3 years, as tolls were increased 40 percent since 1974. Further, the canal has experienced deficits for the first time in its history.

If canal costs continue to inflate at current rates, the American Management System study states the canal will soon become insolvent despite attempts to cut costs and despite one or two toll hikes of 25 to 50 percent.

Mr. President, much has been said as to how much tolls will have to be raised to pay Panama plus meet rising operating costs. Last week I offered an amendment to the treaty to require operating costs be paid prior to payments to Panama, but only 39 Senators opposed tabling my amendment,

The Senate must recognize, regardless of one's position on the treaties, that likely toll increases may cause severe economic dislocations in this country.

BENEFITS ALL

This understanding should benefit all parties concerned about the effect of the treaties, that is, the ports, the shippers, those who export and import goods using the canal, and Panama herself. It is not a proposal which Panama would find troublesome because it merely urges that the United States and the Canal Commission consider a tolls approach which will not destroy the traffic upon which the economic life of the canal depends.

Some commodities are toll sensitive, others are not. Some ports, especially the gulf coast and Atlantic coast ports, could be more adversely affected by the treaties than, say, west coast ports.

DOES NOT SET TOLLS

The understanding does not attempt to set toll rates or place upon the United States or the Commission an arbitrary guideline. It merely advises that in setting toll increases the United States should carefully examine the economic effects on U.S. ports and commodities moving to and from those ports. It provides that the United States prescribe systems and levels of such tolls which will minimize any disproportionate effect on the commerce of any port, group of ports or particular commodity.

The essence of the understanding is that it would insure that any toll increase would be studied carefully as to its effect on the ports and commodities it might impact upon.

Gov. H. R. Parfitt, head of the Canal Zone Government, testified before the Senate Armed Services Committee, laying out the fact that the treaty would force tolls higher. He testified that a Canal Company-State Department study indicates that—

Canal traffic is sensitive to toll increases beginning at 15% up through the maximum increase possible of between 75% and 100%, the point where diminishing returns set in. Sensitivity also increases over time with the full impact of the increase occurring about seven years following its implementation.

Governor Parfitt continued;

Increases of more than 50% would result in little additional revenue. In fact, it is estimated that the very maximum amount of additional revenue obtainable is about 40%, and this would require a toll increase of between 75% and 100%.

TOLL HIKES INEVITABLE

Mr. President, in the face of the inevitable toll increases, vast amounts of trade between east and gulf coasts and the Pacific Basin countries, could shift to rail and truck movement from west coast ports across the United States. Declining business in these ports could seriously impact on the economies of the ports and States involved.

OIL REVENUES QUESTION MARK

The hope of holding toll increases to a modest level until 1984 is dependent upon movement of oil from the Alaska fields by tankers through the canal. However, the approximately $40 million annually these ships will be bringing the canal is likely to decline in 1984 when a mid U.S. pipeline is expected to become operational for transit of the Alaska oil.

A number of question marks impact on the quantity of oil moving through the canal after 1984. It could continue at a high level if the pipeline is not built, or it could decline if it is built. Of even greater adverse consequence would be a change in the law which now prohibits the sale of Alaska oil to Japan.

BRANDIS STUDY

The Ely Brandis study by International Research Associates, so often quoted by proponents of this treaty, focuses on how much tolls can be increased without losing too much business. It is no study of costs and income. The 1974 study by Brandis deals with the impact of tolls on South America as a region and individual countries in South America.

This study points out that a toll hike of 50 percent by 1985 would cost South American countries an additional $5 million for imports and $8 million for exports, most of the latter cost to be borne by the recipient countries.

At least three types of commodities involved in South American exports and imports are sensitive to toll changes.

PETROLEUM

Petroleum is sensitive to increases and the IRA study predicts that, in case of a 50 percent increase, the reduction in traffic would be substantial. The study estimates such an increase would reduce shipments from the west coast to the east coast via the canal by as much as 2.6 million tons.

IRON ORE

Iron ore, mainly from Chile and Peru, would also be sensitive to toll increases. Mr. Brandis estimates a 50 percent toll increase would reduce iron ore exports in 1985 via the canal from 2.3 to 1.7 million tons. Even lesser toll increases will result in some traffic losses.

BANANAS

Exports of bananas are quite sensitive to toll increases. Shipments are expected to more than double by 1985, assuming no toll hikes. These shipments are from Ecuador to the U.S. east coast and Europe.

However, a 50 percent toll increase by 1985 is expected to cut exports 400,000 tons. Dut to competition, all the increases could not be passed on to customers, as tolls already represent a significant portion of the value of bananas.

Mr. President, of course, the Senate recognizes that when toll increases are fixed, the additional cost must be paid by either the buyer or the seller of the tonnage moved through the canal. With respect to South American exports and imports, the study estimates most of the

tolls are likely to be paid by the buyers or importers.

TOBACCO

Tobacco, one of many commodities exported from my State out of the Port of Charleston, could be placed in a competitive situation by these higher tolls. Some 33 percent of the South Carolina tobacco crop is exported and agricultural exports overall from South Carolina amount to 29 percent of production.

TOLL IMPACT ON U.S. PRODUCTS

Mr. President, the U.S. Department of Agriculture has reported that $8.5 billion of total agricultural exports of $23 billion go to Asian markets. Of these exports, 70 percent pass through the Panama Canal. The price of these products in markets in the Orient depends upon both reliable service through the canal and low tolls, so that shippers down the Mississippi River can compete with Canadian exports out of their Pacific coast port of Vancouver and Australian foodstuffs sent north over open seas.

HIGHER FREIGHT RATES

In a study produced by the Economic Research Service of the Agricultural Department, Floyd D. Gaibler states quite bluntly that—

Provisions in the new proposed Panama Canal Treaty have caused concern over probable impacts they will have on agricultural commodities transported from U.S. Atlantic and Gulfports through the Canal to Asian markets.

Dr. Gaibler believes the new payments to Panama will immediately "add approximately 2 percent to the freight rate for transporting heavy grains from the U.S. Atlantic and gulfports to Japan." Of course, the higher cost in transporting goods reduce their competitive position and lower still further the very narrow profit margin on foodstuffs. Dr. Gaibler further notes that with the inflaticnary escalator clauses in the treaties, tolls could rise up to eight additional times in the next 22 years and after 1999 Panama will have complete discretion over what they desire to charge customers.

Mr. President, these same concerns have resulted in opposition to the treaties by a number of groups such as the Gulf Ports Association, the Mid-Gulf Seaports Marine Terminal Conference, and the Port of New Orleans.

Representing these groups in House testimony, Herbert R. Haar, Jr., associate port director, told the Panama Canal Subcommittee:

It is strongly recommended that the Senate not ratify the new proposed Panama Canal treaty unless it is amended so that there will not be an adverse economic impact on American shipping and the American consumer.

More specifically, Mr. Haar stated—

The major commodities to and from our area that would be impacted by an increase in tolls are petroleum, coal, grain, steel and bauxite.

He also pointed out that the Government had directed industries to convert to coal and he anticipates importation of large quantities from Australia to both New Orleans and Texas ports. On the other hand, the Port of Mobile is concerned because higher costs of exporting coal through the canal may affect the competitiveness of this coal with Australian and Canadian coal going to Japan.

GROWING BURDEN

Mr. President, there is no end to the concerns expressed by U.S. leaders as to the economic impacts of the treaties. James J. Reynolds, president of the American Institute of Merchant Shipping, expresses similar concerns. He predicts "a greater and greater burden on those operators and cargoes for which there is no alternative to using the canal."

Melvin Shore, representing the American Association of Port Authorities, favored payment of the diplomatic costs of the treaties be placed on the Government and not shippers and others. He said this should be done "in recognition of the adverse impact that drastic toll increases will have upon our ocean commerce and consequently the ports of the United States."

DISASTER FOR EAST COAST

W. J. Amoss, Jr., chairman of the Liner Council of the American Institute of Merchant Shipping, warned the proposed toll increases spell "sheer economic disaster for operators east of the canal."

Mr. President, I wonder if the Members of the Senate realize there is no cost and income study on the effects of this treaty for the period beyond—I repeat, beyond—1983? The State Department and the administration are the proponents of this treaty, it is their responsibility to show it will break even and deficits will not have to be paid from the pockets of the American taxpayer.

NO STUDY PAST 1983

Figures provided by the administration have not shown that the proposed Panama Canal Commission will be able to break even after 1983.

The most important study commissioned by the administration, that made by the International Research Associates, is a study of revenues only during the 1978–2000 period. It does not attempt to project Commission costs and does not estimate profits or deficits at all.

The Arthur Anderson study for the State Department covered only Commission costs and income for the period 1979 to 1983. It does not provide any basis for the conclusions concerning the period after 1983.

STUDIES LIMITED TO 1979–83

Likewise, the memorandum signed by Secretary of State Cyrus Vance, Defense Secretary Harold Brown, and Army Secretary Clifford Alexander of February 10, 1978, and the later reply from the State Department deal only with the Commission's ability to break even in the years 1979 to 1983.

Mr. President, I am convinced if these treaties pass, there will either be significant toll increases before and after 1985 or the United States will have to absorb a sizable operating deficit for the canal.

My understanding merely lets the Canal Commission know the Senate desires that the effects of tolls on U.S. ports and commodities of all nations be evaluated carefully.

The Panama Canal will need ships to keep it open and viable. We cannot afford to let it die an economic death. To do so would injure our own economy and deny us a vital defense waterway essential to our strategic policy.

An economically dead canal is no better than a closed canal. I urge the Senate to accept this understanding. It will benefit the Panamanian people as well as U.S. citizens.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, the time is charged equally to each side.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland (Mr. SARBANES).

Mr. SARBANES. Mr. President, I think the concern which the Senator has expressed regarding the possible impact of toll changes is one that I share and which is shared widely in the Senate. But it is a concern that has already been addressed by the distinguished Senator from Louisiana (Mr. LONG) by the understanding which he offered to the Neutrality Treaty and which was accepted to the Neutrality Treaty.

That proposal dealt with this matter of the regional impact of toll changes. It, in fact, would require the United States and Panama to consider other economic factors, such as the maintenance of the domestic fleets of the two countries, the competitive position of the canal in relation to alternative means of transportation, the interests of both nations in maximizing their international commerce, and the impact of any adjustment in tolls on the various geographical areas of each of the two parties.

That understanding was added to the Neutrality Treaty and, as a consequence of being added to the Neutrality Treaty, it has the advantage that it is permanent in its application since the Neutrality Treaty is permanent.

Second, the Neutrality Treaty takes effect simultaneously with this treaty and, therefore, the provision which was offered by the able Senator from Louisiana on this issue would come into play right away, at the time that the treaties first came into play, and would continue indefinitely into the future.

In that sense, it is far more protective of our interests than the proposal which is before us, and I think it is extremely important to underscore that.

Finally, during the life of the Panama Canal Treaty, which is from now, from the time it takes effect until the end of the century, the setting of tolls will be done by the Panama Canal Commission. That Commission will be controlled by the United States.

Its board will consist of nine members—five Americans and four Panamanians—all appointed by the United States. It will have the power to set tolls. Congress, through legislation, will have the power to impact on the work of the Commission and the board. So that is an additional protection available to us during the remainder of this century.

Our protection is first of all, in terms of the composition of the board and the Commission and the authority it has; second, a protection which flows from the power of Congress to deal with cer-

tain of these matters through legislation; third, and most important, the protection which already has been provided to us by the understanding, the very carefully worked-out understanding, offered by the able Senator from Louisiana, which was incorporated into the articles of reservation of the Neutrality Treaty and which therefore applies from the moment these treaties take effect, indefinitely into the future.

For all those reasons, Mr. President—the greater protections that are afforded to us under that approach—I oppose the understanding which has been offered by the Senator from South Carolina.

I again stress that the concerns to which this understanding is addressed is one which I and many others share, but we feel that this concern has been fully and adequately responded to by the understanding of the Senator from Louisiana, by the arrangements for the Panama Canal Commission, in the sense that it will be controlled by the United States of America and by the fact that Congress, through its legislative power, retains the authority to impact on this question through statutory enactment.

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

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, the distinguished Senator from Maryland has said that they already have accepted the amendment of the distinguished Senator from Louisiana, which is similar to this. I point out that, generally, that amendment and this understanding have a similar purpose. That is true. However, the Long understanding speaks to the adjustment of tolls in a general sense, while my understanding is more specific. My understanding is more specific in that it speaks directly to the point of evaluating the economic effects of toll increases on, first, each port of the United States; second, regional or groups of ports; and, third, commodities transiting the canal.

The Thurmond understanding also suggests that other methods rather than the current method for setting tolls be considered. My understanding suggests that rather than merely raising tolls based solely on tonnage, new systems and levels may be used to avoid harm to U.S. ports and commodities.

So there is a difference. This understanding is specific. It certainly can do no harm, and it might do a lot of good. I hope the distinguished Senator from Maryland will see fit to accept it.

Mr. SARBANES. Mr. President, I will respond very briefly to the Senator from South Carolina.

The breadth of the Long understanding is an advantage, not a disadvantage, because it encompasses the matters which the distinguished Senator from South Carolina has put forward, as well as other matters. Therefore, it is to our advantage not to seek to limit or restrict it or cut it down. It serves our purposes, very frankly, to have a broad, general criterion of matters to be considered.

As I pointed out, the Long understanding applies not only in the period from now to the end of the century but beyond that as well; therefore, it provides protection for these matters indefinitely into the future. That is of extreme importance, because during the period ahead of us, from now to the end of the century, which is the period to which the understanding of the Senator from South Carolina is addressed, we in fact control the Panama Canal Commission and the setting of tolls and, therefore, the factors which they will consider. Congress, through legislation, can impact upon the decisionmaking process of the Commission.

Therefore, while I am sensitive to and share the concerns which the Senator has outlined, I think this approach may needlessly limit or restrict our control to act in this matter. It is for that reason, as I indicated earlier, that I oppose the Senator's understanding.

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

The PRESIDING OFFICER. The Senator from South Carolina has 1 minute remaining.

(Remarks by Mr. DOLE at this point are printed later in today's RECORD.)

The PRESIDING OFFICER. The Senator from Maryland has 7 minutes remaining.

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

The PRESIDING OFFICER. Is there objection?

Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STONE. 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. 15

Mr. STONE. Mr. President, I call up my reservation and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, the reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida (Mr. STONE) proposes on behalf of himself, Mr. PAUL G. HATFIELD, Mr. DECONCINI, and Mr. BROOKE, a reservation numbered 15.

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following reservation:

"The Panama Canal Commission may not incur any debt arising out of the operation or maintenance of the Panama Canal or encumber the Panama Canal with any lien, unless the United States of America by legislation authorizes the Commission to incur such a debt or encumber the Canal with such a lien.".

Mr. STONE. Mr. President, this amendment will require that before the new canal agency can encumber the canal property, the agency property, with liens or with debts that both Houses of Congress would be required to act. In other words, the agency would have to obtain the concurrence of Congress. I am not certain that either the present law or the current draft of the proposed implementing legislation is sufficiently explicit to insure that Congress will have that authority to control the borrowing powers of the to-be-established Panama Canal Commission.

This is of particular concern to me because under article XIII of the Panama Canal Treaty the United States would turn over the canal property to Panama free of all debts and liens.

Mr. CHURCH. Mr. President, I thank the able Senator from Florida for raising the proposed amendment.

First of all, let me say that the Panama Canal Commission would be an agency of the U.S. Government subject to the laws of the United States and immune from the jurisdiction of the Republic of Panama.

The proposed amendment, therefore, deals solely with the internal law of the United States, and I respectfully suggest would be better addressed in the legislation implementing the treaty.

Now, the draft implementing legislation prepared by the administration does, in fact, provide for the continuing application to the Commission of current law under which expenditures and obligations of the Panama Canal Company as a wholly owned U.S. Government corporation are subject to the control and approval of Congress.

Nonetheless, I understand the Senator's concern, and it can be accommodated.

I have spoken to the responsible officials in the administration, and they are agreeable to including language similar to the Senator's amendment in the legislation which will be submitted and considered by Congress for purposes of implementing these treaties.

I can say on the part of the floor managers that we also will do everything in our power to endeavor to guarantee that this step will be taken.

Mr. President, I do hope this will vitiate the need for the amendment offered by the able Senator from Florida. I sincerely believe that the best way to take care of his concern is through the enactment of appropriate provisions in the implementing legislation.

Mr. STONE. I thank the distinguished floor manager, the Senator from Idaho.

I am gratified, as are the cosponsors of this amendment, to receive the assurances not only of the floor managers but of the administration that this prior consent of both houses of Congress, before allowing the new agency to create liens or debts, would be accomplished in the implementing legislation.

I would say further that the reason for the need for this is that just as the people of Panama have asked for assurances that prior to any transfer there are no unwarranted encumbrances put on there just in order to encumber the property otherwise turned over, so the taxpayers of the United States need that same protection.

If it is in the implementing legislation they can get that protection, and with the assurances, therefore, of the floor managers and the administration, I will ask that the amendment be withdrawn.

Mr. CHURCH. I thank the Senator very much, and I commend him for the

responsible course he has taken in this matter.

Mr. STONE. I thank the distinguished Senator.

The PRESIDING OFFICER. The amendment is withdrawn.

UP RESERVATION NO. 35

The PRESIDING OFFICER. The Senator from Nevada (Mr. CANNON).

Mr. CANNON. Mr. President, I call up my unprinted reservation No. 35 and ask that it be stated.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

Mr. CANNON. Mr. President, I ask unanimous consent that the reading of the reservation be dispensed with, and I will explain very briefly what it does.

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

The reservation is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof the following: "subject to the following reservation:

"After the date of entry into force of the Treaty, the Panama Canal Commission shall be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government and not reimbursed before the date of entry into force of the Treaty. Such reimbursement of such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase 'funds or other assets directly invested' shall have the same meaning as the phrase 'net direct investment' has under section 62 of title 2 of the Canal Zone Code.".

Mr. CANNON. Mr. President, the subject of my reservation is interest payments and recovery of the U.S. investment. I was privileged to chair hearings in the Senate Armed Services Committee on the financial impact of the proposed Panama Canal Treaty. One of our witnesses was Elmer B. Staats, Comptroller General of the United States, who discussed the financial issues. He made the assumption that the forthcoming implementing legislative package will relieve the Panama Canal Commission of the obligation to pay interest to the Treasury on the interest-bearing portion of the U.S. investment. This assumption is in line with the administration's statements that the commission will be relieved of this obligation. The U.S. investment in the canal is sizeable and amounts to about $318 million. When figured at the rate of long term treasury bonds the interest amounts to around $20 million a year. The Panama Canal Company has the statutory obligation to pay. At $20 million per year over 22 years this would amount to a $440 million loss to the Treasury over the life of the treaty. I might note that Comptroller General Staats, stated that this $20 million estimated annual interest payment "could be substantially more" per year over the next 22 years. Since the interest rate is based on the U.S. Treasury average rate for long-term issues and "as that portfolio turns over, these rates are bound to go up, and I do not believe that this has been fully taken into account in these projections." According to an Armed Services Committee staff study, Mr. Staats estimated the total loss to the Treasury over the next 22 years at $505 million.

I have quite a problem accepting the forgiveness of this obligation. As a matter of fact, I cannot accept it. On February 1, 1978, President Carter in a nationally televised address to the American people stated:

Are we paying Panama to take the canal? We are not. Under the new treaties payments to Panama will come from tolls paid by ships which use the canal.

On December 28, 1977, the President said:

We wanted a treaty that did not put a financial burden on the American taxpayer, and we got it.

On September 26, 1977, Secretary of State Vance in testimony before the Senate Foreign Relations Committee stated concerning the cost of the treaties:

The treaties require no new appropriations nor do they add to the burdens of the American taxpayer.

Well in line with this spirit of not imposing upon the taxpayer, I submit my reservation to not relieve the Panama Canal Commission of this statutory interest obligation because if the Commission is relieved of that obligation obviously it would impose a burden on the American taxpayer by the loss of those revenues of at least $20 million a year for the next 22 years.

So, Mr. President, I submit my reservation.

(Mr. ZORINSKY assumed the chair.)

Mr. SARBANES. Mr. President, I assume we will address this reservation later in the day when we can pick up additional time. I simply want to make this one additional comment: We have reserved full control over this matter in this legislation in the Congress, and we can do as we choose about it.

RESERVATION NO. 18

The PRESIDING OFFICER. The hour of 10 o'clock having arrived, under the previous order, the Senate will proceed to vote on the question of agreeing to the reservation (No. 18) of the Senator from North Carolina.

Mr. CHURCH. Mr. President, I move that the reservation be laid 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 to lay on the table. 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 Hawaii (Mr. MATSUNAGA), the Senator from Rhode Island (Mr. PELL), the Senator from Georgia (Mr. TALMADGE), the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 104 Ex.]

YEAS—56

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

NAYS—39

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

NOT VOTING—5

Abourezk	Pell	Williams
Matsunaga	Talmadge	

So the motion to lay on the table reservation No. 18 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HOLLINGS. Mr. President. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHURCH. Mr. President, I ask unanimous consent that Miss Maureen Norton of the staff of Senator HUMPHREY may have the privileges of the floor during the remainder of today.

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

Mr. BIDEN. Mr. President, I ask unanimous consent that Joy Shub of my staff be accorded the privileges of the floor throughout the proceedings on the Panama Canal Treaty.

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

RESERVATION NO. 19

The question is on agreeing to the Curtis Reservation No. 19. The yeas and nays have not been ordered.

Mr. CURTIS. Mr. President, I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the reservation of the Senator from Nebraska (Mr. CURTIS). The yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

The result was announced—yeas 33, nays 65, as follows:

[Rollcall Vote No. 105 Ex.]

YEAS—33

Allen	Glenn	Schmitt
Bartlett	Goldwater	Schweiker
Burdick	Hansen	Scott
Byrd, Harry F., Jr.	Hatch	Stennis
	Helms	Stevens
Cannon	Johnston	Talmadge
Curtis	Laxalt	Thurmond
DeConcini	Lugar	Tower
Dole	McClure	Young
Eastland	Morgan	Zorinsky
Ford	Randolph	
Garn	Roth	

NAYS—65

Anderson	Haskell	Melcher
Baker	Hatfield, Mark O.	Metzenbaum
Bayh		Moynihan
Bellmon	Hatfield, Paul G.	Muskie
Bentsen		Nelson
Biden	Hathaway	Nunn
Brooke	Hayakawa	Packwood
Bumpers	Heinz	Pearson
Byrd, Robert C.	Hodges	Percy
Case	Hollings	Proxmire
Chafee	Huddleston	Ribicoff
Chiles	Humphrey	Riegle
Church	Inouye	Sarbanes
Clark	Jackson	Sasser
Cranston	Javits	Sparkman
Culver	Kennedy	Stafford
Danforth	Leahy	Stevenson
Domenici	Long	Stone
Durkin	Magnuson	Wallop
Eagleton	Mathias	Weicker
Gravel	Matsunaga	Williams
Griffin	McGovern	
Hart	McIntyre	

NOT VOTING—2

Abourezk	Pell

So the reservation (No. 19) was rejected.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the reservation was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP RESERVATION NO. 33

The PRESIDING OFFICER. Under the previous order, the question now is on the unprinted reservation of the Senator from Kansas (Mr. DOLE), unprinted Reservation No. 33.

The yeas and nays have not been ordered.

Mr. CHURCH addressed the Chair.

Mr. DOLE. Mr. President, I ask for the yeas and nays.

Mr. CHURCH. I move to lay the unprinted reservation 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 to lay on the table the unprinted Reservation No. 33 of the Senator from Kansas (Mr. DOLE). 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) and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 106 Ex.]

YEAS—56

Baker	Haskell	Matsunaga
Bayh	Hatfield, Mark O.	McGovern
Bellmon		McIntyre
Bentsen	Hatfield, Paul G.	Metzenbaum
Biden		Moynihan
Bumpers	Hathaway	Muskie
Byrd, Robert C.	Hayakawa	Nelson
Case	Heinz	Nunn
Chafee	Hodges	Pearson
Chiles	Hollings	Percy
Church	Huddleston	Ribicoff
Clark	Humphrey	Riegle
Cranston	Inouye	Sarbanes
Culver	Jackson	Sparkman
Danforth	Javits	Stafford
Durkin	Kennedy	Stevenson
Eagleton	Leahy	Weicker
Glenn	Long	Williams
Gravel	Magnuson	
Hart	Mathias	

NAYS—42

Allen	Goldwater	Sasser
Anderson	Griffin	Schmitt
Bartlett	Hansen	Schweiker
Brooke	Hatch	Scott
Burdick	Helms	Stennis
Byrd, Harry F., Jr.	Johnston	Stevens
	Laxalt	Stone
Cannon	Lugar	Talmadge
Curtis	McClure	Thurmond
DeConcini	Melcher	Tower
Dole	Morgan	Wallop
Domenici	Packwood	Young
Eastland	Proxmire	Zorinsky
Ford	Randolph	
Garn	Roth	

NOT VOTING—2

Abourezk	Pell

So the motion to lay on the table UP reservation No. 33 was agreed to.

Mr. ROBERT C. BYRD. Mr. 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.

UP RESERVATION NO. 34

The PRESIDING OFFICER. Under the previous order, the Senate will now vote on unprinted reservation No. 34, offered by the Senator from South Carolina. The yeas and nays have not been ordered.

Mr. CHURCH. Mr. President, I move to table the amendment, 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 orderd.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Rhode Island (Mr. PELL), are necessarily absent.

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 107 Ex.]

YEAS—58

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

NAYS—40

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

NOT VOTING—2

Abourezk	Pell

So the motion to lay on the table UP reservation No. 34 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

UNDERSTANDING NO. 16

The PRESIDING OFFICER. Under the previous order the Senate will now proceed to a vote on understanding No. 16 of the Senator from South Carolina (Mr. THURMOND). The yeas and nays have not been ordered.

Mr. CHURCH. Mr. President, I move to lay that amendment on the table, 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table understanding No. 16 of the Senator from South Carolina (Mr. THURMOND).

On the 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) and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 108 Ex.]

YEAS—56

Anderson	Biden	Case
Baker	Bumpers	Chafee
Bayh	Burdick	Chiles
Bellmon	Byrd, Robert C.	Church

Clark	Hodges	Moynihan
Cranston	Hollings	Muskie
Culver	Huddleston	Nelson
Danforth	Humphrey	Packwood
Durkin	Inouye	Pearson
Eagleton	Jackson	Percy
Glenn	Javits	Proxmire
Gravel	Kennedy	Ribicoff
Hart	Leahy	Riegle
Haskell	Mathias	Sarbanes
Hatfield, Mark O.	Matsunaga	Sparkman
Hathaway	McGovern	Stafford
Hayakawa	McIntyre	Stevenson
Heinz	Melcher	Weicker
	Metzenbaum	Williams

NAYS—42

Allen	Griffin	Roth
Bartlett	Hansen	Sasser
Bentsen	Hatch	Schmitt
Brooke	Hatfield, Paul G.	Schweiker
Byrd, Harry F., Jr.	Helms	Scott
Cannon	Johnston	Stennis
Curtis	Laxalt	Stevens
DeConcini	Long	Stone
Dole	Lugar	Talmadge
Domenici	Magnuson	Thurmond
Eastland	McClure	Tower
Ford	Morgan	Wallop
Garn	Nunn	Young
Goldwater	Randolph	Zorinsky

NOT VOTING—2

Abourezk	Pell

So the motion to lay on the table understanding No. 16 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Florida is recognized by the Chair for a unanimous-consent request.

Mr. STONE. Mr. President, I ask unanimous consent that a member of my staff, Mr. Barry Schochet, may have floor privileges during the consideration of this treaty.

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

RESERVATION NO. 20

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the DeConcini reservation No. 20. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. CHURCH. Mr. President, the managers do support this reservation.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

The result was announced—yeas 92, nays 6, as follows:

[Rollcall Vote No. 109 Ex.]

YEAS—92

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

NAYS—6

Durkin	Haskell	Metzenbaum
Hart	Kennedy	Wallop

NOT VOTING—2

Abourezk	Pell

So Mr. DECONCINI's reservation No. 20 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. CHILES). Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized to call up an amendment, with the time until the hour of 11:45 a.m. to be equally divided thereon.

RESERVATION NO. 3

Mr. BARTLETT. Mr. President, my reservation to the resolution of ratification of the Panama Canal Treaty withholds consent of the Senate to ratification until the President of the United States has determined that the people of Panama have approved by a plebiscite all of the changes, reservations, and limitations which have been attached to the Panama Canal Treaty. This reservation is similar to the reservation which I proposed earlier to the treaty of neutrality. As I shall point out, the wisdom of that earlier reservation, designed to reduce tensions between Panama and the United States, is made clearer each day as Panama expresses its dissatisfaction with changes made by the United States to that earlier treaty.

Let me remind my colleagues of the issue. For many years, there has been dissatisfaction in Panama over the 1903 Panama Canal Treaty which gave the United States the right to operate and protect a transoceanic canal in the Canal Zone across the Isthmus of Panama. Since 1903, the Governments of Panama and the United States have negotiated several treaties designed to meet some of the demands of the Panamanians while also insuring that the Panama Canal would be maintained efficiently and securely for the use of the world.

The PRESIDING OFFICER. Will the Senator send his amendment to the desk?

Mr. BARTLETT. I have not called up my amendment yet. I thought I would call it up later.

In recent years, Panama has mounted a major diplomatic effort to secure a treaty with the United States which would grant sovereign rights and operational control of the canal to Panama. Anticipating such a treaty, and remembering the dissatisfaction with the manner in which the 1903 treaty was negotiated, the new Panamanian Constitution of 1972 provided that treaties relating to the Panama Canal must be approved by a plebiscite of the people of Panama. On the 23d of October last year, the people of Panama gave their approval in a plebiscite to the versions of the two Panama Canal treaties originally negotiated. At the time of that plebiscite, the people of Panama were not voting on future amendments, reservations or other changes which might be made by the U.S. Senate.

I would like to remind my colleagues also that the White House, the State Department, and the leadership of this body have consistently made a major effort to avoid most perfecting amendments, some, in part on the ground that they would require a second plebiscite in Panama. Fear of a second plebiscite in Panama grows out of apprehension that the people of Panama might reject the changes made to the treaties or that they might even reject their own government for having inadequately represented their interests.

Nevertheless, there are many of us who feel that good relations with Panama will be possible only when there is agreement and satisfaction as to the terms of the new treaties. We are also concerned that a treaty improperly ratified will be found wanting under international law or under the law of Panama. Furthermore, we feel that changes in the Panama Canal treaties should be dealt with in a straightforward and honest manner, by both nations.

Let us take a closer look at the provisions of the Panamanian Constitution to which I refer. Article 274 of the 1972 Constitution of Panama reads as follows:

> Treaties which may be signed by the Executive Organ with respect to the Panama Canal, its adjacent zone, and the protection of the said Canal, and for the construction of a new Canal at sea level or of a third set of locks, shall be submitted to a national plebiscite.

This requirement for a plebiscite applies only to treaties dealing with the old Panama Canal or a new canal, but not to other types of treaties. It reflects the simple fact that the Panama Canal is as important to the people of Panama as it is to the people of the United States. The detail with which this article of the Panamanian Constitution sets out the kind of treaties which are covered shows that the highest national interest of Panama centers around the geographical importance of Panama's location on the narrow isthmus separating two great oceans.

The 1946 Constitution of Panama, which preceded the 1972 Constitution, contained no such detailed instructions as to treaties dealing with the Panama Canal. That earlier Constitution was written just 1 year after the conclusion of the Second World War. During that war, all Panama could see that great naval powers were involved around them

and that the Western democracies found the canal vital to carrying on a two-front war. Those times were very different from the circumstances preceding the 1972 Constitution.

The 1972 Constitution was written to provide a legal basis for the strongman rule of Gen. Omar Torrijos. Four years before, Torrijos had seized power with the help of the Panamanian National Guard and had established a so-called revolutionary government. Much of Torrijos' strength grew from his promises to wrestle control of the Panama Canal from the United States. In the previous 10 years, there had been several instances of violence as a result of the red hot canal issue, and Panama had even rejected a treaty negotiated with the United States during the Johnson administration. Thus, when the 1972 Constitution of Panama was being drafted, the possibility of a revolutionary, new treaty governing the Panama Canal was foremost in the minds of everyone in Panama.

The provision requiring a plebiscite for ratification of any new Panama Canal treaties clearly reflects the concerns of many Panamanians that a treaty might be negotiated which was unacceptable. Certainly, many Panamanians have expressed the view that the 1903 Treaty was negotiated in an irregular manner. Their fears that a new treaty might also be presented in a less-than-straightforward manner can only have been increased by efforts on the part of the Governments of Panama and the United States to prevent a second plebiscite on changes in the proposed Panama Canal treaties.

Failure to present changes in the proposed treaties to a plebiscite of the Panamanian people raises the possibility that the Supreme Court of Panama might void the treaties on the ground that they were not ratified in accordance with the Constitution. Under the 1972 Constitution, there have thus far been no legal cases dealing with the treaty ratification process. However, much of the 1972 Constitution is modeled after the 1946 Constitution, and there, precedent does exist. As recently as the 1960's, there were three court cases which dealt with the constitutionality of the ratification process. In fact, the "Geneva Convention of August 12, 1949" was declared unconstitutional on the grounds that the text considered during ratification debate in the National Assembly was "truncated and therefore incomplete."

In the case of the present treaties, we have seen changes made which were not a part of the documents and understandings being considered at the time of the October plebiscite. Much has been made of the fact that the joint statement by General Torrijos and President Carter was made public in Panama prior to the plebiscite. That is true. But the joint statement was not included in the document considered. In fact, it was excluded because only documents concluded on September 7, 1977, were considered. Certainly, if the Supreme Court of Panama could declare the entire Geneva Convention of August 12, 1949, void on the grounds that the summary of it presented in the official Gazette was not complete, that court could easily find that agreements not considered during the plebiscite would also not be constitutional.

That view has been expressed by several professors of law in Panama, notably Drs. Julio Linares and Cesar Quintero. Both made it clear that the two so-called leadership amendments to the first Panama treaty, the Treaty of Neutrality, were not a part of the original treaty and could not be considered binding under Panama's Constitution. They have repeated that view most emphatically with respect to the now famous DeConcini reservation. Dr. Quintero's interpretation, widely publicized in Panama, holds that the Government of Panama may reject the treaties, but only a second plebiscite can approve the added reservations and amendments. Quintero, who is dean of the Law and Political Science School of Panama University, is not alone in this opinion. On March 28, one Panamanian editorial expressed the situation this way:

> We want to be totally clear regarding the reservations, understandings, and amendments to the treaty which have passed the great test before the U.S. Senate. In light of the constitutional provisions which authorized the plebiscite for approving or disapproving the Torrijos-Carter treaties we consider that any addenda to those treaties made by the the U.S. Senate will have to be submitted to a plebiscite in Panama. (FBIS, 29 Mar. 78, N1).

Logic points inescapably toward the view that changes to the proposed Panama Canal treaties, whether technically in the form of amendments, reservations, or understandings, should, in accordance with article 274 of the Panamanian Constitution, be submitted to a plebiscite of the people. Not to do so would leave the treaties open to challenges in the Panamanian courts and to widespread popular dissatisfaction in Panama. I believe there is also some question as to whether they would be binding under international law.

Some members of this body have said that the question of a second plebiscite is strictly an internal matter of interest only to Panama. That view is clearly incorrect. My reservation directs the President to determine whether the treaties as altered are ratified in Panama in accordance with their proper procedures for ratification because the failure to ratify these treaties properly could prevent them from being binding under international law. We have reviewed this issue during discussion of the Neutrality Treaty, but let me briefly highlight the problem again.

International law recognizes that treaties are usually made by heads of state and that the source of power to negotiate may come from a constitution or from some force of arms, as in some dictatorships. Thus, international law tends to avoid consideration of the internal affairs of states. But, with respect to certain issues such as the ratification of treaties, international law does not divorce itself completely from the consideration of domestic law. In his classic "International Law", Professor Oppenheim summarizes the situation:

> Sec. 497. Although the Heads of States are regularly, according to International Law, the organs that exercise the treatymaking power of the State, such treaties concluded by Heads of States or other organs purporting to act on behalf of the State, as violate constitutional restrictions do not bind the State concerned. This is so for the reason that the representatives have exceeded their powers in concluding the treaties.

Some members of this body have cited article 46 of the 1970 Vienna Convention on the Law of Treaties as supporting the notion that we should not be concerned about the ratification procedures of the Panamanians, but again I believe they have been misled. Article 46 reads as follows:

> 1. A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

First, I should comment that the United States has not yet ratified the 1970 Vienna Convention and that, under the terms of that convention, it does not apply to any treaties concluded by parties prior to ratification by those parties of the Vienna Convention. Nevertheless, article 46, I believe, actually supports my case.

According to article 46, a treaty could be invalid if a violation of internal law were "manifest and concerned a rule of its internal law of fundamental importance". Article 46 defines manifest as follows: "A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

The requirement for a plebiscite is stated very clearly in the "fundamental law" of Panama, namely, in article 274 of the Panamanian Constitution. Panama's chief negotiator, Romula Escobar has even called the requirement for a plebiscite with respect to the treaties "an essential requirement" and "a basic condition". That a failure to have a second plebiscite to consider changes involving the treaties would be a manifest violation is made clear by the testimony of Panamanian jurists and at least one Panamanian negotiator.

Mr. President, international law is a complex field, but its basic principles are similar to the contract law that citizens in both Panama and the United States understand. In business transactions, each side puts forth offers which are either accepted or rejected by the other side. An agreement or deal is consummated when both parties agree to the same terms and express that agreement in language acceptable to both. Basically, the same applies to treaties.

In altering the treaty language as originally negotiated and as originally approved in Panama by plebiscite, the Sen-

ate is, in effect, rejecting an offer from Panama while at the same time countering with an offer of its own. As I see it, Panama may either reject the offer, or submit it to the people of Panama for ratification by plebescite. This view is supported by one of Panama's negotiators, Carlos Alfredo Lopez Guevara, in his discussion with Panamanian media representatives of the significance of the reservations which the Senate has attached to the proposed treaties. Let me quote one Panamanian television account.

Lopez Guevara explained the meaning of the word reservation, as it is used in international law. He said that it means a counterproposal made by one party to the other. This counterproposal can be accepted, rejected or negotiated upon by the other party. If one of the parties rejects the counterproposal or reservation and at the same time presents another, this must be done before the exchange of notes because one cannot participate in the exchange ceremony with reservations.

This was reported on the 30th of March, and the account continues:

In giving his opinion as a lawyer, he stressed that if the amendments and reservations introduced by the Senate and included in the ratification resolution involve substantial changes to the treaties approved by the Panamanian people, then another plebiscite would have to be held.

The PRESIDING OFFICER. All the time of the Senator from Oklahoma has expired.

Mr. BARTLETT. Mr. President, according to the clock, I have used 15 minutes. It is my understanding that there are 40 minutes equally divided.

The PRESIDING OFFICER. The time was until 11:45, the time to be equally divided.

Mr. SARBANES. Mr. President, I yield to the Senator 5 minutes.

Would 5 additional minutes accommodate the Senator from Oklahoma?

Mr. BARTLETT. Yes, that will do it.

Mr. SARBANES. I yield the Senator 5 additional minutes.

Mr. BARTLETT. I thank the Senator.

Mr. CHURCH. Mr. President, will the Senator yield to me for a question?

Mr. BARTLETT. Yes.

Mr. CHURCH. For 30 minutes now, I have been trying to oblige the Senator from Texas, who wanted to use 2 minutes of our time. I wonder if the Senator from Oklahoma would object if he might use those 2 minutes, with the understanding that anything he says will appear at another place in the RECORD. Then the Senator might proceed. It is just an accommodation to the Senator from Texas.

Mr. BARTLETT. I shall be happy to accommodate the Senator from Texas just as soon as I finish in 1 minute.

Mr. CHURCH. I thank the Senator.

Mr. BARTLETT. Lopez Guevara is supported by the best legal scholarship. For example, Prof. J. L. Brierly's "The Law of Nations" expresses it this way:

In accepting a treaty a state sometimes attaches a "reservation", that is to say, it makes the acceptance conditional on some new term which limits or varies the application of the treaty to itself. Such a qualified acceptance is really a proposal for a treaty different from that agreed on, and if the reservation is persisted in and is not accepted by the other states concerned it amounts to a rejection.

Or, in the words of Professor Oppenheim:

That occasionally a State tries to modify a treaty while ratifying it cannot be denied; but conditional ratification is not ratification at all, but is equivalent to refusal of ratification coupled with a fresh offer which may or may not be accepted.

Clearly, to give the proposed Panama Canal treaties their maximum legitimacy, they must be submitted along with all changes to the people of Panama in accordance with article 274 of the Panamanian Constitution of 1972. Failure to take this step would leave the treaties vulnerable to refutation by subsequent Governments of Panama, or for that matter the United States, and might reduce the binding effects of the treaties under international law. In my opinion, such a loophole could work to the advantage of Panama in the future.

Although the government of Panama is undoubtedly a dictatorship, the rule of law has not completely ceased in Panama. Article 274 of their constitution clearly requires a plebiscite prior to ratification of any treaty dealing with the Panama Canal, and the present government of Panama has already acted once in accordance with that provision. Certainly, when confronted with a changed document, the right of the present government to rule would be seriously called into question if the new language were not submitted to a plebiscite.

But above all, it is important that we not commit ourselves to an irreversible treaty, parts of which some Panamanian Government, present or future, might repudiate. Differences between the 1946 and 1972 Panamanian Constitutions underscore the importance of getting the treaties off on the correct legal footing. Article 4 of title I of the 1946 Constitution read quite simply:

The Republic of Panama respects the rules of international law.

Article 4 of title I of the 1972 Constitution reads quite ominously:

The Republic of Panama respects the universally recognized rules of international law which are not prejudicial to the national interest.

In this language is contained great danger for Panamanian-American relations in the future. Clearly, we must insure that any new treaties are made legitimate under Panamanian law. I believe that this means a second plebiscite on the Panama Canal treaties.

The seriousness of this issue can be illustrated by two questions: Do you believe that Panama would accept a treaty that had not been ratified by the U.S. Senate in accordance with our Constitution, when such ratification is required by the language of the treaty itself? And would you, as an elected representative of the American people, give your consent to ratification of a treaty whose language has been changed subsequent to first consideration of the document? I think that the answer to both of those questions is no.

It would be an injustice to the people of the United States if the Senate were to ignore its treaty responsibilities, and it would be an injustice to the people of Panama, about whose human rights and democracy we have been greatly concerned, not to expect that the treaties as amended would be resubmitted to a plebiscite of the people of Panama.

The reservation I propose makes consent to ratification "subject to the reservation that before the date of the exchange of the instruments of ratification the President shall have determined that the Republic of Panama has ratified the treaty, as amended, in accordance with its constitutional processes, including the process required by the provisions of article 274 of the Constitution of the Republic of Panama."

In effect, the reservation I propose makes clear to the President that the Senate does not consent to ratification of a potentially invalid treaty. It instructs the President to determine that the Republic of Panama has properly considered our amendments as required by the Constitution of Panama.

In short, the reservation I propose makes explicit the recognition that a new plebiscite is required in Panama to deal with changes already made or pending to the Panama Canal Treaty. A new plebiscite in Panama is necessary to:

First. Conclude a new agreement between the United States and Panama in the manner of a contract, which we all understand;

Second. Guarantee United States and Panamanian rights under the treaty;

Third. Comply with international law;

Fourth. Reduce the likelihood of misunderstandings with the Panamanians;

Fifth. Reduce the chances that subsequent Panamanian regimes will refute the treaty;

Sixth. Comply with the Panamanian Constitution and insure that the Supreme Court of Panama does not void the agreement;

Seventh. Support our policy of standing up for political and human rights around the world; and

Eighth. Show the American people that the "reservations" passed by the Senate are not a political maneuver designed to camouflage real flaws in the treaties so that General Torrijos and the administration will not suffer political embarrassment and defeat.

Panamanian-American diplomatic relations are unlikely to be smooth in the years ahead. Our interests and policies are simply too diverse on too many issues. For example, in 1976, on 36 issues before the United Nations in which the Soviet Union and the United States were on opposite sides, Panama voted with the Soviet Union 31 times and with the United States only 5 times. I understand that the record last year was even worse. Ambiguities in the Panama Canal Treaty and uncertainty over the impact of the implementing legislation are likely to lead to additional problems. For these reasons, I believe that the United States should protect itself by insuring that it does not commit itself to an irreversible treaty which may fall apart before it has

run its course. My reservation on a second plebiscite in Panama will help prevent some of those problems that can be avoided.

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

Mr. BENTSEN. Mr. President, even in a Senate clearly and deeply divided over the Panama Canal treaties, I think we could establish a broad consensus on at least one important point: our overriding national interest in Panama is to keep the Panama Canal open, neutral, operating efficiently, and accessible to U.S. vessels at all times.

The basic question we have been debating for the past 2 months is whether this objective is best served by a new order in the Canal Zone or by clinging desperately to the status quo.

Mr. President, no treaty, past or present, can guarantee the future of the Panama Canal. In the final analysis the future of the canal, and our ability to use it freely, will be determined by the degree to which Panama and the United States of America are prepared to work together to achieve mutually acceptable objectives.

The treaties before the Senate give us a framework, an acceptable framework in my opinion, for future cooperation with the Government and people of Panama. The treaties are not an indication of the decline and fall of the United States. They are, instead, an important symbol of our willingness, as the most powerful and compassionate nation in the world, to deal with lesser powers from a position of fairness and mutual respect.

The Panama Canal treaties, as originally negotiated and sent to the Senate, were vague on the important questions of canal neutrality and priority passage for U.S. vessels in time of need. The Senate amended the treaties to provide appropriate assurances on these important points. The significance of these amendments has been fully appreciated by the American people.

Poll after poll, in Texas and across the country, has demonstrated that when the people understand the assurances contained in the leadership amendments to the treaty, the majority of them support treaty ratification. Without the leadership amendments such support would be clearly lacking.

I have heard about the Opinion Research Organization being quoted time and time again here on the floor and it is a fine research organization. But they did not quote the figures for Texas, I notice. Those figures for Texas show that 79 percent of Texans in February were opposed to that treaty; only 11 percent for it, until something very important happened. When the two amendments were attached to it, as approved by the leadership and by the Senate, a dramatic shift in public opinion in Texas occurred. After that, 49 percent approved the treaty with those two amendments attached. Thirty-three percent were then opposed and the rest were undecided.

Like many Members of the Senate, I traveled to Panama and Latin America earlier this year to learn firsthand about the treaties and their ramifications. I came away from my meetings with American and Panamanian officials, with Archbishop McGrath of Panama City, with the Presidents of Costa Rica, Venezuela, and Colombia, firmly convinced that those would rejoice most at Senate rejection of the Panama Canal treaties would be Communist and leftist elements in Latin America opposed to our interests and our friends in the area. That they would use the charge of colonialism to advance the cause of Castro and other Communist elements throughout Latin America and the Caribbean.

I came away with the conviction that one of the best ways to keep the Panama Canal open is to give the people of Panama an economic self-interest in its continuing operation and to relieve nationalist strains in Panama with a new treaty that is consistent both with our national interests and Panamanian national pride.

There are risks inherent in Senate approval of the Panama Canal treaties, Mr. President. Let us acknowledge this fact honestly and openly. But there are also risks—in my opinion greater risks—in Senate refusal to approve the treaties. Our choice today is not between the new treaties and the status quo in the Canal Zone. Rather, it is between the treaties as negotiated and amended by the Senate and the potential Panamanian reaction if the treaties are rejected.

Mr. President, I support Senate approval of the Panama Canal treaties because I believe ratification is in the best interest of the United States of America, because I am sincerely convinced that the treaties, as amended by the Senate, provide adequate assurances for our vital national security and economic interests; because I believe the treaties will serve to keep the canal open and accessible to U.S. vessels; and finally, because I feel this Nation is strong enough, confident enough, and decent enough to conclude such an agreement.

Mr. CHURCH. Mr. President, I do not believe that the distinguished Senator from Oklahoma has called up his amendment. I ask him at this time if it is his purpose to call up the amendment so that the Senate may proceed to a vote at 11:45.

Mr. BARTLETT. Yes, my purpose is to call it up and have a vote.

Mr. CHURCH. I have not seen the amendment in its final version. I wonder if the Senator would send it to the desk so I can read the amendment before commenting on it.

RESERVATION NO. 3

Mr. BARTLETT. Mr. President, I call up my amendment, reservation No. 3.

The PRESIDING OFFICER. The reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BARTLETT) proposes a reservation numbered 3:

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that before the date of the exchange of the instruments of ratification the President shall have determined that the Republic of Panama has ratified the Treaty, as amended, in accordance with its constitutional processes, including the process required by the provisions of Article 274 of the Constitution of the Republic of Panama".

Mr. CHURCH. Mr. President, this reservation would require that the President of the United States certify to the U.S. Senate that the Government of Panama has complied with the laws of Panama.

I have little doubt how we would react if a similar reservation was adopted by Panama and directed toward the United States. We would regard it as the height of presumption.

Furthermore, there is no way that the President of the United States can positively certify that Panama has complied with Panamanian laws.

This is a matter that can be authoritatively determined only by the Government of Panama, and, furthermore, it is the business of Panama.

Now, article II of the treaty provides as follows:

This treaty shall be subject to ratification in accordance with the constitutional procedures of the two parties.

I submit, Mr. President, that this language is all the guarantee we need. In the normal course of comity between nations, Panama would certify that its own constitutional processes, its own laws, had been complied with, and we in turn would certify that our laws had been complied with.

I do not think that it is within the competence of the Presidency or of the Senate to construe or to interpret Panamanian law for the Panamanians.

It has been argued that since the Senate has adopted certain reservations to these treaties it is necessary to hold a second plebiscite under Panamanian law. Mr. President, that is for the Panamanians to determine.

The PRESIDING OFFICER. The time of the Senator from Idaho has expired. The Senator from Oklahoma has 1 minute.

Mr. CHURCH. Therefore, the time having expired, I hope that the Senate rejects this amendment. It is my plan to make a motion to table the amendment as soon as the time of the Senator from Oklahoma has expired.

Mr. BARTLETT. Mr. President, my reservation simply says that before it gives consent to this treaty, the Senate advises the President that he take precautions to insure that it is a valid treaty.

We want to know legally what the Panamanians do believe the understanding to be. We do not want a pig in a poke. We want to know what they believe in a legal manner according to international law.

As it stands now, we know that there are those in Panama who believe there should be a plebiscite. There are those in Panama who believe that provisions, reservations, amendments, understandings added to the treaty have not been done so with the support of Panamanians, that the Panamanians do not support those provisions that have been added in the Senate.

So I think it is important that we be assured legally that we and the Pana-

manians have the same understandings so that there will not be a confrontation down through the years as we approach the end of the year 1999.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. BARTLETT. Mr. President, I ask for the yeas and nays.

Mr. CHURCH addressed the Chair.

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

The yeas and nays were ordered.

Mr. CHURCH. Mr. President, I move to lay the amendment on the table and 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 to lay on the table reservation No. 3 of the Senator from Oklahoma (Mr. BARTLETT). The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK) is necessarily absent.

Mr. STEVENS. I announce that the Senator from Wyoming (Mr. WALLOP) is necessarily absent.

The result was announced—yeas 63, nays 35, as follows:

[Rollcall Vote No. 110 Ex.]

YEAS—63

Anderson	Haskell	Moynihan
Baker	Hatfield,	Muskie
Bayh	Mark O.	Nelson
Bellmon	Hathaway	Packwood
Bentsen	Heinz	Pearson
Biden	Hodges	Pell
Bumpers	Hollings	Percy
Byrd, Robert C.	Huddleston	Proxmire
Case	Humphrey	Ribicoff
Chafee	Inouye	Riegle
Chiles	Jackson	Sarbanes
Church	Javits	Sasser
Clark	Johnston	Sparkman
Cranston	Kennedy	Stafford
Culver	Leahy	Stevenson
Danforth	Long	Stone
DeConcini	Magnuson	Talmadge
Durkin	Mathias	Weicker
Eagleton	Matsunaga	Williams
Glenn	McGovern	Zorinsky
Gravel	McIntyre	
Hart	Metzenbaum	

NAYS—35

Allen	Goldwater	Nunn
Bartlett	Griffin	Randolph
Brooke	Hansen	Roth
Burdick	Hatch	Schmitt
Byrd,	Hatfield,	Schweiker
Harry F., Jr.	Paul G.	Scott
Cannon	Hayakawa	Stennis
Curtis	Helms	Stevens
Dole	Laxalt	Thurmond
Domenici	Lugar	Tower
Eastland	McClure	Young
Ford	Melcher	
Garn	Morgan	

NOT VOTING—2

Abourezk	Wallop

So the motion to lay on the table reservation No. 3 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. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, Jr.). The Senator from Maryland has the floor.

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

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

(The following occurred earlier in today's proceedings and are printed at this point by unanimous consent:)

Mr. DOLE. Mr. President, I wonder whether the Senator from Kansas can have some time. I have a noncontroversial matter, just to make some nonlegislative history, which will take about 3 or 4 minutes.

Mr. THURMOND. I yield the 1 minute I have remaining to the distinguished Senator from Kansas, if that will help.

Mr. DOLE. I thank the distinguished Senator from South Carolina.

Mr. President, I ask unanimous consent that the statement I am about to make appear following the six votes at 10 o'clock.

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

Does the Senator ask that this time not be charged against the amendment?

Mr. DOLE. That it be charged against the amendment, but that the comments made by the Senator from Kansas appear following the votes.

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired, and the Senator from Maryland would have to yield time.

Mr. DOLE. Will the Senator from Maryland yield 3 minutes, so that I may make some legislative history? It is not on the amendment.

Mr. SARBANES. I yield 3 minutes to the Senator.

PROTECTION OF LAND HELD BY MASONIC LODGE IN CANAL ZONE

Mr. DOLE. Mr. President, I call the attention of my colleagues to a small, but not insignificant aspect of the current Panama Canal Treaty debate, which should not go unnoticed before we complete our work on this matter. It involves the unique situation of the only privately owned real property lying within the present Panama Canal Zone—land purchased and held continuously by Sojourners Lodge of the Ancient Free and Accepted Masons for 57 years.

Sojourners Lodge, located in Cristobal, Canal Zone, and under the jurisdiction of the Grand Lodge of Massachusetts, holds clear title to a tract of land and a building which sits upon it, at the southwest corner of the intersection of Bolivar Avenue and Eleventh Street. Its purchase of the property from the Panama Railroad Company in 1921 was authorized by an act of Congress the previous year (41 Stat. 948). In fact, all other real property in the Canal Zone is owned by the Government of the United States, and will be transferred to the Government of Panama under the provisions of the treaty now under consideration.

Naturally, there has been concern among the members of Sojourners Lodge about the possible effect of the new treaty upon their legal right, and their practical ability to retain ownership of their property and their building once all surrounding land in the Canal Zone has been turned over to Panama.

The draft treaty of 1967, which never reached the Senate floor for a vote, contained specific reference to the understanding that the Lodge's title to this property would not transfer to the Republic of Panama. Despite the fact that this matter was again brought to the attention of the U.S. negotiating team last year, no similar provision was contained within the present Panama Canal Treaty proposal.

Although State Department officials have stated their clear understanding that the new treaty in no way alters or affects the property title held by Sojourners Lodge, the members have sought a precise statement to this effect by the Government of Panama itself.

With the cooperation of our State Department and the Embassy of Panama located in Washington, D.C., the Senator from Kansas has been able to secure a clear, precise, and unambiguous commitment from an authorized representative of the Panamanian Government that the private deed to this property in Cristobal will continue to be honored in perpetuity. This statement conveys the understanding that Panama will in no way attempt to induce Sojourners Lodge to vacate their land or building, nor levy any charge for their continued occupancy of the property. I am advised that this commitment has been cleared with the highest authorities in the Government of Panama.

So that there may be no question on this point now, or at any future date, I believe this should be made a matter of record in the legislative history of the Panama Canal Treaty now proposed for ratification. Therefore, Mr. President, I ask unanimous consent that the letter from the chargé d'affaires to the State Department legal adviser, dated April 14, 1978, be printed in the RECORD at the conclusion of my remarks, along with correspondence from the State Department and Panama Canal Zone Government confirming their agreement with this position.

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

APRIL 14, 1978.

Mr. HERBERT J. HANSELL,
Department of State,
Washington, D.C.

DEAR MR. HANSELL: In response to your verbal inquiry, I hereby notify you that we recognize the validity of the title now held by the Sojourners Lodge, of the Ancient Free and Accepted Masons, to the tract of land comprising lots numbered 641, 643, 645 and 647 located on the southwest corner of the intersection of Bolivar Ave. and 11th Street in Cristobal and to the improvements thereon. The entry into force of the Panama Canal Treaty of 1977 will not in any way impair the validity of this title.

I avail myself of this opportunity to renew to you the assurances of my consideration.

R. A. BILONICK PAREDES,
Chargé d'Affaires, a.i.

DEPARTMENT OF STATE,
Washington, D.C., February 21, 1978.

Mr. WHITFIELD W. JOHNSON,
Tremont Street,
Boston, Mass.

DEAR MR. JOHNSON: The Secretary has asked me to respond to your letter of January 27, concerning the effect which approval of the Panama Canal Treaty of 1977 would have on title held by the Sojourners Lodge A.F. and A.M. to a tract of land in Cristobal.

Your letter correctly notes that the 1977 Treaty does not specifically confirm the Lodge's ownership of the tract in question. Contrary to your assumption, however, the Treaty does not divest the Lodge of its title or convey title to the Republic of Panama.

Article XIII(2) conveys to Panama (with certain exceptions) all right title and interest of the United States in real property located in the Canal Zone. This provision does not purport, nor was it intended to disturb in any way the present title of the Sojourners Lodge.

Nor is the Lodge's title affected by the termination of the 1903 Treaty. Prior to entry into force of the 1903 Treaty, title to the tract deeded to the Masons was held by the Panama Railroad Company; accordingly, the rights it held (and ultimately conveyed to the Masons) did not arise under the provisions of that agreement, and would not be affected by its termination.

The provisions of the Panama Canal Treaty of 1977 concerning applicable law and law enforcement insure that the present title of the Lodge will not be subject to question under Panamanian law. Under paragraph 1 of Article XI of the 1977 Treaty, Panama agrees that its law "shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements." It seems clear, therefore, that the validity of the 1921 conveyance would not be subject to question under Panamanian law, since it concerns a matter or event occurring prior to entry into force of the 1977 Treaty, the regulation of which is not specifically provided to Panama under earliest treaties. Accordingly, it does not appear that there should be any serious difficulty in obtaining recognition by Panama of the Masons' deed to their land in Cristobal. Upon entry into force of the Teraty, the Lodge should register its deed with the Panamanian authorities in order to formalize their ownership under Panamanian law.

If you require any further information or assistance in connection with this matter, feel free to contact me.

Sincerely,

MICHAEL KOZAK,
Acting Assistant Legal Adviser for Inter-American Affairs.

OFFICE OF THE GOVERNOR.

CERTIFICATE

I, Joseph J. Wood, Chief, Administrative Services Division (Agency Records Officer) and legal keeper of the records of the Panama Canal Company and Canal Zone Government, do hereby certify that the attached document, described herein, as a true and correct copy of the official record of such document contained in the files of the Panama Canal Company and Canal Zone Government:

Signed and notarized copy, dated April 19, 1921, of the indenture made between the Panama Railroad Company and officers of Sojourners Lodge of the Ancient Free and Accepted Masons of Cristobal, Canal Zone, for the building known as the Masonic Temple and the land upon which the building rests.

I further certify that the office of the Agency Records Officer possesses no official seal.

In witness, here I have hereunto set my hand at Balboa Heights, Canal Zone, on this 17th day of February, A.D. 1978.

JOSEPH J. WOOD,
Chief, Administrative Services Division, Agency Records Officer, Panama Canal Company, Canal Zone Government.

OFFICE OF THE GOVERNOR,
September 23, 1977.

Mr. JAMES E. BREDENKAMP,
Chairman, Building Committee, Sojourners Lodge, A.F. & A.M., Cristobal, Canal Zone

DEAR MR. BREDENKAMP: This is in response to your letter of September 19 concerning omission in the proposed Panama Canal Treaty of 1977 and related agreements of specific treatment of lots 641, 643, 645 and 647 in Cristobal, Canal Zone which were conveyed to Sojourners Lodge, A.F. & A.M. by the Panama Railroad Company pursuant to Congressional authorization (41 Stat. 948). As requested, this will confirm that the singular status of title to the lots was brought to the attention of the United States negotiations team. With regard to our conversation, this will also confirm that specific treatment was accorded this property in the 1967 draft treaty.

Sincerely yours,

J. PATRICK CONLEY,
Executive Secretary.

(Conclusion of proceedings which occurred earlier.)

UP AMENDMENT NO. 36

Mr. ROBERT C. BYRD. Mr. President, on behalf of myself, the distinguished minority leader, Mr. DECONCINI, Mr. CHURCH, and Mr. SARBANES, I send to the desk an amendment to the resolution of ratification and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself and Mr. BAKER, Mr. DECONCINI, Mr. CHURCH, Mr. SARBANES, Mr. SPARKMAN, Mr. JAVITS, Mr. LEAHY, and Mr. GRAVEL, proposes an unprinted amendment numbered 36.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that: Pursuant to its adherence to the principle of non-intervention, any action taken by the United tSates of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of this Treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or intereference with its political independence or sovereign integrity."

Mr. ROBERT C. BYRD. Mr. President, this amendment reaffirms the principle of nonintervention, a principle which is and should remain a cardinal principle of U.S. foreign policy.

The amendment would make absolutely clear that the United States does not claim and does not seek any right of intervention in the internal affairs of Panama. The United States respects the sovereign integrity and the political independence of Panama.

Our interest is an open, secure, neutral, and accessible canal. We have no interest in the internal affairs of the Republic of Panama.

Mr. President, the language contained in this amendment is the result of many, many hours of discussion, involving many Senators on both sides of the aisle. These discussions have involved Senators who have adverse viewpoints, diverse viewpoints, and differing viewpoints.

The final text of the amendment represents a consensus which developed out of those discussions with the many Senators on both sides of the aisle.

On this Sunday, the past Sunday, together with the distinguished floor managers of the treaties, Mr. SARBANES and Mr. CHURCH, met with the Panamanian Ambassador, Mr. Gabriel Lewis, in the company of Warren Christopher, the Deputy Secretary of State, and showed to the Panamanian Ambassador the proposed text of the amendment.

Following our discussion, Ambassador Lewis relayed the contents of the proposed amendment to his government. Later in the day, Mr. SARBANES and Mr. CHURCH, and I were informed through the State Department that the Panamanian Government considered the amendment to be a "dignified solution to a difficult problem."

Mr. President, as I have said throughout the course of this debate, these treaties are consistent with the best and most worthy of American values and principles. They serve and promote our national interests.

This amendment is totally in accord with those goals and principles, and it demonstrates our respect for and our concern for the pride and sensitivities of the people of Panama.

This amendment is the concrete expression of policy based upon respect for the sovereignty of our treaty partner.

This amendment and these treaties represent a fair and honorable course for our country and for Panama. I strongly urge the adoption of the amendment.

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

Mr. ROBERT C, BYRD. Yes, I yield.

Mr. JAVITS. I think it more appropriate for the Senator to yield to Senator BAKER.

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. BAKER. Mr. President, I thank the Senator from New York. I will not take very long, and I thank the majority leader for yielding.

Mr. President, I support this proposal. I would point out, as my colleagues know, that it is a product for much effort, as the majority leader indicated, following in the wake, as it did, of expressed discontent by the Panamanian Government and many people of the Republic of Panama, of the text and tone of the so-called DeConcini reservation.

Early on I conferred with the distinguished majority leader and I indicated to him at that time it was my view that the so-called leadership amendment to the Neutrality Treaty had in many respects the same equivalent effect in that it provided that the United States has the right to protect the regime of neutrality and the free, open access of this

canal to American traffic on a priority basis, and traffic of all nations permanently, but that I would have no objection to some effort to devise language, which would be consistent with the leadership amendment, which did not significantly diminish the rights of the United States to protect that regime of neutrality, and that I would await the negotiations that might be conducted on the majority side of the aisle and, indeed, with the Government of the Republic of Panama.

The majority leader very kindly kept me advised of the progress of those negotiations, and following the course of those negotiations, as described by the majority leader, I indicated to him that I found this language acceptable, and I would be pleased to cosponsor it.

I do not believe this language diminishes in any respect the rights of the United States, nor does it impugn the authority of the Republic of Panama. I think it materially improves the potential for a good relationship between the countries, and I think it is a constructive measure that I hope will be adopted by the Senate.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader both for his support of the amendment, his cosponsorship of it, and his supporting statement.

Mr. President, before I yield to the distinguished Senator from New York, I ask unanimous consent that the distinguished chairman of the Committee on Foreign Relations (Mr. SPARKMAN) be added as a cosponsor.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, Jr.). Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I would like to make the same request, that I be added as a cosponsor.

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

Mr. JAVITS. Mr. President, I have always believed very deeply that this was a test of the American policy, certainly the Americas, for the foreseeable future. I hope it lasts for a century or more.

It involves very deeply our relations with the other countries in the Americas, and the formula which you have used in this amendment "open, neutral, secure, and accessible" is the proper formula to be used, and the formula respecting intervention is taken almost verbatim from the words of the Carter-Torrijos agreement, an understanding upon which we based our ratification of the first treaty.

Mr. President, I think a very creditable job has been done for our country in dealing with what I believe were the very legitimate objections to the original DeConcini amendment which, in my judgment, gave a hunting license to any American President, and had to be unacceptable to the people of Panama.

I voted against it; a number of others voted against it, who have been constant and indefatigable supporters of the treaty, because I believe it nullified—not the words, not the agreement, but nullified—the purpose, the intent, and the motive for the United States entering into this treaty.

Nobody pretends this is an advantageous treaty to the United States over and above 1903. But, Mr. President, it is a necessary agreement, an engagement by the United States that we live in 1978, not in 1903, and that in this time even the rights of small nations have to be respected and regarded as sovereign and equal in significance and solemnity with the respect with which we expect to be accorded to the sovereignty of big nations, including superpowers like the United States.

So I believe this reservation has now dealt in the most practical and direct way with the two problems: First, the real purpose of the United States to have a canal which is open, neutral, secure, and accessible, and I hope these words will ring in history—they are exactly the right test; and, second, that under no circumstances are we going to allow any American President or any American Congress to dream up some incident which will enable us to determine how Panama should be run or who should govern it.

For those reasons, Mr. President, I very strongly support this reservation.

Mr. President, I ask unanimous consent that article II of the Panama Canal Treaty and article VIII of the Neutrality Treaty be printed in the RECORD.

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

PANAMA CANAL TREATY

ARTICLE II

RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

2. This Treaty shall terminate at noon, Panama time, December 31, 1999.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

ARTICLE VIII

This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

The PRESIDING OFFICER. Who yields time?

Mr. LAXALT. Mr. President, will the Senator yield for a question or two?

Mr. JAVITS. Certainly.

Mr. LAXALT. If I understand the Senator from New York's observations, the so-called DeConcini reservation was objectionable to the Senator on the basis that it granted the United States a so-called hunting license.

Mr. JAVITS. Right.

Mr. LAXALT. I gather that whatever is being expressed in the new reservation propounded by the leadership changes that results; is that correct?

Mr. JAVITS. That is correct.

Mr. LAXALT. Is the Senator saying to all of us then that the effect of this reservation is to diminish the effect of the DeConcini reservation?

Mr. JAVITS. Not at all. On the contrary, it is to lay down the ground rules by which it should be used, and which are the only ground rules that are practicable for a nation like our own.

What concerned me about the original DeConcini reservation is that it was susceptible to abuse, and this, the ground rules here laid down, it seems to me, removes that danger.

Mr. LAXALT. To the extent then this is a limiting factor, a moderating factor, certainly at least to that extent then it has to diminish the thrust of the DeConcini amendment or do I misunderstand the observations of the Senator from New York?

Mr. JAVITS. I think the Senator does misunderstand my observations. It diminishes nothing. It increases our stature, but it diminishes absolutely nothing about what the purpose of the agreement between Carter and Torrijos, which was incorporated in the previous treaty, was intended to attain, and that is under any circumstances, even if it means stepping upon the territory of Panama, under any circumstances, even if it means guerrillas or organized troops who are operating out of Panama, we have the obligation to keep that canal open, neutral, accessible and secure.

Mr. LAXALT. But——

Mr. JAVITS. If I may just finish, the Senator asked me a question.

Mr. LAXALT. Yes, sure.

Mr. JAVITS. What it does prevent is the abuse of that particular provision for some national purpose which is unworthy of us and which is not within the purpose or intent of this agreement or the reason why I am hopeful the Senate will ratify it today. It simply is a protection against abuse.

May I give the Senator an example—

Mr. LAXALT. Surely.

Mr. JAVITS. —because I know we would like to be very precise about this.

I go out of town, I have a lawyer, I give my lawyer a power of attorney. I tell him, "Look, I am giving you this power because I want you to pay my bills; when the dog has to go to the vet I want you to take the dog and pay the vet," and so forth. I do not give him any power of attorney to empty out my safe deposit box but, nonetheless, he does.

Now, Mr. President, is that a limitation on his power if I write in the power of attorney, "I am sorry but I do not want you to empty out my safety deposit box," or is it simply to prevent abuse? That is what I am saying.

I am saying that we are adopting now a reservation which will prevent the

abuse of a reservation we previously adopted, which was susceptible of abuse.

Mr. LAXALT. The Senator used the power of attorney example. If I may say so, knowing the Senator's reputation for careful and precise language, I was intrigued by his choice of words, particularly of the term "hunting license."

To me, that indicated, if we are going to talk about the analogy of a power of attorney, something akin to a general power of attorney.

What we have here, if I understand the thrust of this amendment, is a limited and special power of attorney, so that you have begun with a general power of attorney, but have now come in with a reservation seeking to limit that to a special power of attorney; is that not correct?

Mr. JAVITS. I do not agree with that at all, and I think it is a complete misreading of the intent of this particular reservation.

The PRESIDING OFFICER. The Chair would inquire as to who is yielding time at this point.

Mr. LAXALT. The Senator from Nevada is yielding time at this moment. May I ask a further question?

Mr. JAVITS. On your time, yes.

Mr. LAXALT. This treaty expires, does it not, on December 31, 1999?

Mr. JAVITS. That is correct.

Mr. LAXALT. The DeConcini reservation to the Neutrality Treaty takes effect, under its terms, on January 1, 2000, does it not?

Mr. JAVITS. Correct.

Mr. LAXALT. I fail to understand, since this discussion has arisen, how in the world a provision of this kind can be operative on the first treaty, when, by the terms of the pending treaty, it expires on December 31, 1999.

Mr. JAVITS. The reservation expresses a policy of the United States, and a policy which we believe now, from what the majority leader has said, is acceptable as the policy which will guide United States actions under these treaties toward the Republic of Panama.

It seems to me, therefore, that the purpose and intent of the reservation being clear to both parties, if acceptable to both parties, it may be incorporated in this document without vitiating its effectiveness, because really it is binding on us.

In other words, what it is is a guideline as to the actions of the President of the United States, the Commander in Chief of our Armed Forces——

Mr. LAXALT. Well, Senator——

Mr. JAVITS. If I may just finish, I think, notwithstanding the fact that this treaty runs out, as it were, under its terms, in respect of this activity it is a totality. Both treaties are a totality and a link. One treaty does not become effective until the other treaty becomes effective, and the terms of each treaty say that. Therefore that link, it seems to me, fully justifies the wording of this reservation.

Mr. LAXALT. Without being elementary or fundamental here, as a matter of simple contract law, is it not true that the treaties are tantamount to contracts?

Mr. JAVITS. I can agree to that.

Mr. LAXALT. All right. Is it not also true that under the terms of the treaty now under consideration, it expires on December 31, 1999? How in the world can this reservation be operative in a treaty that takes effect after this treaty expires?

Mr JAVITS. I just explained that, Senator. Both treaties are linked as a unit by the provision in each treaty that neither treaty shall be effective unless the other is. It is because of that link, in my judgment, that we have a right to adopt this reservation and this reservation is, in my judgment, binding.

If the two treaties were absolutely insulated one from the other, the Senator's question might have some pertinence; but even then, I doubt that the argument would be effective, because this represents a guideline to the President of the United States and to future Congresses.

It seems to me that that question is completely resolved, even on the texts of the treaties, by the relation between the two contracts.

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

Mr. LAXALT. Surely

Mr. McCLURE. Certainly the Senator from New York has again demonstrated the validity of the comment I made to him yesterday, that if I have a very weak case in court I want him as my lawyer, because he is capable of making a very good argument where there is no possibility of a valid argument. I commend him for that, but certainly the Senator from New York knows the difference between a general power of attorney and a limited or special power of attorney. I think the Senator from Nevada is precisely correct, that this is a limitation and a reduction in the scope of the original DeConcini amendment.

I think it is also worthy of noting that the Senator is exactly correct with regard to the expiration of the terms of this treaty at the end of this treaty. The Senator from New York is now arguing that the two are linked, when the managers of the treaties refused to allow a linkage between the two treaties when that was discussed, and when amendments were offred earlier to do precisely that. So there is not the linkage now being argued; there is a separation, and an ending of the first treaty. I commend the Senator from Nevada for having made those points.

Mr. SCOTT. Mr. President, will the Senator yield briefly?

Mr. LAXALT. I am pleased to yield to the Senator from Virginia.

Mr. SCOTT. I appreciate the Senator's yielding.

I voted against the original DeConcini reservation because I had doubt that it would have any valid or binding effect upon the treaty; and to me this amendment to the reservation merely expresses a concern for the people of Panama.

I would think that we, as U.S. Senators, should be concerned about the people of the United States far more than we should be concerned about the people of Panama. They demonstrate a little bit in the street and we fly to pieces about it; but the American people are opposed to this treaty, and I believe the important thing here is to do what is best for the United States. The distinguished Senator from New York spoke of enhancing the American image by adopting something of this nature. The American image and the American leadership in the free world will be shown by strength; and we are not becoming stronger by giving away this vital artery of commerce.

I am retiring from the Senate, as Senators know, at the end of this term. In my judgment, other Senators will retire involuntarily come the general election in November.

Mr. HELMS. Mr. President, I yield to the able Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from North Carolina for yielding to me.

Mr. President, I do not know why the amendment before the Senate now has been shrouded in such secrecy. I was able to obtain a copy of this amendment at 12 minutes after 12, to have an opportunity to study it. Why the need for all this secrecy? What has become of the old principle of "open covenants openly arrived at"?

What this amendment seeks to do is to get this treaty and the other treaty off the horns of a dilemma caused by the administration and the leadership themselves. They accepted the DeConcini reservation. They embraced it, they endorsed it, and in fact it became a leadership-administration amendment.

Now they seek to water down, in this treaty which expires on January 1 of the year 2000, a reservation to the other treaty, which is in perpetuity.

The distinguished Senator from New York spoke of the words here being the words of the memorandum between the President and the dictator, which later became the leadership amendment. That is true. The Neutrality Treaty did have the leadership amendment. This amendment now is a pseudo-leadership amendment. It seeks to graft onto this treaty, which expires at the end of this century, the provisions of the leadership amendment.

That being true, let us see what the DeConcini reservation says: notwithstanding the provisions of article V or any other provision of the treaty, if the canal is closed, or its operations are interfered with, the United States has a right unilaterally to take whatever action is necessary to keep the canal open and operating even to the point of using military force.

The Neutrality Treaty had the leadership amendment in it. Yet the DeConcini amendment says irrespective of the leadership amendment, irrespective of that limitation, this unilateral right to use military force to keep the canal open will be a right that the United States reserves under the treaty.

So, Mr. President, how could you, by inserting a provision in this treaty, affect the provisions of the DeConcini amendment which is not effective, even by the terms of the leadership amendment which forms part of the Neutrality Treaty?

How can you put something in another treaty that is not effective to diminish the

DeConcini rights reserved to the United States which are contained in the very treaty as to which the DeConcini reservation was made?

Obviously, with the treaty before us, the Panama Canal Treaty, giving the canal away, with that expiring on the dawn of the 21st century, anything contained in this treaty falls. It is dead. It has become functus officio. It has performed its function. It has no further standing.

What we are doing here, Mr. President—and I hope all will understand, all on both sides of this treaty—is we are seeking to placate the Panamanians without angering those of us who want to see that we do have a right to keep the canal open. It is something in the nature of a sop, a sop to the Panamanians. It is a mighty weak effort, it seems to me, to try to tie, in effect, the leadership amendment to the Neutrality Treaty also on the Panama Canal Treaty. If those words are not effective in the Neutrality Treaty, how in the world can they be effective in the Panama Canal Treaty, which is an entirely different document?

The difficulty that the administration and the leadership are having in diminishing the DeConcini amendment is that the Neutrality Treaty has been acted upon by the Senate. The leadership and the administration had absolute control of every single word that went into that treaty, and this treaty as well. They had absolute control. They controlled every single word that went into both of these treaties here on the floor of the Senate. Now they are seeking to tear down the force and effect of the DeConcini amendment.

But the DeConcini amendment cannot be touched. That Neutrality Treaty has been acted upon by the Senate. The time for reconsideration of the action by the Senate has expired. It has become part of history, Mr. President.

I am reminded of the verse from the Rubaiyat of Omar Khayyam as to the Neutrality Treaty.

> The Moving Finger writes; and having writ moves on; Nor all your Piety nor Wit Shall lure it back to cancel half a Line Nor all your Tears wash out a Word of it.

So, Mr. President, that is the effect of the Neutrality Treaty and the DeConcini amendment. It is there. It is part of history. It is a fait accompli.

The moving finger of history has written, and having written moves on. "Nor all your Piety"—and I think that is an apt word to use under the state of affairs with respect to this effort—"nor all your Piety nor Wit Shall lure it back to cancel half a Line Nor all your Tears wash out a Word of it."

So, Mr. President, it would seem to the Senator from Alabama if the Panamanians took offense at the DeConcini reservation, and they obviously did because they are demonstrating down in Panama right now against it, the matter has not been rectified by this language.

I know the leadership will pass the amendment. There is no doubt about that. I have a couple of amendments to offer to it later on in the day.

It can be passed. As I say, they have control of every word going into the treaty. But not a line of the DeConcini amendment can be changed by any action on this treaty which expires on January 1, in the year 2000.

So this is a sop and a mighty poor sop to the Panamanians. The administration got itself into this difficulty and they are now saying that this will solve things. Well, it will not solve a thing. The Panamanians are expecting the United States to back off the DeConcini amendment when it cannot be done.

This is, as I say, a mighty poor sop for the Panamanians.

Do Senators wonder where the word "sop" comes from? It is something that puts you in mind after the roast is gone, after the meat served at a meal is gone. Then when you sop up the gravy on a biscuit and hand that to the Panamanians, that is what is being given here to the Panamanians. It is not the real thing which is being given to them; it is just a sop to Panama.

I am reminded of something Jesus said in the sermon on the mount:

> What man of you if his son asks for a loaf will give him a stone? Or if he asks for a fish, will give him a serpent?

So, Mr. President, even though the leadership has the power to put this reservation in, it is giving a might poor sop to the Panamanians, because the moving finger has written and it has moved on.

The DeConcini reservation, accepted by the leadership, endorsed by the leadership and the administration, has become a part of history. These little assaults on the DeConcini reservation are going to fall—not by vote of the Senate, because the Senate is going to approve this or anything else that is recommended by the leadership. But what will it accomplish? It will accomplish nothing, because the rights reserved to the United States in the DeConcini amendment will continue to be reserved.

I have two amendments that I shall offer later. I hope that Members of the Senate will register their protest to this reservation, which was negotiated, certainly, in secrecy from the rank and file Members of the Senate, its contents carefully guarded, Members unable to get copies of the reservation.

What did they fear? Was it the bright light of logic? Did they fear that? I rather believe so.

Did they fear the bright light of scrutiny? I believe so.

But the DeConcini reservation, impervious as it is to the leadership amendment in the Neutrality Treaty, will be impervious to efforts in this treaty to water down or to diminish it. It is going to be part of the treaty between the United States and Panama, no matter what we do in this treaty.

I hope that those on both sides will understand that that is the case. I hope the Panamanians, looking for a way out and expecting more than this little sop from the administration and from the leadership, in order to give the Panamanians some reassurance, will vote this amendment down, will vote the treaty down, which would cause the defeat of the Neutrality Treaty and will allow these treaties to go back to the negotiating table so that treaties acceptable to Panama and the United States can be agreed upon. Because, as I see it, neither the people of the United States nor the people of Panama approve of this treaty. I hope the so-called leadership amendment, which was pointed out as being so defective when it was added to the Neutrality Treaty and which is just as defective now, will be voted down by the Senate.

I yield the floor.

Mr. LAXALT. I thank the Senator from Alabama. I yield to the Senator from Utah.

Mr. HATCH. I thank the distinguished Senator from Nevada. I should like to ask some questions in order to establish some legislative history concerning this particular reservation. Maybe I can ask them of the floor manager of the treaty, the distinguished senior Senator from Idaho.

Does this reservation mean that the United States may not use military force to defend the canal?

Mr. CHURCH. No.

Mr. HATCH. Does the United States have the unilateral right, pursuant to this reservation, to send troops to keep the canal open under this reservation, or must the Panamanians agree to such sending of troops?

Mr. CHURCH. Each country, under the treaty, has the obligation to keep the canal open and, in accordance with the terms of the leadership amendments as well as the terms of the pending reservation, that choice can be made by each government.

Mr. HATCH. Can it be made unilaterally is my question; and can we, without Panama's permission, send in troops?

Mr. CHURCH. I think I answered the question.

Mr. HATCH. Specifically, I think I interpret your answer to be that we can.

Mr. CHURCH. The Senator is correct.

Mr. HATCH. If the canal were to be closed and the Panamanians were to be opposed to an effort to send in troops, would this amendment prevent us from sending such troops?

Mr. CHURCH. This reservation does not undo the previous action of the Senate. It clarifies the purpose for which the United States would act. I do not envision a circumstance where the canal was actually threatened, and where the Government of Panama was unable to cope with the character or the magnitude of the threat and did not ask for the assistance of the United States so that both governments could fulfill their mutual obligation under these treaties.

Mr. HATCH. However, in order to establish legislative history here, if Panama were opposed—and that may be hypothetical and probably is, in nature, and I hope so; I hope that they will not be. But if they were opposed to an American effort to send troops to Panama to open the canal, would this reservation prevent us from sending troops into Panama to keep the canal open?

Mr. CHURCH. The answer is no, but the purpose for which the United States would act, and, therefore, the character of its action, would be limited strictly to the obligation that it assumes under the treaty; namely, to keep the canal open,

neutral, secure, and accessible. This is the same obligation that the Government of Panama undertakes. I think it is only reasonable to assume that both governments would act in concert to adhere to their mutual obligation under the treaty.

In fact, if either government refused to keep the canal open, neutral, secure, and accessible, that, in itself, would constitute breach of treaty.

Mr. HATCH. I am glad to have that information. With regard to that precise issue, if American troops land on Panamanian soil solely for the purpose of keeping the canal open, neutral, secure, and accessible pursuant to this reservation, and the Panamanians oppose the landing of our troops, would such a landing constitute an intervention into the internal affairs of Panama?

Mr. CHURCH. I think the answer to that question is expressly written into the terms of this reservation.

Mr. HATCH. What would the answer be, yes or no?

Mr. CHURCH. I quote from the terms of the reservation as follows:

> Any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of this Treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as it purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

Mr. HATCH. That is fine, except that I have added a little element to it, which is that if the Panamanians oppose our entry and we assert that the entry is in the exercise of our rights to assure that the canal shall remain open, neutral, secure and accessible, the language of the reservation in question, would such a landing under those circumstances constitute an intervention into the internal affairs of Panama?

Mr. CHURCH. The answer is "No."

Mr. HATCH. I appreciate the Senator's candor.

If the Government of Panama were to fall under the control of an anti-American dictatorship or other type of political leadership and the quality of service for the transit of the canal declined to the point that, although the canal remained open in theory but closed in essence, would the United States be free under this reservation to open the canal with military force and contrary to the expressed wishes of the Panamanian Government?

Mr. CHURCH. I say to the Senator that it is difficult to speculate on all of the hypothetical situations that may be conjured up. I can only say that whatever may develop will be judged at that time by the Governments of the United States and Panama in relation to the obligations each has assumed under these treaties.

Now, I cannot foretell the future and neither can the Senator from Utah. Therefore, it is impossible for me to answer every hypothetical question.

When the time comes, if it ever comes, and that I doubt very much——

Mr. HATCH. Let us assume the time does come—excuse me.

Mr. CHURCH (continuing). That the United States is called upon to keep the canal open, neutral, secure, and accessible, our Government then will decide whether the facts of the case warrant an action by the United States pursuant to the terms of this treaty.

I cannot speak for any future President. I can only say that he will make his assessment of the situation in the light of the provisions of this treaty and, in compliance with the terms of the treaty, do what he feels is in the best interests of the United States.

Mr. HATCH. I am not asking the distinguished Senator from Idaho to speak for the future, but I am asking him to speak for the present, as the distinguished floor manager of this treaty, and that is, assuming that there is an anti-American government—to make it easier to understand, an anti-American subversive government in Panama, and that because of it considerable service to the canal may not be shut down to the point——

Mr. CHURCH. I will say to the Senator that he now has the floor. I will speak for this reservation on my time, but I am not going to start interpreting what constitutes a shutdown of the canal when he himself cannot define it in a credible manner.

Mr. HATCH. I will be glad to define it.

Mr. CHURCH. The words to which both countries will adhere are controlling. And the words specify that the canal shall remain open, neutral, secure, and accessible.

Those are the test words against which future Presidents will measure any decision or action they might take in accordance with our rights under the treaty.

I will be happy to take the floor in my own right in a few minutes and explain my understanding of this reservation. But I can go no further than the guidelines actually set forth in the treaty, or use words different from the words in the treaty. Certainly, the Senator would not ask me to do so.

Mr. HATCH. I am not asking the Senator to do that, but I am asking the Senator to assist me in formulating the legislative history with regard to this.

But let me move on to the next question.

If the Panamanians are unable to operate the canal, for any reason, would the United States have the right under this reservation to come into the canal and operate it even if the Panamanians oppose our entry?

Would the distinguished Senator from Idaho answer that question for me?

Mr. CHURCH. In the first place, Mr. President, we shall control the Commission that operates the canal from now until the end of the century.

It shall be our responsibility to see to it that Panamanian personnel are adequately equipped and trained to maintain and operate the canal in order to effect an orderly transition at the end of the century.

So I do not envision any circumstance which would leave the Panamanians unable to operate the canal. I think it is an unreasonable and unrealistic presumption.

Furthermore, if the Senator believes that we can operate the canal by moving in the Marines under some fanciful circumstance in the future, then I invite his attention to a recent article in the Washington Post in which our own military authorities point out that neither our own Marine Corps nor our own Army have the competence to do so.

Mr. HATCH. I am willing to accept that.

Mr. CHURCH. Therefore, I feel that the question the Senator poses can be answered in no other way.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Will the Senator yield to me?

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

Mr. HOLLINGS. Mr. President, I learned long ago that when the judge rules with you, do not question the ruling. It is in that spirit that I accept this amendment drawn by the leadership.

I commend the leadership working out the language which would satisfy those who had misgivings about the DeConcini amendment down in Panama, and some of us who have been supportive of the DeConcini amendment up here.

It has been a very tenuous task to get the parties together. I think Senator CHURCH, Senator SARBANES, Senator ROBERT C. BYRD, and Senator CRANSTON have done an outstanding job.

So I intend to support this language. But I think it behooves us at this particular moment in the record to clear the record with respect to the DeConcini amendment. This was really an emphasis of the leadership amendment, and the leadership amendment in turn was only an emphasis of those amendments submitted by the Foreign Relations Committee. They were withheld by the committee at the request of the leadership, although the committee was ready to adopt them.

The genesis of the Foreign Relations Committee amendments dated back to October 14 when President Carter and Gen. Omar Torrijos met at the White House to clarify the misunderstandings. I should remind everyone of the record at that particular time. The chief Panamanian negotiator was stating publicly, and some of his colleagues down there, in the press and the media, that we had no such rights under article IV of the Neutrality Treaty to go in on our own initiative. The question of invitation was what was in issue at the particular time. It was so obscured and confused that it was then that President Carter asked General Torrijos to come by the White House on his return from London.

We sat in the Foreign Relations Committee room that afternoon with Ambassador Sol Linowitz and he submitted then the language of clarification.

At that particular time, it was thought that the language of clarification stating the intent of article IV, would put to rest

all concern. But on that very evening at 8 o'clock General Torrijos on his arrival back in Panama said publicly:

Look, I signed nothing. I didn't even give them an autograph.

It was then that I reduced down to black and white the particular understanding between the President and the general. I did so in the form of an amendment.

Mr. President, I ask unanimous consent to have my amendment No. 9 printed in the RECORD.

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

At the end of article IV of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, add the following: "Panama and the United States assume the responsibility to assure that the Panama Canal will remain open and secure for ships of all nations. The United States and Panama shall, each in accordance with its respective constitutional processes, defend the Canal against any threat to the regime of neutrality and each shall have the right unilaterally or collectively to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal. This shall not be interpreted as a right of intervention in the internal affairs of Panama but as a right of the United States to take such action, military or otherwise, for the sole purpose of insuring that the Canal will remain open, secure and accessible. Such right shall never be exercised against or directed against the territorial integrity or political independence of Panama.".

At the end of article VI of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, add the following new section 2: "The vessels of war and auxiliary vessels of the United States and of Panama will be entitled to transit the Canal expeditiously. This is intended and it shall be so interpreted to assure the transit of such vessels through the Canal as quickly as possible without any impediment, with expedited treatment, and in case of need or emergency as determined by either party to go to the head of the line of vessels in order to transit the Canal rapidly.".

Add the following article VIII to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and renumber accordingly: "The rights and responsibilities under this neutrality treaty shall supersede any obligation or prohibition that the parties may have under the Rio Pact, the Hay-Pauncefote Treaty of 1901, the charter of the Organization of American States and the charter of the United Nation.".

Mr. HOLLINGS. That amendment was joined in over the fall period by the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. GOLDWATER), the Senator from Missouri (Mr. EAGLETON), the Senator from Georgia (Mr. NUNN), and others. We submitted to the Foreign Relations Committee the need for this being understood without any confusion.

The Foreign Relations Committee, in its report, recommended that these amendments be adopted, in their 14-to-1 vote, and then explained in the Foreign Relations Committee report, on page 6, the statement of intent of these amendments, which now, in essence, is a statement of intent of the leadership amendments.

I ask unanimous consent to have printed in the RECORD page 6, page 7, and the top part of page 8, that section of the Panama Canal treaties report of the Committee on Foreign Relations to the U.S. Senate, dated February 3, 1978.

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

STATEMENT OF INTENT

The Committee's intent in recommending the adoption of these two amendments to the Neutrality Treaty is that the Carter-Torrijos Joint Statements of October 14, 1977, be made an integral part of the treaty with the same force and effect as those treaty provisions submitted to the Senate initially for its advice and consent.

The Committee had originally voted to include the Joint Statement in a single amendment which would have added as a new article IX to the treaty. Upon being advised by the State Department—contrary to previous advice—that this placement could require a new Panamanian plebiscite, the Committee voted to reconsider the proposed article IX and voted instead to recommend the addition of that same material, in two parts, to articles IV and VI. This did not represent a "flip-flop"; in each instance the substantive wording was identical to that of the Joint Statement, and each provision—whether placed in one article or in two—would have had precisely the same legal effect, being equally binding internationally. The difference is purely one of cosmetics. If a negligible change in form, with no change whatsoever in substance, could obviate the need for a new plebiscite—an eventuality which could complicate vastly the ratification process—then the Committee concluded that it would happily oblige.

The meaning of these amendments, which together constitute the entire Joint Statement, is plain. The first amendment relates to the right of the United States to defend the Canal. (It creates no automatic obligation to do so. See p. 74 of this report.) It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

The above-described rights are not affected by the second paragraph of the amendment, which provides that the United States has no "right of intervention . . . in the internal affairs of Panama", and which prohibits the United States from acting "against the territorial integrity or political independence of Panama." The Committee notes, first, that these provisions prohibit the United States from doing nothing that it is not already prohibited from doing under the United Nations Charter, which proscribes "the threat or use of force against the territorial integrity or political independence of any state" (article 2(4)). The Committee never supposed that the United States, in entering into the Neutrality Treaty, intended to obtain powers that it had previously renounced. The Committee thus does not believe that the provision in question substantively alters existing United States commitments to Panama.

Second, the prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first. The Joint Statement recognizes that the use of Panamanian territory might be required to defend the Canal. But that use would be for the sole purpose of defending the Canal—it would be purely incidental to the Canal's defense; it would be strictly a means to that end, rather than an end in itself; and it would not be carried out for the purpose of taking Panamanian territory. The concepts of the territorial integrity and political independence of Panama are, in short, an integral part of the treaty, so that action directed at preserving the regime of neutrality set forth in the treaty would never be directed against Panama's territorial integrity or political independence.

For these reasons, use of Panamanian territory to defend the Canal would clearly be permissible under the portion of the Joint Statement incorporated in Article IV. This is made clear in an opinion presented to the Committee by the Department of Justice (hearings, part 1, p. 332):

"A legitimate exercise of rights under the Neutrality Treaty by the United States would not, either in intent or in fact, be directed against the territorial integrity or political independence of Panama. No question of detaching territory from the sovereignty or jurisdiction of Panama would arise. Nor would the political independence of Panama be violated by measures calculated to uphold a commitment to the maintenance of the Canal's neutrality which Panama has freely assumed. A use of force in these circumstances would not be directed against the form or character or composition of the Government of Panama or any other aspect of its political independence; it would be solely directed and proportionately crafted to maintain the neutrality of the Canal."

Finally, even if a conflict were somehow to arise between the two paragraphs, because the United States has the right to act against "any . . . threat directed against the Canal", there is no question that the first would prevail. The rights conferred therein are stated in absolute terms and must therefore be construed as controlling.

The meaning of the recommended amendment to article VI is equally clear. This provision—extracted verbatim from the Joint Statement—confers upon United States warships and auxiliary vessels the right to go "to the head of the line" in an "emergency". What constitutes an emergency, and when one exists, is for the United States and the United States alone to determine. The provision could hardly be more explicit.

Like the recommended amendment to article IV, this amendment, if adopted by the Senate, will become an integral part of the treaty, of the same force and effect as all other provisions. The Committee is informed by the Department of State that the Government of the Republic of Panama has concluded that no new plebiscite will be required for the approval of the two amendments. Together, they comprise the verbatim text of the Joint Statement, which was read by General Torrijos to the people of Panama live on national television three days before the October 23 plebiscite. (See p. 478 of part 1 of the hearings for a list of Panamanian newspapers in which the Joint Statement appeared prior to the holding of the plebiscite.) It thus is clear that the Panamanian people were fully apprised of the Joint Statement prior to the plebiscite, and were accorded a full opportunity to consider its provisions before approving the treaties.

Mr. HOLLINGS. Mr. President, I think that statement of intent was what persuaded the Senator from South Carolina and other to join the Foreign Relations Committee and the leadership in the leadership amendments. So I did not

have any of the feel or understanding that the distinguished Senator from New York (Mr. MOYNIHAN) had about the DeConcini amendment.

I want to make clear my esteem for the Senator from New York. Incidentally, he was one of the first on board. I think in August he received, as we all did, a telegram from the President of the United States urging support for these treaties. If not the first, he was one of the first who wired back that he did support the treaties. His experience in the field of foreign affairs is unrivaled in this body. I know we all have enjoyed his eloquent statements with respect to raising our debate to a higher level, and explaining that the true test of greatness of the United States was not how we treated our strong and mighty adversaries or friends but how, in foreign policy, we treated the weaker of the parties involved. I have followed, with great admiration, Senator DANIEL MOYNIHAN in the statements he has made.

However, over the weekend, I say in the Washington Post of Sunday, April 16, a squib from the DeConcini remarks on the right to protect the canal, and a section from the remarks by Senator DANIEL MOYNIHAN in the Senate on April 13.

Senator MOYNIHAN begins by saying:

We cannot get anywhere by imposing symbolic subjection upon the Panamanians.

I want to try to explain the difference that the Senator from South Carolina has with the Senator from New York on this particular score. I quote from Senator MOYNIHAN:

I suggest that the world will think we have acted from fear. The world will see our effort to impose complex and meaningless and unnecessary conditions on our relations with Panama as the reverse of the Angola coin; because the Senate, when it faced the prospect that some serious opposition might be encountered, would have none of it. The Senate stood up and said one thing after another which at that time visibly was not so—that Angola was just having a tribal civil war. . . . That is what one distinguished Senator described the Soviet invasion of Angola as—a tribal civil war. Nobody in Central Africa thought it was a tribal civil war. They thought it was a Russian invasion. We would not help the people who would face it.

Then he said:

Having shown our fear there, are we not also expressing our fear here? Should we not say we are a confident and decent people?

Farther down, he said:

Why make Panama the object for expressions of fears which should be confronted on their own?

If there are people in this body—and I hope there are—who are fearful of the U.S. position in the world, fearful of the positions of the free nations in the world, concerned for freedom, let us confront that. Let us not sublimate it by imposing upon Panama—friendly, proven, trustworthy Panama—conditions which are inappropriate to a republic.

Let me indicate what I do agree with. I agree that the Panamanians are friendly, that they are proven, and that they are trustworthy. With respect to that, I agree with the Senator from New York. I think, in a way, some of the debate on the floor of the U.S. Senate has been demeaning to the people of Panama.

Yesterday, I was about to join the Senator from North Carolina in elaborating somewhat in the RECORD the historical record. The Senator from North Carolina brought it from 1856 to 1903. I wanted to show that it was we who were doing the reneging, not carying through from 1903 until 1977, when these treaties were submitted; that we had misgivings about the United States' record, not the record of the Panamanians. So I do consider them friendly, proven, trustworthy, and I hope they continue to be. These treaties will make the basis for mutual trust.

I return now to my historian friend, Senator MOYNIHAN. I was in the Senate at the time of the Angola debate. It was a tribal civil war in Angola. In fact, we had dealt with the People's Republic of China, and we had been in there for a year and a half, trying to help a side in the tribal civil war, but we were not winning. The question, after spending hundreds of millions of dollars, was whether we were bogging down into another Vietnam, whether or not we could back a side that could prevail.

But then the Senator goes on with a misstatement of history—because I was in the Senate at the time—by saying, "having shown our fear here."

Our fear is not of Panama. Our fear is not our greatness. Our fear, I believe, is the same as that of the Senator from Nevada (Mr. LAXALT), the Senator from North Carolina (Mr. HELMS), my colleague from South Carolina (Senator THURMOND), and others. It is a fear of the U.S. Congress.

Somebody should tell the Washington Post what is going on in this world. It is the U.S. Congress that the people are fearful of.

I happen to believe that under the present 1903 treaty, repudiated by two Republican Presidents and two Democratic Presidents, we had no chance to protect ourselves.

I favor the new treaties, and I favor the DeConcini amendment, because I have the same fear of this Congress, which the senior Senator from New York (Mr. JAVITS) a moment ago said would dream up some incident to abuse the DeConcini reservation or abuse Panama. I am fearful that there are those in Congress who would dream up some language that would say it was a domestic incident down there and we had no right.

I am realistic enough to know that no language is going to force us in and no language is going to force us out. We cannot jockey here for the exact wording each Senator would want. We all have to agree that no language will force us in or force us out. It depends on the measured judgment at the particular time—the intent, the steel, the determination, and the will of a national Congress.

The lack of confidence in the Presidency has been due to his vacillation, to the frequent change of signals. The lack of confidence in the U.S. Congress is because of its marching up and down the Hill: Do social security, now take it back; do the neutron bomb, take it back; do the B–1 bomber, take it back. People cannot get a focus on the people's representative body.

So, yes, they say now, on this important matter, let there be no understanding, let there be no shenanigans; let them not try to obscure an intransigence down there, such as a failure to operate with a strike, and call it a domestic thing, so that we do not intervene. We will never intervene. I do not worry about intervening down there. We have a tough time getting an honor guard to go to the Unknown Soldier's grave. We do not vote any money to go anywhere militarily. That is my misgiving; that is what I worry about.

But we do not want either an unfriendly government to change the signals or to use a sitdown strike, or something of that kind, to say that we do not have the right.

All Senator DECONCINI has been saying is let us be honest, clear, open, and aboveboard and state it like it is, and like our defense chiefs say they understand it, like the Commander-in-Chief, the President, says he understands it—and not how the Washington Post understands it in its editorial that same day, or how Senator MOYNIHAN understands it, because we are not worried about Panama. We do not say in the DeConcini amendment we are unfriendly to you, or you are not proven, or you are not trustworthy. We say we do not trust ourselves. That is what we are saying.

We would like to see a little bit more steel, more will, more determination and stability within this wishy-washy Congress—a Congress going off in all directions when it comes to our national defense.

I have supported the treaties from the very word "go." I would be glad to debate it. But I thought that the Washington Post and other media representatives running around loose wondering what kind of man is DECONCINI, and he is a freshman, and is he trying to get headlines, and all—I find that totally unjustified and unwarranted, and frankly on the verge of insulting. Somebody should stand up who understands the truth and understands this Congress and who has been here a little while and say, "Mr. Washington Post, and anybody else of a similar mind, we have no fear of Panama. We have no fear of our true greatness. But we are a little worried about the U.S. Congress."

Like Pogo, we have met the enemy and it is us.

And I think that is what DENNIS was trying to tell us all, and I think he told us just as clearly as anybody possibly could, and that does not detract in any way from anyone else.

I support Senator CHURCH and the particular language submitted, and I will be glad to debate it, but I wanted to make a true record.

It was Omar with his own shenanigans, it was Bethancourt, his chief negotiator, and all that other crowd that is listening on public radio who got us into this. We are not playing games. We respect the Republic of Panama as a nation. We respect the people of Panama as a people. But it was some of their own statements

that got us into this particular leadership amendment. The DeConcini amendment, and the clarifications thereof.

And I think in accepting that somewhere, sometime, they should read the record, read nothing less than the statement of intent, 14-to-1, by the Senate Foreign Relations Committee, and they will see what the Senator from South Carolina has in mind in supporting both this particular clarification and the DeConcini amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho.

Mr. CHURCH. Mr. President, a few minutes ago when I returned to the Chamber I heard the distinguished Senator from Alabama quoting from the Rubaiyat. I heard him say:

The Moving Finger writes;
And having writ moves on;
Nor all your Piety nor Wit
Shall lure it back to cancel half a line
Nor all your tears wash out a Word of it.

He was telling us that we could not undo the DeConcini reservation since the Senate had already enacted it and attached to it the articles of ratification of the Neutrality Treaty.

With all respect to the Senator from Alabama, it makes no sense whatever to claim that the Senate cannot enact a reservation to this treaty, which would be controlling on both treaties. We do that all the time. Congress never can take an action on one day that cannot be undone the next.

But that is not the purpose of the leadership amendment. We have not introduced it today either to erase a word that has been writ or to shed any tears over those words.

For more than a week now the DeConcini reservation has been rolling around like a loose cannon on a heaving deck. Everybody has interpreted it in their own self-serving way. Some have even gone so far as to suggest that the DeConcini reservation repudiated our long-standing commitment to a policy of nonintervention in the internal affairs of other countries.

The DeConcini reservation did not do that. The sponsor of the reservation made it celar that was not his purpose. Yet the confusion that emerged was so serious it become necessary for us to clarify the purpose of that reservation as it was intended by its sponsor and by those of us who voted for it.

In other words, Mr. President, it became a matter of cardinal importance to get hold of that loose cannon and fasten it down in its intended place, which is what this leadership amendment is designed to do.

Let it be clear, both from the language of this leadership reservation and from the legislative record being made in this debate, that neither the United States of America nor the Senate has any desire whatever to set aside the policy of nonintervention which we have upheld for more than 40 years. Neither the United States nor this Senate has any intention of calling into question the pledge that Franklin Roosevelt made when he inaugurated a new era in the relations between this republic and our neighbors to the south which became known as the Good Neighbor Policy.

We pledged nonintervention in the internal affairs of any other country in the United Nations Charter, in the Rio Pact, and in the principal treaties involving the members of the Organization of American States.

And we stand by the policy of nonintervention in the internal affairs of any other country. That most certainly applies to the Republic of Panama.

Mr. President, the people of Panama have a reason to be sensitive about this matter. There was a time in the years before Franklin Roosevelt's Good Neighbor Policy when the United States rather habitually interfered in the internal affairs of small countries in the Caribbean and in Central America. Indeed, for many years we did so unilaterally under the sweeping provisions of the Platt amendment by which the United States asserted the authority to move its troops at its pleasure anywhere in Panama, in Central America and in the Caribbean whenever we chose, whenever a government displeased us.

That was the 20th Century version of the Brezhnev doctrine as it is applied today to Eastern Europe. To my knowledge, it is only the Soviet Union, alone among the countries of the world, which today claims the right to move its troops anywhere it pleases in Eastern Europe whenever a government there displeases the Politburo. We saw them do it in 1968 when the Soviet Army moved into Czechoslovakia because the internal actions of the Czechoslovakian Government were not approved in Moscow.

So, Mr. President, far from repudiating what has been the centerpiece of American policy towards Central and South America since the days of Franklin Roosevelt, we hereby reaffirm it, and we do so in words that make it unmistakably clear that the United States shall claim no right to intervene in the internal affairs of the Republic of Panama or to interfere with its political independence or sovereign integrity.

That is the purpose of this leadership amendment. I proudly support it, and I am confident that the great majority of Senators will proudly support it, because it will make clear to all the world that the United States wants no part of the Brezhnev doctrine; and that the United States shall not use its power, as the Soviet Union claims the right to use its power, to interfere in the internal affairs of our neighboring states. That is all there is to it.

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

Mr. CHURCH. That is why I am confident that this leadership amendment will be approved not only in the Senate but in Panama as well. It does, in fact, represent a dignified solution to a difficult problem that arose in the first place out of a misunderstanding we can now correct by supporting this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LAXALT. The Senator from Nevada yields time to the Senator from New Mexico for a question, as I understand it, 2 minutes.

The PRESIDING OFFICER. The Senator from New Mexico has 2 minutes.

Mr. SCHMITT. Mr. President, I generally admire and concur in the remarks of the distinguished leader of this treaty debate, the proponents of this treaty debate, here on the floor, Mr. CHURCH. I think he has stated the fundamental position of the United States very well.

My concern, however, is that, not being an international lawyer, but having only logic as a tool, I see an inconsistency in the reservation that has been presented to us by the leadership and, as I understand it, the distinguished Senator has already indicated that if a revolution in Panama threatened the canal we would have the right to intervene.

My first question is, Is that true?

My second question is, Is not a revolution the internal affair of Panama?

If I read the reservation that actions taken by the United States of America shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama, then I am afraid I do not understand the situation.

I am the last to advocate interference in the internal affairs of any country. But I think if we are going to put a reservation on the treaty we had better have it a consistent reservation. I would like very much to have Senator CHURCH respond and educate me, if he would.

Mr. CHURCH. Well, I respond to the Senator by saying he finds in the language of the leadership's proposal a problem that I do not see there.

It is conceivable, of course, that a revolution could occur. Normally that would not be our affair, and we claimed——

The PRESIDING OFFICER. The time of the Senator from New Mexico has expired.

Mr. LAXALT. I will yield 1 additional minute.

The PRESIDING OFFICER. The Senator may proceed.

Mr. CHURCH. We claim no right to interfere to put down a revolution or otherwise decide for the Panamanians what kind of government they should have. Our only claim runs to discharging our obligation under the treaty to keep the canal open, secure, accessible, and neutral.

If, under some circumstances, the Panamanian Government is no longer capable of doing that, as it has pledged itself to do, then the United States, as the other party to the treaty, reserves the right to do so. But the purpose would be limited to the canal itself and would not be directed toward determining for the Panamanians who shall govern them or what form of government they should adopt for themselves.

Mr. SCHMITT. Mr. President, I think the inconsistency is there whether the Senator sees it or not, and he is concerned about it. Of course, that was the basis for trying to encourage the Sen-

ate to look toward hemispheric management of the canal to remove just these kinds of inconsistencies.

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

Mr. LAXALT. Mr. President, I yield at this time 5 minutes to the Senator from Alaska (Mr. STEVENS).

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, let me state at the outset again I am one who originally sought to find a way to make these treaties acceptable to the people of the United States through amendments, and I find it unfortunate that it is necessary to vote against the treaties because it is my conclusion that they are so ambiguous that they can only lead to a prolonged period of misunderstanding and disputes between the United States and Panama, and that this leadership amendment is one of those things that is going to cause the trouble.

We are again left in the position where we are leaving a legacy to future generations that can be solved only by force.

It seems to me that the very least the United States can do is to assure that the relationships it has with foreign countries through treaties are not subject to misinterpretation or, even worse than that, are not subject to one interpretation in the foreign country and another in our country.

Mr. President, the original DeConcini amendment, which I voted against because it was capable of being ignored that is the Panamanians are capable of ignoring it under their constitutional domestic law, at least stated that the United States independently had the right to take such steps under our own constitutional processes, including the use of military force, to reopen the canal or restore the operations of the canal.

As I said, our research showed that the Panamanians could ignore that. As a matter of fact, I think that is what General Torrijos has done by going to foreign nations with his letter. He has set the stage to ignore it.

The leadership amendment now attempts to amend the DeConcini amendment to the Resolution of Ratification on the treaty that does not become effective until the year 2000. At least that is this Senator's opinion, and I would like to propound a parliamentary inquiry to the Chair.

The PRESIDING OFFICER (Mr. FORD). The Senator will state it.

Mr. STEVENS. Is the neutrality treaty, or the Resolution of Advice and Consent thereto, before the Senate?

The PRESIDING OFFICER. The opinion of the Chair is that it is not.

Mr. STEVENS. I would make another parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Is that Resolution of Ratification, the advice and consent resolution to the neutrality treaty, subject to amendment by an amendment at this time?

The PRESIDING OFFICER. In the opinion of the Chair it is not.

Mr. STEVENS. Then, Mr. President, I am constrained to make a point of order, and I do make a point of order, that this amendment is an amendment to the Resolution of Ratification to the Neutrality Treaty, which has already passed and is not before this body.

I make that point of order specifically on the ground that the DeConcini amendments specifically says that each nation, the United States and the Republic of Panama, shall have the right independently to take such steps as deemed necessary in accordance with its constitutional processes, and this amendment states specifically that it is an amendment to the provisions of this treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, and it is intended to be at least a limitation on the action previously taken by the Senate in adopting the Resolution of Ratification to the Neutrality Treaty, as amended by the DeConcini amendment.

I make that point of order.

The PRESIDING OFFICER. A point of order is not in order until the proponent's time on the reservation has been used or yielded back.

Mr. STEVENS. I ask unanimous consent that it be in order now.

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

The PRESIDING OFFICER. The Chair is prepared to rule.

As the Chair has stated, the Resolution of Ratification of the Neutrality Treaty is not before the Senate. The one on the Panama Canal Treaty is. Under the rules and the precedents of the Senate, the nature and scope of amendments or reservations are not defined and even though his reservation may incorporate the Resolution of Ratification of the Neutrality Treaty by reference, that is not proscribed by the rules.

Therefore, the Chair holds the point of order not well taken.

Mr. STEVENS. Mr. President, I can only say that, having confused the people of Panama before, the Chair has certainly confused them once again. At least he certainly has confused this Senator. I know there will be trouble when they try to translate this amendment to the Resolution of Ratification of the Panama Canal Treaty as it affects the Resolution of Ratification of the Neutrality Treaty into Spanish so that the Panamanians can understand it.

There is no question in my mind but that this is a precedent of the Senate that needs the total consent of a majority of the Senate to understand. I can only appeal the ruling of the Chair, and I do so.

I think it is incumbent upon the Senate to understand that it is setting a new precedent, that if you have two treaties and you have previously acted on one Resolution of Ratification and given advice and consent of the Senate, when the next one comes along all you have to do is hang an understanding as to the first treaty on it, and that is binding on us. Is that also binding on Panama?

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. STEVENS. I appeal from the ruling of the Chair, and I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair would like to state that the Chair's ruling was made as to form and not substance.

Mr. STEVENS. I beg the Chair's pardon; I specifically stated the conflict in substance between this amendment and the previous DeConcini amendment, and pointed out that it specifically amends the Neutrality Treaty. That is a point of order of substance, and not of form.

The PRESIDING OFFICER. The Chair was attempting to state that the Chair is not supposed to interpret possible effect but only to rule as to form.

The question is on the appeal from the ruling of the Chair.

Mr. ROBERT C. BYRD. Mr. President, I think that the Chair is preeminently correct in its ruling. I say so with all due respect—and when I say "due respect," I mean great respect—to the distinguished Senator from Alaska (Mr. STEVENS).

I move that the appeal be laid 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 to lay on the table the appeal from the ruling of the Chair. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Arkansas (Mr. BUMPERS), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE) is necessarily absent.

The result was announced—yeas 74, nays 22, as follows:

[Rollcall Vote No. 111 Ex.]

YEAS—74

Allen	Hart	Metzenbaum
Anderson	Haskell	Morgan
Baker	Hatfield, Mark O.	Moynihan
Bayh	Hatfield, Paul G.	Muskie
Bellmon	Hathaway	Nelson
Bentsen	Hayakawa	Nunn
Biden	Heinz	Pearson
Burdick	Helms	Pell
Byrd, Harry F., Jr.	Hodges	Percy
Byrd, Robert C.	Hollings	Proxmire
Cannon	Huddleston	Randolph
Case	Humphrey	Ribicoff
Chafee	Inouye	Riegle
Chiles	Jackson	Sarbanes
Church	Javits	Sasser
Clark	Johnston	Sparkman
Cranston	Kennedy	Stafford
Culver	Leahy	Stennis
Danforth	Long	Stevenson
Durkin	Magnuson	Stone
Eagleton	Mathias	Talmadge
Eastland	Matsunaga	Weicker
Ford	McIntyre	Williams
Glenn	Melcher	Young
Gravel	Metzenbaum	Zorinsky
	Morgan	
	Moynihan	
	Muskie	
	Nelson	
	Nunn	
	Pearson	
	Pell	
	Percy	
	Proxmire	
	Randolph	
	Ribicoff	
	Riegle	
	Sarbanes	
	Sasser	
	Sparkman	
	Stafford	
	Stennis	
	Stevenson	
	Stone	
	Talmadge	
	Weicker	
	Williams	
	Young	
	Zorinsky	

NAYS—22

Bartlett	Hansen	Schweiker
Brooke	Hatch	Scott
Curtis	Laxalt	Stevens
DeConcini	Lugar	Thurmond
Domenici	McClure	Tower
Garn	Packwood	Wallop
Goldwater	Roth	
Griffin	Schmitt	

NOT VOTING—4

Abourezk	Dole	McGovern
Bumpers		

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 was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I have spoken with the distinguished Senator from Nevada (Mr. LAXALT). It has been agreed between us that the time for the rollcall vote that has just been taken should be divided equally between both sides. I ask unanimous consent that that may be the case.

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

Who yields time?

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Nevada, I yield to the Senator from Massachusetts 6 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 6 minutes .

Mr. BROOKE. Mr. President, let me take just another tack from that that was taken by my distinguished colleague from Alaska. No one knows whether this treaty is going to be ratified, but in the event the treaty is ratified, I think we ought to be as clear as we can be without any ambiguity, if we can avoid it, as to just what is meant by the so-called DeConcini condition.

I think that it is well and proper that we seek to reassure the Panamanian people that no slight to their dignity has been intended during our debate. I personally hold a deep affection for the Panamanian people and understand and sympathize with their desire to obtain legitimate national aspirations. I believe the American people, armed with the facts, will support justified efforts to help the Panamanians achieve those aspirations.

I am troubled, nevertheless, by the intensity of the controversy that has arisen over the so-called "DeConcini condition." As a result of that controversy, on April 11 I wrote the President and asked the following question:

> Under the so-called DeConcini condition does the United States reserve to itself the option to take whatever actions are necessary, including the unilateral decision to use military force on the territory of Panama if necessary, to ensure that the Canal will be available for the passage of U.S. vessels, regardless of whether the threat to the Canal comes from any source external to Panama or from any internal source within Panama?

Last night I received a reply from the President that stated, and I quote, "The answer to that question is affirmative."

Therefore, regardless of what is contained in the language offered by the majority leader today, I believe it is clear that the United States retains the option to use military force on Panamanian territory, by unilateral decision if necessary, to keep the canal open even if the threat is from a source internal to Panama.

To be sure, this is a discrete right, to be exercised in a limited way and for a limited purpose. But it exists and there should be no equivocation about its meaning.

I do not and would not support an interpretation of the "condition" that claimed for the United States a wide-ranging right to intervene in the internal affairs of Panama. We do not intend in any way to challenge the political independence of Panama. We do not wish to control Panamanian affairs. Therefore, I believe the so-called leadership language may be a useful explanation. But I do not believe that it in any way limits our right to take whatever steps are necessary to maintain U.S. access to the canal in the face of a threat from whatever source. As the President also wrote in his letter:

> It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the Canal from any threat regardless of its source.

That is, so to speak, the bottom line.

I readily admit that the "condition" is a unique qualification. It has come about because of a very unique situation. It would be foolish to ignore that this is the case. The United States is being asked to give up title to property that it clearly owns, without recompense. It is being asked to forfeit unique "rights" it presently possesses under a binding international agreement. As I have said previously, I am not adverse to legitimate changes in our relationship to the canal and to Panama. They are needed, they are justified. I will vote for this treaty. But, to say this does not diminish the uniqueness of the situation and the likelihood, indeed perhaps the necessity, for unique initiatives such as the "DeConcini condition."

I personally want to assure our Panamanian friends who are listening to this debate that I, for one, deeply desire a continued close relationship between our two peoples.

I think others of my colleagues, perhaps all of my colleagues, want to do that.

I must admit to no particular regard for the present Government of Panama which follows practices that are inimical to the principles I believe should govern the relationship between a government and its constituents. But to say that I have a dislike for the Panamanian Government is in no way intended as an insult to the Panamanian people. That I would never do, for I deeply desire that the affinity of our two peoples for each other will continue and deepen as we seek acceptable solutions to difficult problems of concern to both countries.

I again want to make it clear that the "DeConcini condition" should be understood by the Panamanians as well as by us to mean that if there is a threat to the canal arising from within Panama, the United States will have the right to go in and keep that canal open. That is what we have said in this "condition." That is what the President says in even more forceful language in his letter, and I think this ought to be understood clearly by the Panamanians, or else we are going to have great difficulty down the road.

I ask unanimous consent, Mr. President, that both my letter addressed to the President, dated April 11, 1978, and the President's letter addressed to me, dated April 17, 1978, be printed in full in the RECORD.

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

U.S. SENATE,
Washington, D.C., April 11, 1978.

President JIMMY CARTER,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: For the past several months, I have tried in my activities relating to the Panama Canal debate to reduce the level of ambiguity and potential for misunderstanding inherent in both of the treaties. While with my colleagues I feel comfortable in claiming a modest degree of success, the events of the past week indicate that the potential for tension and future debilitating rancor between Panama and the United States is high.

I am particularly disturbed over the controversy that has arisen regarding the so-called "DeConcini condition" attached to the resolution of ratification of the Neutrality Treaty. When the Senate acted upon this matter, I believe the prevalent assumption was that Panama had been informed of the substantive nature of the "condition" and had not indicated any deep reservations regarding it. That does not appear to be the case in light of the Panamanian communications to the Secretary-General of the United Nations and Heads of State of various countries.

Now, we are faced with the spectacle of various members of the Senate and the Administration trying to tell the Panamanians that the "DeConcini condition" does not reserve to the United States the option to act unilaterally with military force on Panamanian soil to keep the Canal operating in the face of an internal threat from Panama while at the same time trying to assure various Senators that that is its impact. I do not believe we can act responsibly on this matter and leave the door open to such ambiguity.

Therefore, I would deeply appreciate it if you would provide me with your thinking regarding the following question. Your answer could do much to clear the air on this matter and would indicate to both the Senate and Panama what interpretation the Administration will consider binding.

"Under the so-called DeConcini condition, does the United States reserve to itself the option to take whatever actions are necessary, including the unilateral decision to use military force on the territory of Panama if necessary, to ensure that the Canal will be available for the passage of U.S. vessels, regardless of whether the threat to the Canal comes from any source external to Panama or from any internal source within Panama?"

It would greatly assist me in my decision regarding the Panama Canal Treaty if I could receive an answer to this question before April 17th.

With warm personal regards, I am

Sincerely,

EDWARD W. BROOKE.

THE WHITE HOUSE,
Washington, D.C., April 17, 1978.

Hon. EDWARD W. BROOKE,
U.S. Senate, Washington, D.C.

SENATOR EDWARD BROOKE: I appreciate your thoughtful letter of April 11, raising the question whether the United States reserves to itself the option to take any necessary action to ensure that the Panama Canal will be available for the passage of U.S. vessels. The answer to that question is affirmative.

Article IV of the Panama Neutrality Treaty gives to each of the Parties ". . . the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations" and provides that each Party ". . . shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal." The first "Condition" included by the Senate in its Resolution of Ratification reaffirms this right of the Parties.

In his letter to me dated March 15, General Omar Torrijos noted that, to clear up any confusion in this regard, he and I had earlier prepared a Memorandum of Understanding "which clearly interpreted the unilateral capability of each one of our countries to protect the regime of neutrality against threats, attacks, or a closing of the Canal. . . ".

It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the Canal from any threat regardless of its source.

The correlative part of the Memorandum of Understanding, embodied in the leadership amendment to the Neutrality Treaty, makes it quite clear that action of this character must be confined to the stated objective alone, and that it will not be interpreted as a right of intervention in the internal affairs of Panama.

Thus, the provisions of the Neutrality Treaty are clearly consistent with our existing international obligations concerning non-intervention. We have no interest in or intention of intervening in the internal affairs of Panama. Our position in this regard should be clearly understood in both countries.

I am confident you will agree that the Panama Canal Treaties protect the interests of both parties and that they serve the highest national interests of the United States.

Sincerely,

JIMMY CARTER.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Nevada, I yield the remaining time on this side to the Senator from North Carolina. May I ask how much time that is?

The PRESIDING OFFICER. The Senator from Nevada has 3 minutes.

Mr. GRIFFIN. I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I think it is essential to read into the RECORD a paragraph from the letter of the President of the United States to Senator BROOKE, to which the able Senator has added. I quote:

It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the canal from any threat, regardless of its source.

"Regardless of its sources." I submit, Mr. President, that the President of the United States has, in fact, with those words, introduced a new element into the debate by including the phrase "regardless of its source."

At least he is candid to that extent, but he is not quite so candid, I would say to the Senator from Massachusetts, when he says that such intervention will not be interpreted as intervention in the internal affairs of Panama.

Now, I anticipate that the Panamanians will interpret this differently. I pray, of course, that the objection to this flawed treaty will not result in violence in Panama. But this treaty is an engraved invitation to agitators. This Senate will make a grievous mistake if it does not send these treaties back for renegotiation.

Mr. President, here we are in the final day of debate on the Panama Canal treaties, and this reservation, submitted so late, in such a state of frenzy, and drafted in such secrecy, shows clearly that we are no nearer to a consensus on the meaning and importance of the treaties than when we started. It is still the generally accepted wisdom that the decisions of two or three Senators today, the last day, will decide the ultimate disposition of the matter.

Mr. President, why is it that the President of the United States, the entire foreign policy apparatus, the power structure of academics, businessmen, and bankers, and the most powerful voices of the media have been unable to convince the American people that these treaties are in the best interests of the United States? Why is it that in the last 2 weeks or 10 days that even the supposed beneficiary of these treaties, the Republic of Panama, has balked at accepting the work of the Senate?

The fact is, Mr. President, that these treaties are still under a cloud. They originated under a cloud, they were negotiated under a cloud, they have been debated under a cloud.

The result is that it will be virtually impossible for the United States and the Republic of Panama to work out a mutually acceptable and productive relationship, whether the treaties pass or whether the treaties fail. The threat of violence and disagreement was the ostensible reason for negotiating these treaties; yet the threat of violence and disagreement still hangs over the future, even if the treaties are ratified.

The Senator from North Carolina was one of the first Senators to visit Panama after the treaty drafts were announced. On August 19, when I arrived at the airport, the press asked why I had come. I said then, and I repeat it now, that my intention was nothing but that of good will toward the Panamanian people. I said that I stood ready, should the treaties fail, to work together to help the Panamanian people; that, indeed, opposition to the treaties was not to be interpreted as hostility toward the Panamanian people.

I repeat that today because I feel that these treaties are not in the best interests of the Panamanian people. If they fail today, there will be bitterness and disappointment, and it will be difficult to pick up the pieces. But if the treaties are ratified, it may well be the beginning of the disintegration of Panamanian freedom and independence.

For it has already been demonstrated that the treaties are fatally flawed. There is already bitter disagreement between Panama and the United States as to the meaning and interpretation of the most significant passages. Once the treaties go into effect, should they be ratified, the practical application of these terms and requirements will inevitably continue, destabilizing Panamanian economic and social structures. I have demonstrated on this floor that Panamanians will lose jobs, not gain them as a result of the treaty. And when this new unemployment is added to the present economic stagnation, the climate will be ripe for political agitation.

Why are these treaties under a cloud? Why are they fatally flawed? They are fatally flawed because there has never been a meeting of the minds on the fundamental problem, which is the transfer of sovereignty. Now I realize that the notion of sovereignty has been ridiculed on this floor from the beginning, as something of no importance. But if the treaties founder, they will do so because that issue was never resolved. Sovereignty was not the issue, we were told over and over again; yet it is the issue upon which, even if the treaties succeed, we will come to grief.

For sovereignty is the question of ultimate power. It answers the question: Who has the right to decide what actions may take place within a defined territory? As long as the United States is free to exercise all the rights of a sovereign within the territory of the Canal Zone, there was no doubt that we could do whatever was necessary to defend it. There was no question of intervention in the internal affairs of Panama. There was no question of violating the territorial integrity of Panama.

But the moment that the United States surrenders its sovereign rights, then every thing that we do, every action, is subject to the will of Panama. It is as simple as that. When Panama is sovereign, Panama decides.

At the root of the problem is a fundamental unresolved contradiction that our negotiators failed to solve. The treaties are an attempt to paper over that contradiction.

The ultimate issue in sovereignty, of course, is the right to use force. That is what sovereignty is all about. There may be disputes about actions of a lesser level, but in the end, they come down to the issue of who has the right to use force.

The treaties attempt to pretend that there will never be any division of opinion between the United States and Panama on how the ultimate right to use force will be exercised. But that is an absurd supposition It is an insult to the people of Panama. It assumes that they will be forever subservient to the desires of the United States.

That is why the people of Panama have been so disturbed over the past few

weeks. The United States has made it clear that, despite the pretence of handing back sovereignty, we intend to keep the ultimate right to use force, even against the Panamanian people if necessary. There can be no other interpretation.

The President of the United States has said in writing that we intend to use force against any threat to the canal. I repeat, against any threat to the canal. From the standpoint of the United States, I applaud his intention; but from the standpoint of the people of Panama, it can only mean that the President of the United States intends to use force against the people of Panama if the President decides that the people of Panama are the threat.

Let us not pretend that it does not mean that. It does mean that. The DeConcini reservation simply makes manifest what is implicit in the formula of the treaties. The DeConcini reservation brings out into the open what is merely implied. And the attempt of the leadership to hide the true meaning of the treaties does a disservice to the people of the United States and the people of Panama.

The Senator from North Carolina knows full well that some of his colleagues have adopted a cynical attitude. They have been saying to him privately that the problem is not in the concept of the treaties, but in stating it openly. In other words, they say that it is all right for the dictator of Panama and the President of the United States to have a private understanding that the United States has the right to exercise the ultimate sovereign power of force, but that it is wrong to state it in writing.

Indeed, when the Senator from North Carolina spoke to President Lakas of Panama, even President Lakas attempted to make the same proposal.

But the Senator from North Carolina rejects that concept as unworthy of two great nations, one large, and one small. It can only be described as deception. Furthermore, it is a violation of every international agreement that we have ever signed. Indeed, Panama is absolutely right in asserting that the DeConcini reservation is a violation of the U.N. Charter, the Rio Pact, and the OAS Charter. But if the DeConcini reservation is such a violation, so are the basic treaties if you make their implicit logic explicit.

Nor is the Senator from North Carolina raising this issue belatedly I raised it in the hearings of the Senate Armed Services Committee, and received replies from Admiral Holloway that made it crystal-clear that our military leaders had an imperfect understanding of our rights under international law. I am almost embarrassed to read his reply. He said:

> The relationship of the Canal to the national security of the United States is such that the independent introduction of military forces into the territory of Panama by the United States in response to a reasonably perceived threat to the neutrality of the Canal, likewise would constitute a reasonable exercise of the inherent right of individual self-defense by the United States and so would be permitted by the (UN) Charter.

Now I want to make it clear that I agree wholeheartedly with the sentiment that the canal is so important to the national security of the United States that defense of the canal is tantamount to the defense of the United States. But the point is that we are hamstrung in exercising such defense once sovereignty is turned over to Panama because of other agreements which take precedence over the Panama Treaty, namely, the UN Charter and the OAS Charter. I think that it was unwise to agree to the restrictions of the UN and OAS Charters; but we did agree. If we are going to keep our word, then Admiral Holloway's reply is sheer nonsense.

Nor did the Senator from North Carolina fail to attempt to highlight the fundamental contradiction in the treaties. On the very first day of debate, I introduced a substitute for the leadership amendment to the Neutrality Treaty, a substitute that would make explicit our right to intervene. When that substitute was debated, I pointed out that only by such explicit language, agreed to by Panama, could the right of intervention have the color of legality. In a lengthy colloquy with the distinguished Senator from Utah, Mr. HATCH, the whole issue of sovereignty, intervention, and their relationship with our international obligations was developed at length and in detail for the edification of the Senate.

The Senator from North Carolina proposed the retention of an enlarged Galeta Island base under the terms of the 1903 treaty; such a base would have preserved the sovereign jurisdiction of the United States, including the sovereign right to use force, without violating the internal affairs of Panama. But the Senate, in its apparent wisdom, also turned that down.

During the debate on the final passage of the Neutrality Treaty, the Senator from North Carolina warned that the leadership amendment failed to meet the problem posed by the transfer of the exercise of sovereignty back to Panama. I stated at that time:

> Once the transfer takes place, then the United States has no right to assert its interpretation of treaty rights over another sovereign state. The Senator from North Carolina pointed out that our obligations under the United Nations Charter, the Rio Treaty, and the OAS Charter precludes us from using force or the threat of force for any purpose except individual or collective self-defense. Since the Canal will no longer be defended as part of U.S. territory, it is manifestly absurd to hold that we could defend the canal as part of our own self-defense; we could only defend the canal as part of collective self-defense with the Republic of Panama.
>
> Once the canal falls under Panamanian sovereignty, then Panama is the sole judge of any treaty right or of any interpretation of the regime of neutrality. The Treaty proponents are in the position of claiming that the United States has the unilateral right to invade the territory of another nation in order to assert our own interpretation of a treaty right. . . .
>
> In any case, the introduction of U.S. troops into the territory of Panama, without Panama's permission, in order to assert our interpretation of the treaty would be a blatant violation of Panama's territorial integrity and Panama's political processes. Whatever political process Panama would use to come to her interpretation of the impact of the treaty on events or situations on her sovereign territory obviously would be violated.

Mr. President, the issue remains unresolved today. The President has written to the distinguished Senator from Massachusetts, and he attempts to assert both sides of the contradiction at the same time. He says, and I quote:

> It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the Canal from any threat regardless of its source.

That is what the President of the United States says: Any threat. Any threat. The President does not exclude threats which arise from the internal affairs of Panama. The President does not exclude threats which arise from within the integral territory of Panama. How can he exclude such threats? Is it not possible that such threats may be the most likely of all threats?

So the President is not excluding actions when the threat arises from Panama's internal affairs.

Nevertheless, the President has not abandoned the agreed-upon doubletalk. He says:

> The correlative part of the Memorandum of Understanding, embodied in the leadership amendment to the Neutrality Treaty, makes it quite clear that action of this character must be confined to the stated objective alone, and that it will not be interpreted as a right of intervention in the internal affairs of Panama.

What the President is saying is that any intervention in the internal affairs of Panama for the sake of defending the canal will not be interpreted as an intervention in the internal affairs of Panama.

Well, of course, the United States will not so interpret our intervention in the internal affairs of Panama; but can anyone have any doubt that Panama will interpret it as an intervention in the internal affairs of Panama?

The terms of the argument are contradictory. The President is trying to reconcile two opposites by declaring that they are not opposites. But the two propositions are mutually exclusive. And if the Senate of the United States attempts to assert both propositions at the same time, our whole relationship with Panama inevitably will come to grief.

It is far better to have the language explicit, rather than attempt to sort things out later when our only choice would be to use force against Panama. Our only choice would be the much discussed "gunboat diplomacy." Unless of course, we simply surrendered our rights and our best interests and withdrew.

Therefore, no one is doing a favor, either to the people of the United States or to the people of Panama by insisting that the right to intervene against "any threat regardless of source" does not include threats whose source is the internal affairs of Panama. Of course it includes threats from Panamanians. Of course it includes threats that arise from social conditions, including strikes, riots, and demonstrations. Of course it includes intervention against any decision

of the Government of Panama that threatens the operations of the canal. What else could it mean?

And if it does not mean these things, what good does it do to issue a declaration that intervention against any of these internal affairs will not be interpreted as intervention in internal affairs? I submit that the President of the United States has, in fact, introduced a new element into the debate by including the phrase "regardless of its source." At least he is candid to that extent; but he is not candid when he says that such intervention will not be interpreted as intervention in the internal affairs of Panama.

That phrase "any threat regardless of source" may well be sufficient reason for Panama to reject the treaty, in whole or in part, either now or in the future. There is no way in which any person who understands the English language can interpret that as a nonintervention pledge. Rather, it is the opposite; it is a pledge to the people of the United States that the United States will intervene in Panama.

So, Mr. President, I say again that if this Senate acts with wisdom, it will return these treaties to the negotiating table so that we can come up with a solution that will be acceptable to the Panamanians and acceptable to the American people, 72 percent of whom are in strong objection to these treaties.

The PRESIDING OFFICER (Mr. RIEGLE). Who yields time?

Mr. CHURCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, earlier in this debate I spoke to the leadership amendment and emphasized that its purpose was to underscore the fact that the United States remains firmly committed to a policy of nonintervention in the internal affairs of the other countries of this hemisphere.

I alluded to an earlier policy of the United States, often described as the gunboat diplomacy of the 1920's, and also to the mentality of the Platt amendment through which we sought to enforce our authority inside Panama whenever we chose to do so.

Mr. President, the Platt amendment was repealed by the Congress of the United States in 1934.

Ever since that time, consistent with the Good Neighbor Policy enunciated by Franklin Delano Roosevelt, the United States has firmly committed itself to respect the rights to self-determination of our neighboring countries.

But I did not mean to suggest in my earlier remarks that the United States alone practiced a policy of interventionism in the early years of this century.

I think that Ambassador Jorden, the U.S. Ambassador to Panama, put this whole matter in proper perspective when he testified before the Foreign Relations Committee. I think his testimony ought to read into the RECORD at this point. This is what Ambassador Jorden had to say on the sensitive question of interventionism, as it is seen by Latin Americans:

Now, intervention in Panama and in the minds of the Latin Americans has a very special meaning. When Latin Americans think about intervention they think of foreign troops coming in, killing their people, removing their government or replacing their government, taking over and running the show, and that is the context of intervention for the last 50 years in Latin America.

They remember the Spanish, they remember the French in Mexico, they remember Haiti and Nicaragua and all the rest of it. When they talk about intervention that hits a very sensitive nerve and it is bloody difficult for any Panamanian to say, "Yes; we have given the United States the right to intervene."

Now, when we are talking about intervention we are talking about a very different thing. We are talking about fulfilling a specific treaty obligation to protect the Panama Canal, not to destroy Panama or replace the government but to protect that canal. I think that most Latin Americans would not have any problem with that because the canal is important to them, to Peru and Ecuador and Nicaragua. All these countries that use the canal want to have it protected, want to have it open and safe, and would be quite happy if the United States did protect it.

Now, the Ambassador said everything that needs to be said on this score and, clearly, this is what the language of the leadership amendment accomplishes.

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

Mr. GRAVEL. Will the Senator yield to me?

Mr. SARBANES. Mr. President, how much time is left to the managers of the bill?

The PRESIDING OFFICER. The Chair would advise that the managers of the bill have 7 minutes remaining.

Mr. SARBANES. We need to reserve about 5 minutes. I yield 2 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska (Mr. GRAVEL) is recognized for 2 minutes.

Mr. GRAVEL. Mr. President, just briefly, when the heads of state came to Washington to witness the signing of the treaty by Jimmy Carter and Omar Torrijos, we Senators had a reception in the Russell Office Building, a luncheon, to receive these gentlemen.

I was fortunate enough to be seated at my table next to the President of the nation of Colombia, whose name is Lopez Michelsen.

I was struck by the intellect of this gentleman and felt very proud to be associated with him. I was impressed that South America would have this kind of a leader.

I had previously met Carlos Andres Perez of Venezuela, who I thought was similarly a great intellect and a great leader.

So I would like at this time to have printed in the RECORD a statement made by President Michelsen with respect to the issue of intervention at the recent dedication, in the last few days, in his country, and it deals with the subject most cogently.

I think it is something that should be part of this RECORD because of the fine statements already made by others.

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

SPEECH BY PRESIDENT MICHELSEN

(Excerpts of speech delivered by the President of Colombia, Alfonso Lopez Michelsen, on Sunday, April 16, at a ceremony of the laying of the cornerstone for the museum Jose Eliecer Gaitan, named after the liberal leader assassinated in Bogota, Colombia, during the signing of the "Bogota Charter" also known as "The Charter of the Organization of American States," which spell out very clearly the principle of nonintervention.)

President Lopez Michelsen praised Gaitan's opposition to any type of intervention and the adoption by OAS of the "Charter of Bogotá", under which for the last three decades the right of non-intervention by a foreign power is guaranteed.

"Gaitán's struggle", he said, "was not against the United States, but against the type of imperialism, that we, as Latin American countries, have to stand united against."

"What a strange coincidence that precisely when we are commemorating the end to the unilateral intervention of the United States in our countries, an amendment of the U.S. Senate, in the treaties that set forth the autonomy and sovereignty of Panama, would want to protocolize again, after 30 years, the U.S. right to intervene in our territories."

He advised the foreign powers not to set foot on "the sacred soil of Latin America." (Quote: "That the foot of a foreign country never be set on the sacred soil of Latin America.")

"It can't be that today under the pretext of assuring transit through the Canal, or tomorrow under the pretext of fighting drug traffic, or the day after tomorrow in the name of man's right against one or other ideology, it is justified that a country, unilaterally, acquires the right of intervention."

Mr. GRAVEL. I ask unanimous consent to have printed in the RECORD a statement made by the Prime Minister of Great Britain, James Callaghan, as to the interest that his nation places with respect to Panama.

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

STATEMENT BY BRITISH PRIME MINISTER JAMES CALLAGHAN

Britain has vital interests in the Panama Canal. Our ships are the second largest users. We have made an exhaustive study of the texts of the new treaties, which we unreservedly support as a permanent and stable solution to the future of the canal.

In our view, the treaties will insure the maintenance of the canal as a major international waterway, free and open to all nations.

Mr. GRAVEL. Mr. President, how much time do I have?

The PRESIDING OFFICER. Fifteen seconds.

Mr. GRAVEL. I do not think I can read what I have in 15 seconds so I will try to get another 15 seconds or a minute later on in the discussion.

I thank my colleagues.

The PRESIDING OFFICER. Who yields time?

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana (Mr. MELCHER).

PANAMA'S SUCCESSFUL ECONOMY AND THE IMAGE OF THE UNITED STATES IN LATIN AMERICA

Mr. MELCHER. Mr. President, although I am one of the minority who opposed the Neutrality Treaty and who, therefore, opposes this treaty, I have asked for this time to summarize my concerns on economic matters of Pana-

ma operating the canal as contrasted with our image in Latin America.

Many supporters of the treaties expound that a strong and powerful United States can demonstrate its greatness by giving all of the canal facilities to Panama, and they espouse it as the proper act for us to salvage or enhance our prestige in Latin America. Accompanying that proposition is the administration admonition that there should be no strings attached, no amendments to the treaties other than those of Baker-Byrd, and no reservations of substance such as the DeConcini reservation. Can the assumption that this gift to Panama will enhance our image in Latin America bear analysis?

It is not my purpose to argue ownership, sovereignty or the propriety of the 1903 treaty. The facts concerning these three points are relevant, but they are not the central issue concerning the adoption of the treaties.

There are several points that I would stipulate to in the old or new treaties. Our original purchases of the land in the Canal Zone—both from the individual owners of parcels of land (about one-third of the total), and the balance from the Government of Panama—may have been at prices that were too cheap. I would have further stipulated that the annual return to Panama for the operation of the canal and the Canal Zone should be much higher and that the restricted use of the land within the Canal Zone has been unreasonable and harmful to Panama. These stipulations could and should have been remedied more than a generation ago. The treaties do correct those inequities in a strange mixture.

Gradually over the next several years we give up control of the land in the Canal Zone. Likewise, gradually over the next several years we give up control of the canal's operation but continue for 22 years to participate in the management. During this period of time—22 years—we provide funds for Panama to assure—I repeat—to assure—make certain—guarantee, if you will—that the canal's operation will be efficient and effective. So the economic and land injustices for Panama are corrected.

If there were no more to the treaties than that, or if the treaties provided some form of a beneficial partnership for Panama and the United States beyond 1999, I would not fault them—I would vote for them. But there is much more.

Under the treaties, after 1999 we cannot participate in the canal's operation. This apparently is the price we are to pay for Panama to accept the complete ownership of the canal's facilities, the railroad, the buildings, homes, land, and military facilities. In 1976 dollars the fair market value of all of this is $10 billion. We will further assist in military sales of $50 million; help in up to $200 million of Export-Import Bank credit; $75 million in housing guarantees; and participate in $20 million through the Overseas Private Investment Corporation. There will be $43 million cost to us for transfer of military, and $165 million spread over 20 years for early retirement of Canal Zone employees.

Will this generosity be an enhancement of our prestige in Latin America? To turn over the $10 billion in assets to provide the other monetary assistance, it is rationalized by the administration, will show how strong and fair a nation we are.

Actions of benevolence by the United States during the past two decades have not necessarily enhanced our world prestige, which has slipped during this era while we have been generous with foreign aid. It is an old axiom that one cannot buy friends, and our foreign aid efforts in Latin America have borne that out.

The per capita value of all that goes with the treaties is about $6,000 for every man, woman, and child in Panama. Naturally, the individual people will not see much of it, because the bulk is in assets connected with the canal's operation. They have benefited from that operation and will continue to do so. The per capita loss to each man, woman, and child in the United States of about $46 will not be felt directly, because the canal for us has been a principal asset only in the sense of facilitating world commerce—an indirect but important benefit and, therefore, if the canal continues to operate efficiently, the benefit continues, and no actual loss is felt by Americans.

For the Panamanian people to benefit in the long run from the canal depends on its continued successful operation in the future. It is at this point that I believe the treaties falter and demonstrate not U.S. strength, but clearly demonstrate weakness in our lack of practical planning and our willingness to subjugate ourselves to the clamor of the administration that beyond 22 years there should be no concern about the canal.

That argument—after 22 years everything will work out fine—is a very tempting lyric from a tune orchestrated by the entire administration. All of us in the Senate have extremely pressing problems for our individual States. Indeed, collectively Congress and the administration are well aware that our own domestic problems are so grave and urgent that we should not be spending great amounts of time on the Panama Canal Treaty debates while the U.S. economy stagnates, basic American industries founder, the dollar shrinks from inflation, and millions of Americans cannot find a job. So the temptation of the treaties is to say "yes" and get them behind us. But that, I believe, is the true weakness of the United States—the willingness of the executive branch—three Presidents—and their State Department to concede unreasonably, to believe that all will work out for the best in the treaties, and to assert that the cash and canal assets turned over to Panama will show us to be a truly strong nation.

Their faulty concession is that U.S. money backup and comanagement is essential for 22 years, but after 1999 neither will be required at all. We are dealing with a small country under a pretty tough dictator. Panama surely does not now have the economic base to operate the canal efficiently without our help.

It takes patience and persistence by us to work out long-range practical comanagement of the canal with Panama. Both sides of the negotiators—probably for political reasons—bargained and stalled for years and never reached a reasonable comanagement arrangement. The politics on the Panamanian side involved the symbolic removal of the United States from their country—get out, period. Getting rid of us has become the focal point for General Torrijos' national guard to gain a "liberation" image that helps their control over Panama. For the United States to abruptly abandon all interest or participation in the canal would be a startling event for individual Americans. Hence, the limbo period of 22 years of comanagement. It is a "Catch-22"—long enough so Americans are not to worry about what happens to the canal's operation after that, and short enough so the Panamanians can see complete control of the canal without a U.S. presence.

It has been argued by some on one side of the issue that there is a threat of Communist takeover by Cuba or Russia. It has been argued by some on the other side that failure to agree—here and now—to these treaties precipitates another "Vietnam" requiring 100,000 or 200,000 American troops guarding the canal. There is neither any sign of a Communist takeover nor a new "Vietnam." For Cuba, Russia or any aggressor to disrupt the canal's operation brings down the solid wrath of all the world's countries that use the canal. As for the "new Vietnam" argument, that assumes the Panamanians have given up on negotiating and have reversed their generally peaceful nature to become warriors without weapons to destroy that which provides their best economic base—the canal's operation itself.

Rather than view a form of comanagement of the canal as an infringement on the country of Panama, I view it in a business sense, as the sensible procedure to help Panama in a meaningful way. For the very same reasons that continued financial help for Panama is necessary for 22 years to operate and maintain the canal, we need some arrangements for the same joint responsibility after 1999.

Panama has attracted foreign capital through banking and insurance laws that are looser than most countries. They have attracted foreign capital for other reasons—principally because of their close ties to American business with the solid backing of the U.S. Government. Panama's share of U.S. investment in the Latin American Republics is 42 percent. That is the lion's share. Almost half of all business investment by U.S. interests in Latin America is in Panama. It amounts to $1.8 billion. That is, indeed, close business ties between Panama and the United States.

The Panamanians argue that with the treaties they will be on even more solid ground for continued opportunities to secure outside capital. However, it is important to note that Panama is overextended now, paying 28 percent of their annual revenue for interest due on their debts. They, in particular, need the financial gains the treaties guarantee

them to even hold their own shaky economy together.

If foreign investment at decent interest rates are to be available for Panama over a period of time, the complete absence of American participation in the canal's operation will be a disadvantage to Panama's credit. Efficient operation of the canal is the cornerstone of Panama's economy, and assured financial backup for effective maintenance and management is their best collateral to attract capital. That is the basis to attract long-term, long-line credit, which has been available to Panama partly—or, perhaps, largely—because of its close ties to the United States. With annual annuities and other funds backed by the U.S. Government for 22 years, Panama's credit for that period of time should be good. After 1999, without the financial backup from the United States and without our comanagement of the canal, the Panamanians are less likely to attract outside capital to expand their economy.

I believe world bankers, as a group, are more conservative and careful on investments than most of us, but I ask of you: Would any of you care to invest in long-term bonds for Panama to mature after 1999? In short, I believe that the business world outside of Panama and the business community within Panama rely on the backing of the United States both for credit and for a responsible government in Panama and, from that, a growing economy can possibly be nurtured.

The existing government under General Torrijos' national guard denies so much that is basic in a democracy that I believe their government will either be deposed or gradually reshaped. Torrijos has succeeded for 10 years, because of our solid backing. Substantial U.S. backing cannot continue if Torrijos and the national guard continue to deny democratic elections, an independent judiciary, and a government run by fairly elected officials rather than elections rigged by the national guard, and government officials subservient to the national guard.

The treaties do not affect that directly but, because they do not continue a form of active cooperation in the canal's operation after 1999, there is a likelihood that U.S. business investment will decrease then. Since the canal is the basic part of Panama's economy, any slippage in its efficient operation damages them first in lost revenue then, second, in credit rating. Inadequate funding works against the best interests of the canal's operation. We share that interest with the rest of the world who use the canal.

We have a special relationship with Panama, because of our development of the canal and our responsible operation of it. Although we have negotiated with Panama for a long period of time to reach the point where we now are, in my judgement the treaties do not produce a satisfactory long-term arrangement with and for Panama.

With more negotiation there is every reason to believe the treaties could become a firm and productive arrangement between Panama and ourselves. As they are, Panama receives a big gift but we, by the treaties terms, remove our backing and all responsibility after the year 1999. That gift and withdrawal is not necessarily a sign of strength. Rather, it would be a stronger United States that patiently but pointedly renegotiated arrangements with Panama to back up, assist and participate in the continued management of the canal's operation.

Negotiations to reach such a treaty would provide a sensible, sound leadership position helpful more to Panama than ourselves. That would provide an assurance of continued efficient operation of the canal, basic to Panama's economy, and an important advantage for world commerce, which is of great significance for all of Latin America—probably more beneficial to them collectively than to us.

But, then, that is the true sign of greatness and that is what is now lacking in the treaties.

Renegotiated treaties could retrieve it for us.

Mr. President, if I have any time remaining I reserve the remainder of it.

The PRESIDING OFFICER. The Senator is advised that he has 2 minutes remaining and it is so reserved.

Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Illinois seek recognition?

Mr. PERCY. Mr. President, will the Senator yield 1 minute?

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Chair advises that the proponents of the amendment have 5 minutes remaining and the opponents have 1 minute remaining.

Mr. SARBANES. I yield 1 minute.

Mr. PERCY. Mr. President, I supported the DeConcini amendment.

The pending reservation before us now does not diminish the DeConcini amendment, or anything else in the treaty, as many Senators opposing the treaties have been arguing. In my judgment, it simply interprets what we mean in the treaties. It states that our purpose in taking any action will be to keep the canal open, not to intervene in the internal affairs of Panama.

This is a clarification, not a weakening of the treaties or the DeConcini amendment.

I am pleased to be a cosponsor of the reservation.

Mr. President, I indicated I would support the treaties only conditioned upon our accepting amendments that would make it possible for U.S. warships in perpetuity to go to the head of the line and that would make it possible to protect the neutrality of the canal from outside intervention at any time there was a threat to the canal. I think the leadership reservation improves the DeConcini amendment by clarifying that the objective and purpose of all of us, including Panama, is to keep the canal open. The United States stands ready to help and assist in that regard, whenever it is threatened, working in partnership with Panama.

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

Mr. SARBANES. Mr. President, I yield 1 minute to the Senator from Arizona.

Mr. DECONCINI. Mr. President, I support the leadership amendment.

I am rising to speak, Mr. President, on behalf of an amendment to the instrument of ratification which bears the name of the majority leader, the minority leader, a number of other distinguished Senators, and myself. This amendment is designed to clarify a few very simple concepts that apparently have been misunderstood by the Panamanians and some Members of this Chamber. The misunderstanding centers around what has become known as the DeConcini amendment to the Neutrality Treaty.

Let me begin by indicating that I have approached these treaties negatively from the outset. After my visit to Panama which included numerous discussions with Panamanian leaders, including General Torrijos himself, I came away with the very distinct impression that Americans and Panamanians had radically differing perceptions of these treaties and the rights they conferred on the United States and Panama. Since that time, I have stated publicly and privately that I would not support the treaties unless certain questions were satisfactorily answered. Of most concern to me was the Americans' right to keep the canal open after the year 2000 should it be closed for any reason.

I should add that I have never been an opponent of the idea of new treaties with Panama. I sincerely believe that our relationship with that nation needs to be redefined in order to reflect the changed values of the 1970's. In all too many ways, the present treaty arrangement reflects a bygone era.

However, I have also felt that any new treaties must protect the special and historic American interests in the canal.

Quite frankly, Mr. President, it was my intention to vote against these treaties, although I held out the option of voting "yea" if certain changes could be incorporated. It was not until it became apparent to the administration that my vote might be crucial that serious overtures were made to accommodate these concerns. After a period of serious negotiations with the administration in which the Senate leadership played a key role, agreement was reached on both the form my amendment would take—that is, as a condition to the instrument of ratification—and its content.

Although there have been conflicting reports on this point, it appears that the administration may have been unaware that the wording of the DeConcini amendment would cause profound consternation in Panama. At least, we can say for sure that on March 16, none of us in the Senate believed that it would cause much protest from the Panamanians. And the reason for this is quite simple. The DeConcini amendment asserted no right that had not already been asserted in the report of the Foreign Relations Committee. On page 6 of that report an unequivocal American right to use force to protect and defend the canal was clearly stated to be the intent of the

"leadership amendments." At one point, the report says:

The United States has the right to act as it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

In other words, Mr. President, the DeConcini amendment in no way sought to go beyond the rights already asserted by the Senate Foreign Relations Committee. My amendment was specifically addressed to the question of whether those rights were actually conferred by the language of the treaty itself and the subsequent leadership amendment. In my view—and in the view of a number of my Senate colleagues—the actual language was insufficient to sustain the rights asserted. Thus, we sought at the time to remedy the situation, not by creating any new rights, but by less ambiguously stating those rights we were told by the Foreign Relations Committee already existed.

The amendment we have before us now is an attempt to reassure the Panamanian people that the United States is not asserting, nor has it ever asserted, a right to intervene in the internal affairs of Panama. I would like to reiterate my words at the time the original amendment was introduced and passed:

I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation. My amendment to the resolution of ratification is precautionary only; and it is based on the long history of American stewardship of the Canal. It recognizes the very special relationship that the Panama Canal has to American security. I certainly hope that if this right is attached to the treaty it will never need to be exercised. Yet, it is important that the American people know that should the need arise, the United States has sufficient legal sanction to act.

It is unfortunate that so many Panamanian people and their leaders have misconstrued the original DeConcini amendment. I believe that the misinterpretation may, in part, have been the result of considering the amendment in the context of a sometimes intemperate Senate debate on the canal treaties. In the heat of debate, we have occasionally used phrases or words that do not truly reflect the high regard we have for the Panamanian people and the respect that we have for every sovereign state. That, however, is the price we pay for openness and democracy. I sincerely believe, Mr. President, that not viewed in the context of this debate, the Panamanian people surely would not have reacted as they did to my amendment.

But that does not change the facts. This negative impression has been fostered by certain segments of both the American and Panamanian press. Thus, Mr. President, what we are doing today is asking the Senate to adopt an amendment to the resolution of ratification that was carefully worked out with all parties. Its purpose is to put to rest Panamanian fears that the United States is asserting in the DeConcini amendment a right to intervene in the internal affairs of the Republic of Panama. But—and this is equally as important—we are leaving intact the thrust and purpose of the DeConcini amendment which is to allow the United States to retain the right to keep the canal open.

I am satisfied, Mr. President, that the amendment we have before us today accurately reflects American policy. It restates our traditional view of nonintervention in the internal affairs of other nations, and it makes clear that in the exercise of our rights to keep the canal open we shall never have as our purpose the interference in the internal, sovereign affairs of the Republic of Panama. On the other hand, we also make it clear in the words of this amendment that the right to keep the canal open is unaffected. We are saying, simply, that in the exercise of that right we shall clearly have as our objective only the keeping open of the canal and not any other objective, such as interfering in Panama's internal politics.

Let me say, Mr. President, that the majority leader has shown great wisdom, restraint and patriotism in his handling of the delicate discussions that have led to this amendment. He has displayed an even-handedness toward each party and a respect for the interests of each party that sets him apart as a true leader. I believe this Nation owes him the deepest debt of gratitude.

I thank the Chair.

Mr. SARBANES. Mr. President, I simply wish to underscore, as we close out our time on the leadership amendment that these treaties represent an opportunity for the United States and for Panama and for the peoples of both countries to join together in a constructive and positive partnership. It offers the opportunity to assure that the canal will remain open, secure, accessible, and neutral. It will continue to serve as a great international waterway, at the same time that it gives assurances to the people of Panama that there will not be intervention in their internal affairs, that their sovereign integrity or their political independence will not be interfered with, that the very things which the able Senator from Idaho mentioned as being encompassed within the term "interventionism" in the thinking of Latin America will not take place.

Mr. President, much has been said over the course of this debate and as a consequence reactions have been prompted both here and in Panama. One would hope, as we come to the closing minutes, that should these treaties take effect, then both parties would seize the opportunity which is presented to develop a new relationship and to enhance the strength of both the United States and the Republic of Panama. These treaties are fair treaties. They are treaties designed to respond to the interest of both parties and to do so in such a way that fully recognizes and accords the respect that peoples are entitled to.

The leadership amendment, which is before us, is an important contribution to this objective just as the other amendments which have been made to the resolutions of ratification have been important contributions as the Senate has carried out its role of advising and consenting to these treaties.

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

Mr. MELCHER. Mr. President, I have no further requests for time. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina has 1 minute remaining.

Mr. HELMS. Mr. President, I yield that 1 minute to the distinguished Senator from Alabama. I see him shaking his head. So in that case, I yield it back.

The PRESIDING OFFICER. All time has been yielded back.

AMENDMENT NO. 104

Under the previous order, the hour of 2:30 p.m. having arrived, the Senator from Alabama (Mr. ALLEN) is recognized to call up an amendment on which there shall be 30 minutes debate with vote thereon to follow the debate.

Mr. ALLEN. Mr. President, I ask that the amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) for himself, Mr. THURMOND, and Mr. HELMS, proposes amendment numbered 104.

At the end of the amendment, add the following:

This reservation shall not be construed as limiting, detracting from, or diminishing the rights reserved to the United States in the DeConcini Reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 10 minutes.

Mr. ALLEN. Mr. President, the pending leadership amendment to which this amendment is offered is brought to us by the same people who brought the leadership amendment to the Neutrality Treaty, an amendment that was found to be so deficient and so full of holes, in the judgment of many here in the Senate, and it is brought to us by the same people who brought the DeConcini amendment.

I say that after the DeConcini amendment was offered, the leadership embraced the amendment, recommended it to the Senate, and it was approved by the President of the United States.

So a moment ago, when a point of order was raised that the leadership amendment was out of order, because it sought to amend the DeConcini amendment in the other treaty, I voted with the leadership in moving to table that appeal, because I do believe that the leadership can offer amendments and get anything added onto this treaty that they see fit, because they do have a majority who follow their recommendation with respect to approval or disapproval of amendments.

But that does not remove the fact that no matter what is placed in this treaty as an amendment or as a reservation, it cannot alter the terms of the DeConcini

amendment. That is there to stay. It is frozen into that treaty, because it has already been passed on by the Senate. The time for reconsidering the vote has expired.

It was an amendment that was recommended to the Senate by the leadership.

But I must say, Mr. President, that since the Panama Canal Treaty has been under consideration, the main thrust of the leadership has been to undercut or dilute the provisions and the meaning of the DeConcini amendment.

But, Mr. President, if the DeConcini amendment can withstand, as it apparently has, the provisions of the first two leadership amendments, and the present leadership amendment is on all fours with the first leadership amendment in the Neutrality Treaty, but if it can withstand the provisions of the leadership amendment to the Neutrality Treaty by the wording in the DeConcini reservation saying that "Notwithstanding the provisions of article V or any other provision of the treaty, if the canal is closed or its operations are interfered with, the United States can take whatever means, including military action, to keep the canal open," if the DeConcini amendment has survived the leadership amendment in the Neutrality Treaty, certainly it is going to survive the leadership amendment offered to a treaty that expires with the end of this century when the DeConcini amendment takes over. So no matter what the leadership adds to the Panama Canal Treaty, the DeConcini amendment will still be there, and you may rest assured that the United States is going to use the DeConcini amendment to assert any right it may need to assert in order to keep the canal open and to keep it in operation, notwithstanding the leadership amendment in the Neutrality Treaty and notwithstanding the present leadership amendment that is now pending.

So, Mr. President, there being so much doubt and so much ambivalence in the amendments that have been offered heretofore, since the leadership now is trying to dilute the DeConcini amendment, they had control over the DeConcini amendment, they accepted it, they assured the Senators that that is what they needed and what they wanted—never mind that it was to get sufficient votes to approve the treaty—but it, in effect, was also a leadership amendment, so, Mr. President, that being the leadership amendment also, and there being so much confusion caused by that amendment, can we now depend upon the second leadership amendment as a solution of the dilemma that we find ourselves in as a result of the action of the leadership?

Mr. President, I submit we need to clarify just what the leadership is driving at in this amendment. What do they say? The amendment was not made available to Senators, the rank and file Senators, I will say, until after 12 o'clock today, after the amendment was offered. What does it mean? It cannot interfere with the DeConcini amendment and, as I read it this morning, quoting from the Rubaiyat of Omar Khayyan—I guess, Mr. President, that is where the dictator got his first name from Omar Khayyan, Omar Torrijos—but I do not believe he would approve of this paragraph from the Rubaiyat, because it is very pertinent as to the standing of the DeConcini amendment. It stands there and it is going to stand there as a part of history.

Reading from the Rubaiyat:

The Moving Finger writes; and, having writ, moves on:

So we have moved on from the Neutrality Treaty—

Nor all your Piety nor Wit

I do not know whether they are talk-about the Senator from Idaho or the Senator from West Virginia or the Senator from Maryland when they speak "nor all your Piety nor Wit":

Shall lure it back to cancel half a Line.

So you can talk about diluting the DeConcini amendment all you want to, but the Rubaiyat is proof that that cannot be done:

Nor all your Tears wash out a Word of it.

So no matter what we do here on this treaty which expires with the year 2000 it is not going to affect the Neutrality Treaty and the DeConcini amendment which starts with the year 2000.

When the year 2000 comes this treaty and the leadership amendment are going to fall and we are going to take up with the Neutrality Treaty and the Deconcini amendment.

This amendment I have offered, along with the distinguished Senator from North Carolina (Mr. HELMS) and the distinguished Senator from South Carolina (Mr. THURMOND) would merely state—and I think it is necessary to help the leadership here to advise the Senate and advise the country of just what they mean by their amendment—this amendment we are offering will help them define what they mean by their amendmet. It does say:

This reservation—

That is, the leadership amendment—

shall not be construed as limiting, detracting from or diminishing the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the canal open and operating.

That is what the reservation would be defined as if this amendment to the leadership reservation is agreed to.

Mr. President, I reserve the remainder of my time, and I now yield 5 minutes to the distinguished Senator from Kansas (Mr. DOLE).

The PRESIDING OFFICER. The Senator from Kansas (Mr. DOLE) is recognized for 5 minutes.

Mr. DOLE. Mr. President, I thank the distinguished Senator from Alabama.

Mr. President, I believe, having participated in some of the debate, and having offered amendments, some the Senator from Kansas thought were meritorious, and having had those amendments rejected, that in the years to come all of us will grow more aware of the importance of the treaty guarantees proposed by the distinguished junior Senator from Arizona (Mr. DECONCINI).

The so-called DeConcini reservation to the Neutrality Treaty, which has already been approved by the Senate, was the vital assurance of America's right to take independent action as it deemed necessary to insure that the Panama Canal shall always remain open for the transit by ships of all nations.

The DeConcini reservation to the second treaty, which was adopted last evening, will provide the very important guarantee that any decision our country makes with regard to the defense of the canal may not be vetoed by the Panamanians who sit on the Combined Military Board created by the treaty. This provision also preserves our right to act independently—not to intervene in Panama's internal affairs—that was never the intent—but to protect and defend the canal whenever its operations are threatened in any way.

Mr. President, I support the DeConcini reservation to the Panama Canal Treaty now under consideration, just as I supported the DeConcini reservation to the Neutrality Treaty last month. I believe that both of them are necessary preconditions to Senate ratification of the treaties even though they do not, in my opinion, make the treaties entirely acceptable.

The real significance of these assurances, however, is that they underscore the inherent weaknesses of both treaties as originally proposed by the administration. When the text of the two Panama Canal treaties was first released last September, the Senator from Kansas thought he recognized some very basic and some very fundamental weaknesses in the defense provisions of the negotiated accords.

There were conflicting interpretations of America's rights to protect and defend the Panama Canal, despite the fact that President Carter told us the provisions were "clearly understood" by the leaders of our two nations. These conflicting interpretations were not dreamed up by anyone on this floor. They were stated by witnesses before the committee. It was indicated that there was some difference of opinion by former Panamanian negotiators, and on the strength of that, the Senator from Kansas as well as others offered amendments as far back as last September. Our Nation's military leadership, which had endorsed the treaties, expressed their interpretation that "if neutrality is violated, then the United States has the responsibility to intervene in Panama and restore the neutrality regime of the canal." This was Adm. James Holloway's testimony before the Senate Armed Services Committee on January 24.

But Gen. Omar Torrijos continued to state his interpretation that "it is necessary for the United States to be committed so that when we ring the bell here, when we push the button, a bell rings over there, and the United States comes in defense of the Panama Canal." General Torrijos' interpretation obviously contradicted that of our own military leaders, who had been led to believe by our administration that our decision to defend the canal would be unilateral in nature.

At the outset, the Senator from Kansas

stated that the only way to resolve the ambiguity, and to resolve the concerns of the American people, would be to clarify the treaty language as forthrightly as possible.

DOLE AMENDMENTS

Last September 23, I introduced an amendment which I felt could help resolve the problem. My amendment No. 5 to the Neutrality Treaty was designed to specifically guarantee our authority to intervene militarily on behalf of the canal whenever we alone determined its neutrality to be threatened. At the time, the administration complained that my amendment was unnecessary. They suggested that the Senator from Kansas was trying to be an obstructionist.

But I might add that within 2 weeks, on October 14 of last year, the administration itself released a "joint statement of understanding" reached by President Carter and Gen. Omar Torrijos, thereby underscoring the fact that there was a difference in interpretation.

Even though the Senator from Kansas did not feel that the "Carter-Torrijos understanding" was a perfect answer to the problem, I took the administration at its word and proposed that the statement of understanding itself be incorporated as part of the treaty. I introduced treaty amendment No. 7 for that purpose. Again, the administration and other treaty proponents complained that the Senator from Kansas was trying to "kill" the treaties. They said it was unnecessary to put the statement of understanding directly into the treaty.

I do not believe that those Senators who supported the two DeConcini reservations will now consent to any dilution or diminishment of those guarantees. Yet, I share the concern already expressed by my colleagues from Nevada, Alabama, and Idaho, that the so-called leadership reservation does, in fact, limit the scope of the DeConcini reservation. If this were not so, there would be no purpose in offering it.

The leadership has told us time and time again how unnecessary it is to attach modifications to these treaties, because certain guarantees and limitations are "understood" by the leaders of the two countries. That was the reason originally set forth last fall, for opposing the defense amendments proposed by the Senator from Kansas. If the new leadership reservation in fact makes no change in the treaty, and simply reflects aspects already implicit in the articles, then perhaps the leadership reservation is unnecessary.

In any case, I support the Allen amendment of the second degree, to the leadership reservation, providing that it shall not limit, diminish, or detract from the rights of defense guaranteed by the DeConcini reservation, to keep the canal open and operating.

The American people and many of my colleagues disagreed with the leadership position. Momentum and support for the amendment was building, and in January of this year, the administration capitulated and agreed to give its blessing to an amendment of this type. The majority and minority leaders of the Senate agreed to introduce a new amendment to that effect, and it became known as the leadership amendment. It passed by an overwhelming majority vote, and made an important improvement in the treaty, but was not enough in itself to fully guarantee our basic defense rights.

And so, on January 19 and March 2 of this year, the Senator from Kansas introduced two additional amendments designed to protect our base rights in Panama during the future. The first of these proposed that the United States and Panama work together to find a mutually acceptable arrangement under which we might retain a military presence into the next century. If such an arrangement was not completed before December 31, 1999, we would retain the right to keep our present bases until a separate agreement was reached. The second amendment, which was similar in nature, would simply have added 10 words to the Neutrality Treaty, to hold open the possibility that Panama and the United States could agree at some point that a continued American military presence would be necessary.

The junior Senator from Arizona, Mr. DECONCINI, cosponsored both of these amendments. He, like many others in this body, shared a valid concern about our ability to protect the canal after the year 2000. Of these last two amendments offered by the Senator from Kansas, the first received 34 votes and the second, 37 votes. So the handwriting was on the wall at that point. More than one-third of the U.S. Senate—enough to deny ratification of the treaties—expressed strong support for efforts to strengthen the defense provisions in the neutrality treaty.

Therefore, it should have come as no surprise to anyone when the DeConcini reservation was adopted 1 week later, on March 16. Given the political situation, it was probably necessary for a so-called "swing Senator" to be the one to achieve victory with such a strengthening amendment, and I commend the junior Senator from Arizona for his ability to accomplish this. We know that the administration, and the pro-treaty leadership on the Senate floor, would have fought the same reservation if it had been offered by any except the "undecided Senators." The Senate leadership, along with the floor managers of this treaty, would have argued that the vital DeConcini reservation was "unnecessary" because U.S. defense rights were already "understood." They would have said it was "redundant" to spell out those rights because President Carter and General Torrijos already had implicit understandings along those lines.

Fortunately, those voices were silent during consideration of the DeConcini reservation to the first treaty, and apparently they will be willing to accept the DeConcini reservation to the second treaty, as well. This fortunate. These treaty modifications are necessary, and they will serve the best interests of our country for decades to come.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. CHURCH. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CHURCH. Mr. President, the distinguished Senator from Alabama keeps quoting from the Rubaiyat. He has told us again that:

The Moving Finger writes; and, having writ,
Moves on: nor all your Piety nor Wit
Shall lure it back to cancel half a Line
Nor all your Tears wash out a Word of it.

Well, there are other passages from that same poet that seem to me to be applicable to this debate. For example:

Myself when young did eagerly frequent
Doctor and Saint, and heard great argument
About it and about: but evermore
Came out by the same door where in I went.

With them the seed of Wisdom did I sow,
And with mine own hand wrought to make it grow;
And this was all the Harvest that I reaped—
"I came like Water, and like Wind I go."

That, in a way, characterizes this argument. First, the Senator from Alabama takes the position that somehow we are seeking to dilute the DeConcini reservation. He is saying, "First of all, you cannot do it because that has been riveted into the resolution of ratification for the Neutrality Treaty."

Well, Mr. President, we are not attempting to erase, withdraw, or weaken the provisions of the DeConcini reservation. We are trying to make clear what its purpose is, as agreed upon by its sponsors and by those who voted for it.

So the Senator from Alabama is dead wrong when he says that we are here for the purpose of diluting the DeConcini reservation.

Then he goes on to say that in any case it cannot be done, whatever our intention may be, because the Neutrality Treaty starts at the end of the century when the Panama Canal Treaty expires.

Again I say the Senator from Alabama is dead wrong. The Neutrality Treaty and the Panama Canal Treaty start at the same time. Their provisions become binding at the same time, to wit, when the articles of ratification are exchanged by the two governments. That is the effective date when both treaties come into force. This leadership amendment addresses itself to all the provisions in both treaties and to all the provisions of the articles. So the argument has no merit, and the Senator is playing games.

I see three different Allen amendments. I do not know if the Senator intends to present all of them. The pending amendment, No. 104, reads:

This reservation shall not be construed as limiting, detracting from, or diminishing the rights reserved to the United States in the DeConcini Reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

The next amendment, No. 105, reads:

This reservation, to the extent set forth herein, shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

And there is another, which reads:

This reservation shall be construed as limiting, detracting from, and diminishing the rights. . . .

And so on. As I said, the Senator is playing games. He wants to add something, anything, to the carefully crafted

language of the leadership reservation, when nothing should be added. The leadership reservation makes explicit exactly what the sponsor of the DeConcini reservation himself sought: Namely, that any action by the United States of America in the exercise of its right to assure that the Panama Canal shall remain open, neutral, secure, and accessible pursuant to the treaties and the articles of ratification thereto shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose intervention in the internal affairs of the Republic of Panama or interference in its political liberty or sovereign integrity.

It cannot be better stated. But the Senator from Alabama has done everything he can to defeat these treaties and he is not in a mood to acknowledge the clarity of this language. Rather, he is in a mood to confound and confuse the question by adding one amendment after another, inconsistent as they may be.

I hope the Senate will have none of that. I strongly urge the Senate to overwhelmingly defeat each of these amendments. They are mischievous. We should see them for what they are, and we should vote them down. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Every amendment the Senator from Idaho does not approve of is mischievous. This is not a mischievous amendment. I ask the question, is it fair for the leadership to obtain approval of the Neutrality Treaty by accepting the DeConcini amendment, making it their own, and thereby getting the first treaty approval and to now try to undercut the provisions of that reservation? It is not fair. It is not fair to those who cast their vote on the approval of the DeConcini amendment.

Now he says I am trying to undercut the DeConcini amendment. If that be true, why is he opposing my amendment which says that this reservation shall not limit or detract from or diminish the DeConcini amendment? It is patently incorrect on its face.

Mr. President, the distinguished Senator also said that the Neutrality Treaty starts at the very same time as the Panama Canal Treaty. He knows that the United States is in full charge of the defense up until the year 2000, and that the DeConcini amendment was aimed at article V of the treaty. I will read it. It has to do with the effective date of article V:

> After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces.

So he knows. I do not know why he states the contrary is true. He knows that the DeConcini amendment goes into effect in the year 2000, even though the Neutrality Treaty does go into effect at the same time as the Panama Canal Treaty, if that is approved.

So the DeConcini amendment starts in the year 2000, and the distinguished author of that amendment stated that he—I know it did not become an amendment—intended to have a similar amendment to offer to the Panama Canal Treaty. I do not believe it has come in.

I thank the Chair.

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

Mr. CHURCH. Mr. President, I yield myself such time as I may require.

In the first place, the DeConcini reservation is addressed not simply to article V but to any other provision of the treaty, and the reservation explicitly says this, on its face.

Now I read from article II, section 1 of the Panama Canal Treaty. It says:

> 1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

Both treaties enter into force at the same time. That was written plainly into the language of the treaty. Why do we pretend otherwise? It is irrefutable. We do not have time to waste on arguments that are grounded in nothing but whimsy.

Mr. President, I am happy to yield to the distinguished Senator from New York.

Mr. JAVITS. I thank my colleague.

Mr. President, let us get to the substance of this amendment and the substance of what we are talking about. The substance is the internal affairs and the sovereignty of Panama. That is what this is all about. The original article V stated very clearly that both parties may do whatever they think they have to do to maintain the neutrality of the canal permanently.

That covered everything DECONCINI or anybody else could think of. Then along came the people of Panama and said, "What about using this as a reason for getting into Panamanian politics or invading our territory just because you always can contrive an instance? Somebody threw a rock at a ship."

General Torrijos and President Carter got together and they said, "We have no such design." They therefore said, "What we mean by protecting the neutrality is to take any action each of us thinks we ought to take independently of the other, including military action, in order to maintain the canal"—I would like to give the words because they are very clear—"open and secure."

Then along came DECONCINI and he said, "Regardless of any other consideration, whatever that may be, we have to keep this canal," said he, and I would like to use his words because they are also very important in considering this matter, "to reopen the canal or restore the operations, as the case may be, if the canal is closed or its operations are interfered with."

Still, everybody was saying the same thing. But DECONCINI did not say, just like article V did not say, without interfering in the internal affairs of Panama, including the invasion of its sovereignty or messing around with its politics.

So now we come along and we say that. That does not diminish anything DECONCINI did. It does not diminish anything article V did. It does not diminish anything the leadership did in the first treaty.

It simply makes clear what we mean. We mean that we are going to keep this canal open, secure, neutral, and free. But it does not mean, and that is all we are saying now, the negative, it does not mean that we are going to interfere with Panamanian politics or invade its sovereignty, or just invade its territory because we feel like it.

It seems to me, Mr. President, that when we put each of these things beside the other, it makes clear exactly what we intend, and we are saying what we intend, in the reservation.

Now we come to a matter of law. A reservation, which makes a particular meaning clear and is then accepted by the other side, is a free-standing contract, whether the proponent of this amendment is right or wrong as to the linkage, and I think the linkage is very clear. That its why we put these articles which relate to linkage, that is, article II and article VIII, into the record. They link both treaties. One does not take effect without the other, and it says so in the treaties themselves. Even under normal rules of relevance you can make an amendment to either treaty with that linkage.

Be that as it may, the point is this is a free-standing relationship between Panama and the United States which has nothing to do with DECONCINI, but which is defined further by this reservation to mean that we will not, whatever may be our other rights, either use those rights or any other fancied rights to interfere in the political affairs of Panama or to invade its sovereignty.

That does not exclude us from its territory or its troops, or anything else, to keep this canal open, secure, and neutral.

Mr. President, that, in my judgment, is the intention of both peoples, the people of Panama and the people of the United States, and it is properly expressed. It needs no further embellishment. It needs no further going up hill and down hill just for the sake of making a change. I hope very much, therefore, that the amendment will be rejected.

Mr. SARBANES. Mr. President, we are prepared to yield back the remainder of our time and move to table the amendment. Has all time expired?

The PRESIDING OFFICER. All time has expired on the proponents side and the motion to table is in order.

Mr. SARBANES. Mr. President, I move to table the amendment offered by the Senator from Alabama, 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 to

table the amendment of the Senator from Alabama. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Montana (Mr. MELCHER) are necessarily absent.

The result was announced—yeas 60, nays 38, as follows:

[Rollcall Vote No. 112 Ex.]

YEAS—60

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

NAYS—38

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

NOT VOTING—2

Abourezk	Melcher

So the motion to lay on the table the Allen amendment No. 104 was agreed to.

Mr. SARBANES. Mr. 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.

The PRESIDING OFFICER (Mr. LEAHY). Under the previous order, the Senator from Alabama (Mr. ALLEN) is recognized to call up his second amendment, on which there shall be 30 minutes of debate, with the vote thereon to follow the debate.

The Senator from Alabama (Mr. ALLEN).

AMENDMENT NO. 105

Mr. ALLEN. Mr. President, I call up amendment No. 105 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself, Mr. THURMOND, and Mr. HELMS, proposes an amendment numbered 105:

At the end of the amendment, add the following:

This reservation, to the extent set forth herein, shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

Mr. ALLEN. Mr. President, I yield 30 seconds to the distinguished Senator from Indiana (Mr. BAYH).

Mr. BAYH. I thank my colleague from Alabama.

Mr. President, I ask unanimous consent that a member of my staff, Chris Alridge, be granted privilege of the floor during the remainder of the debate and votes on this particular matter of the treaty.

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

The Senator from Alabama.

Mr. BAYH. I thank the Senator very much.

Mr. ALLEN. I am glad to accommodate the distinguished Senator.

Mr. President, I yield myself 9 minutes.

Mr. President, even though the distinguished managers of the treaties have stated that the leadership amendment now pending does not dilute the DeConcini amendment, which was added to the resolution of ratification to the Neutrality Treaty, yet they have seen fit to have the Senate table an amendment to their amendment which would merely have made that statement, that the purpose of the leadership amendment is not to limit or detract from or to diminish the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the canal open and operating.

One wonders why they would object to this statement, which is something they have stated on the floor is not their intention. Yet, when we ask them to state that in the form of an amendment, they have the Senate table that amendment.

Mr. President, the DeConcini amendment was added to the Neutrality Treaty. Already there was a leadership amendment which had been agreed to and added to the Neutrality Treaty and it had substantially the very same provisions in the leadership amendment as are now contained in this leadership amendment to the Panama Canal Treaty—that is, that in intervening to protect the canal, we should not interfere with the internal affairs of Panama; that we should not interfere with their territorial sovereignty; that we should not interfere with their independence—the very same provisions that are contained in the present leadership amendment.

So the same provisions in the Neutrality Treaty did not limit the scope of the DeConcini amendment, because the DeConcini amendment said that notwithstanding the provisions of article V of the Neutrality Treaty, which says that starting with the year 2000 only Panama could have troops in Panama—notwithstanding that provision or any other provisions of the treaty, the United States could act unilaterally, even to the extent of using military action to keep the canal open and operating. That was despite the provisions of the leadership amendment actually inserted in the Neutrality Treaty.

So, Mr. President, if the DeConcini amendment could survive as an integral part of the treaty and as a provision that was offensive to the Panamanians, as being an affront to their dignity and their sovereignty, how could it be contended that it is not going to survive exactly as written in the Neutrality Treaty, despite a second leadership amendment to limit the meaning of the DeConcini amendment?

If the actual words in the Neutrality Treaty would not limit the DeConcini amendment, how are you going to limit the DeConcini amendment by a leadership reservation offered to the Panama Canal Treaty which expires at the end of this century, even though the DeConcini amendment would not become effective until the year 2000?

Mr. President, the leadership has seen fit to defeat an amendment to their amendment which would say that the leadership amendment does not diminish or decrease or detract from or limit the DeConcini amendment.

Just what does the leadership amendment mean? We would not be in this impasse today if we had had some clarity of expression in the treaty as shaped by the leadership, because they are responsible for the DeConcini amendment with its ambiguities. Yet, they come forward and say, "This is going to correct it. Maybe it will not dilute the DeConcini amendment, but it will be a concession to Panama and will save their face," and so forth. But I do not know that it is going to do that. Let us define what the leadership amendment does.

I have sought by amendment 104, which has just been tabled, to have the amendment say that it shall not be construed as limiting or detracting from or diminishing the rights reserved in the DeConcini amendment. If they think the opposite, if the leadership feels that it does diminish it, let us hear from them. They have had the original treaty approved. We all know—it is a matter of historic record—that they got it approved by agreeing to the DeConcini amendment, and it seems likely that that carried three Senators over to vote for the Neutrality Treaty. Now they are seeking to diminish and detract from and undercut the DeConcini amendment.

If that not be so, if it does not diminish it, they had the opportunity to say so in the other amendment, which they tabled even though they have been contending that it does not detract from the DeConcini amendment. Now let us see what their attitude is. In trying to probe for what this amendment means, let us try to find out now, before we agree to it, as was the case with the DeConcini amendment. We found out what it meant after it had been approved, and the leadership has been working ever since to change that meaning or to dilute that meaning on the floor of the Senate.

This amendment says:

This reservation—

That is, the leadership amendment—

to the extent set forth herein, shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation to the

Neutrality Treaty to take action to keep the Canal open and operating.

So if they table the one saying it does not diminish, let us see what their attitude is going to be when this amendment says that it shall be construed as limiting or detracting from the DeConcini amendment.

Mr. President, I yield the remainder of my time to the distinguished Senator from Texas (Mr. TOWER).

Mr. TOWER. I thank the distinguished Senator from Alabama.

Mr. President, much of the debate in recent weeks has been speculation on our judgment by the court of world opinion, should the Senate reject the second treaty. Many in the media have editorialized that continued operational control of the canal would represent a throwback to the turn-of-the-century jingoism we have been accused of before. Our continued presence in the canal—regardless of the practical reasons why we should stay—would be judged as an example of a powerful nation out of touch with international realities, unable to shake its preoccupation with the colonialism of the past.

Relinquishing control, on the other hand, would underscore and enhance our status in the eyes of the world as a country setting an example for others to follow. If we buy this line of reasoning, then relinquishing control is a sign of strength, an example of our magnanimity in the conduct of foreign policy.

I say, "Baloney!" In fact, no informed or fairminded nation in the world could believe that the United States is bent on territorial and political aggrandizement in this world, when everything in our recent history has proved to the contrary.

As a matter of fact, in the face of countless examples of adventurism, aggression and threats to world peace on several fronts, we appear less committed to maintaining American strength and resolve—and yet more expectant that stability will be preserved if we simply demonstrate our good faith to the world. We have been asked to show foresight by overlooking international realities and by ignoring very serious flaws in the language of the proposed treaty.

I will not argue that the existing 1903 treaty cannot be improved upon or even replaced by a treaty more in keeping with American foreign policy goals for the remainder of this century and beyond. I do not believe, however, that the treaty before us today is the most prudent and responsible basis for the future of the Panama Canal and the future of United States-Panamanian relations.

Testimony before both the Foreign Relations Committee and the Armed Services Committee has demonstrated without question the critical importance of the Panama Canal to our national security. The notion that the canal is not a vital element of our economic and security structure has been repeatedly shown to be mythical.

The Senate has, in my view, paid little attention to the inherent and undeniable risks to which the canal will be exposed if the treaty before us is ratified and put into effect. Potential threats to the future security of the Panama Canal exist not only from sources external to Panama, but from the potential for political instability within Panama's own borders.

In addition to these security considerations, the proposed treaty would result in great cost to the American taxpayer and would bestow extremely generous payments to the Panamanian Government from canal tolls. The economic consequences of these provisions have not been taken into full account in my view during the course of the Senate's debate. Direct and indirect costs to the U.S. Treasury could well exceed $1 billion. The absolute minimum direct cost to the taxpayer will exceed $750 million. The necessary payments to Panama from canal revenues will require substantial toll increases, particularly as inflation raises the cost of operating and maintaining the canal. This in turn will have a detrimental effect on the economies of those ports handling ships which use the canal and specifically could cost thousands of jobs in the gulf coast ports.

I might note, Mr. President, that we have operated this canal for the benefit of all maritime nations and have done so evenhandedly.

In sum, the economic consequences of entering into the treaty now before the Senate will be decidedly adverse to the American taxpayer and the U.S. economy.

This reason alone is sufficient to warrant dramatic revision to the treaty provisions involving economic factors. Since the Senate has failed to accept modification to these terms, and as the provisions related to the canal's future security are clearly inadequate, I urge my colleagues to avoid a serious national mistake by voting to reject the treaty before the Senate today.

This reason alone is sufficient to warrant dramatic revision to the treaty provisions involving economic factors.

Since the Senate has failed to accept modification of these terms and as the provisions relating to the canal's future security are clearly inadequate, I hope my colleagues will avoid a serious national mistake, indeed an international mistake, by voting to reject the treaty before the Senate today.

I thank my colleague from Alabama.

The PRESIDING OFFICER. The Senator from Idaho (Mr. CHURCH).

Mr. CHURCH. Mr. President, I yield myself such time as I may require, and I shall be brief.

A few minutes ago the Senate tabled an amendment offered by the Senator from Alabama which said that the leadership reservation shall not be construed as limiting, detracting from, or diminishing rights reserved to the United States in the DeConcini reservation. Now the Senator from Alabama asks us to adopt just the opposite language, to wit, this reservation shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation and he has still a third amendment which is in between.

Mr. President, I submit this is gamesmanship, and I concede, first off, that the Senator from Alabama has a great sense of humor. He also is capable of advancing the most intriguing kinds of arguments. For example, he has repeatedly said that the DeConcini reservation does not take effect until the end of the century. Then he has said if we amend the articles of advice and consent to the Panama Canal Treaty, which expires at the end of the century, how can we possibly reach the DeConcini reservation?

That is an intriguing argument. Its only weakness is that it has no relationship whatsoever to the provisions of the two treaties.

Article II of the Panama Canal Treaty and article VIII of the Neutrality Treaty provide that both treaties go into effect simultaneously, 6 months after the articles of ratification are exchanged by the two nations.

So, the argument advanced by the Senator from Alabama simply cannot be reconciled with clear provisions of these two treaties.

So I hope that nothing deflects us from our course. This is the 38th day of Senate debate on these two treaties. As I recall, the Senate debated only 11 days on the NATO alliance. We must not in this, the 38th day, permit ourselves to be distracted from our purpose.

The treaty we vote on today is right for the United States, right for the Republic of Panama, and right for the times in which we live. But it can never be made popular. This means that Senators are confronted with the hardest of choices: Either to vote for what is best for their country or for what is best for them in their own home States.

If as few as two Senators who voted for the first treaty cut and run on the second, ratification of this treaty will fail. But the issue, I assure you, Mr. President, will not die with the defeat of the treaty. Rather it will fester and grow more inflamed, making its ultimate resolution all the more painful.

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

Mr. CHURCH. Yes. I am happy to yield.

The PRESIDING OFICER. The Senator from California (Mr. CRANSTON).

Mr. CRANSTON. Mr. President, a few minutes ago, the Senate tabled an amendment stating that the leadership amendment does not limit the DeConcini reservation. Now we are asked to vote on an amendment that it does limit the DeConcini reservation.

The fact is, of course, that the leadership amendment does neither. It simply makes clear that any action taken under the DeConcini reservation is not a departure from the principle of nonintervention.

Mr. President, the vote today is not on a "giveaway" of the Panama Canal or on the right to "intervene" in Panama. The vote today is an affirmation of the international public trust under which the United States built and oper-

ated the Panama Canal. The vote today is on a passing of that international publict trust to Panama where the canal is located.

The international public trust to which I refer is that spelled out in article I of the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal:

> The Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty.

The United States has maintained the canal as a permanent neutral international transit waterway—"secure and and open to peaceful transit by the vessels of all nations on terms of entire equality." Panama, of course, assumes this exact obligation under article II of the Neutrality Treaty. The United States and Panama, jointly and individually, agree to maintain this "regime of neutrality" under article IV of the Neutrality Treaty.

By accepting this public trust, Panama does not relinquish its national sovereignty over the canal; indeed, Panama reaffirms it. By transferring the operation of the canal to Panama, the United States is not relieved of its obligation to maintain this "regime of neutrality"; indeed, the United States reaffirms it.

In recent days I have been distressed by the controversy that has arisen over certain reservations this Senate has attached to the Neutrality Treaty or this Panama Canal Treaty. Those reservations concern the obligation and right of the United States to maintain the "regime of neutrality" and to assure that the canal shall remain open, secure, and accessible. Those reservations are not a right of intervention in the internal affairs of Panama, they are not directed against the political independence or territorial integrity of Panama. And they are not in violation of any of the rights or obligations of the United States or Panama under the Charter of the Organization of the American States or the Charter of the United Nations. Indeed, these reservations merely spell out in detail and specifics the obligations and rights of the United States in maintaining the regime of neutrality.

May I say to our friends in Panama: If Panama performs that trust, as I have every confidence that Panama will, the United States need never take any act to maintain the regime of neutrality of the canal. And if for some unforeseen reason in the future, Panama should be unable to maintain the regime of neutrality, certainly both Panama and the United States—indeed the world—would expect the United States to act.

These treaties have a basic purpose even more important than establishing Panamanian sovereignty over the canal: the continuation of the canal as a permanently neutral international transit waterway. This is what the United States built and has given to the world. This is what Panama now acquires.

In ratifying these Panama Canal treaties, this Senate can reaffirm this international public trust. In agreeing to these treaties as ratified, Panama will affirm its national sovereignty over the canal and accept this international public trust. And the canal will remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland (Mr. SARBANES).

Mr. SARBANES. Mr. President, I have listened to the distinguished Senator from Alabama as he argues first for one amendment and then for the other, two amendments diametrically opposite to one another. The one amendment says this reservation shall not be construed as limiting, detracting; the other amendment which he offers says this reservation shall be construed as limiting, detracting.

I am reminded, "Oh, what a tangled web we weave," by the skillful Senator from Alabama, and I must say I was given considerable pause when the amendments were first presented at the desk as to in what order they would be presented or brought up.

After all, one would then have to anticipate, I assume, that the arguments would have been completely reversed from the argument that was made, given the order that was followed, had we come with No. 105 ahead of No. 104, and we would have had to reverse all the arguments.

The Senator from Alabama would have been, I know, as he is in all of the arguments he makes, extremely skillful in doing that.

Mr. ALLEN. Mr. President, will the Senator yield inasmuch as I have no time?

Mr. SARBANES. I do yield.

Mr. ALLEN. I thank the Senator.

The Senator realizes, of course, had the first amendment, the amendment saying that the leadership amendment shall not be construed as limiting or detracting or diminishing the DeConcini amendment, if the leadership had accepted that amendment, as it stated on the floor was the intention of the leadership, then there would have been no amendment.

But inasmuch as the leadership had the Senate table the first amendment, then the Senator from Alabama, in an effort to find out what in the world the leadership did mean by the amendment, offered the second amendment to let the leadership pick and choose what it does mean by the amendment. That is the purpose of the inconsistent amendments. There would have been no second amendment offered had the first amendment been accepted.

Mr. SARBANES. It is very helpful for the Senator from Alabama to give us inconsistent, diametrically opposite, amendments in order to be of help to the leadership.

I think, in the course of this debate, both those who have offered various amendments which have been adopted and the leadership in offering the amendment that is now presented, have been very clear in terms of what they are trying to accomplish.

I know the Senator from Alabama would like to structure it in his own way and in his own manner, but I only have recourse again to the fact that the Senator from Alabama has been against a treaty with Panama ever since October of 1971. In the newsletter which he communicated to his constituents he has been opposed to a treaty; he has participated in cosponsoring a resolution that would have the United States maintain all sovereign rights, all jurisdiction in Panama; would make no concession—I think the only concession he is prepared to make is to pay a little more money.

I think it is clear to everyone that what is at stake with these treaties is not a little more money; what is at stake with these treaties is whether we are to develop a fair and equitable relationship between ourselves and the people of Panama, one that respects their dignity and independence just as we expect other nations to respect our dignity and independence.

The Senator has been extremely skillful in proposing amendments. He has been very good at moving in the stone walls on consideration of this treaty.

He keeps pushing the stone walls in closer and closer in order to leave less and less room within the walls on the basis of which the United States and Panama can reach an agreement. So the stonewalling which he has talked about so frequently is really something he has been extremely skillful at carrying forward here, and he keeps moving those walls in and narrowing down that space so there will not be a sufficient basis for an agreement.

I recall one debate in which one moment he was saying that these treaties were very unfair to the people of Panama and they should be angry about what was happening to the treaties. The next moment he turned to the Members of the Senate and said, "If the Panamanian people are going to be angry about what happens with these treaties then we ought to reject them."

So he creates his own closed circle just as these two amendments have created a closed circle. The way to dispose of the amendments, Mr. President, is to table both of them. We have tabled the previous one.

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

Mr. SARBANES. I move, Mr. President, to table this amendment, the amendment pending, of the Senator from Alabama, 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 Maryland to lay on the table Mr. Allen's amendment No. 105.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. HART). The Senate will be in order. Senators will please take their seats. The rollcall will be suspended until the Senate is in order.

The clerk may proceed.

The call of the roll was resumed and concluded.

The result was announced—yeas 59, nays 41, as follows:

[Rollcall Vote No. 113 Ex.]

YEAS—59

Abourezk	Hart	Matsunaga
Anderson	Haskell	McIntyre
Baker	Hatfield,	Moynihan
Bayh	Mark O.	Muskie
Bellmon	Hatfield,	Nelson
Bentsen	Paul G.	Nunn
Biden	Hathaway	Pearson
Bumpers	Hayakawa	Pell
Byrd,	Heinz	Percy
Harry F., Jr.	Hodges	Proxmire
Byrd, Robert C.	Hollings	Ribicoff
Case	Huddleston	Riegle
Chafee	Humphrey	Sarbanes
Chiles	Inouye	Sasser
Church	Jackson	Sparkman
Cranston	Javits	Stafford
Danforth	Johnston	Stevenson
DeConcini	Leahy	Stone
Eagleton	Long	Talmadge
Glenn	Magnuson	Williams
Gravel	Mathias	

NAYS—41

Allen	Goldwater	Randolph
Bartlett	Griffin	Roth
Brooke	Hansen	Schmitt
Burdick	Hatch	Schweiker
Cannon	Helms	Scott
Clark	Kennedy	Stennis
Culver	Laxalt	Stevens
Curtis	Lugar	Thurmond
Dole	McClure	Tower
Domenici	McGovern	Wallop
Durkin	Melcher	Weicker
Eastland	Metzenbaum	Young
Ford	Morgan	Zorinsky
Garn	Packwood	

So the motion to lay on the table amendment No. 105 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The hour of 4 p.m. having arrived, the Senate will now proceed to a vote on the leadership.

Mr. ALLEN. Mr. President, inasmuch as tabling seem to be in order, or seem to be the order of the day, and since the Senate is in the habit of voting to table, I move to table the leadership amendment and I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, let me say I did this last night so as to accommodate the distinguished Senator: In my original unanimous-consent request, I phrased it so that a tabling motion would not be in order to this amendment. But I felt in fairness to those like the Senator from Alabama who might move to table, I would give them the opportunity to do so, and I intend to vote no.

Mr. ALLEN. I thank the distinguished Senator for his debate.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. During this rollcall vote, the Senate will be in order. Senators should take their seats or retire to the cloakrooms to conduct conversations.

Mr. STONE. Mr. President, inasmuch as the Senate has completed one vote and is about to proceed to two other votes, I ask unanimous consent that this be a 10-minute rollcall vote.

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

Mr. NUNN. Mr. President, I ask unanimous consent that John Roberts, of the Senate Armed Services Committee staff, be granted the privileges of the floor for the day.

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

Mr. BENTSEN. Mr. President, I ask unanimous consent that a member of my staff, Laura Katz, be granted the privileges of the floor during the debate and vote on the pending treaty.

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

Mr. MATHIAS. Mr. President, I ask unanimous consent that Margaret S. Nalle, of my staff, be granted the privileges of the floor for the remainder of the day.

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

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Edward Kenney, of the Senate Armed Services Committee, be granted the privileges of the floor for the remainder of the day.

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

The Senate will be in order.

Mr. STEVENS. Mr. President, I ask unanimous consent that Steven Perles, of my staff, be granted the privileges of the floor during the votes and consideration of the pending treaty.

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

Mr. PACKWOOD. Mr. President, I make the same request for Skip Priest, of my staff.

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

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

The second assistant legislative clerk called the roll.

The result was announced—yeas 21, nays 79, as follows:

[Rollcall Vote No. 114 Ex.]

YEAS—21

Allen	Garn	Lugar
Bartlett	Goldwater	McClure
Curtis	Hansen	Schmitt
Dole	Hatch	Schweiker
Domenici	Helms	Thurmond
Eastland	Johnston	Tower
Ford	Laxalt	Wallop

NAYS—79

Abourezk	Culver	Humphrey
Anderson	Danforth	Inouye
Baker	DeConcini	Jackson
Bayh	Durkin	Javits
Bellmon	Eagleton	Kennedy
Bentsen	Glenn	Leahy
Biden	Gravel	Long
Brooke	Griffin	Magnuson
Bumpers	Hart	Mathias
Burdick	Haskell	Matsunaga
Byrd,	Hatfield,	McGovern
Harry F., Jr.	Mark O.	McIntyre
Byrd, Robert C.	Hatfield,	Melcher
Cannon	Paul G.	Metzenbaum
Case	Hathaway	Morgan
Chafee	Hayakawa	Moynihan
Chiles	Heinz	Muskie
Church	Hodges	Nelson
Clark	Hollings	Nunn
Cranston	Huddleston	Packwood
Pearson	Sarbanes	Stone
Pell	Sasser	Talmadge
Percy	Scott	Weicker
Proxmire	Sparkman	Williams
Randolph	Stafford	Young
Ribicoff	Stennis	Zorinsky
Riegle	Stevens	
Roth	Stevenson	

So the motion to lay on the table UP amendment No. 36 was rejected.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 37

Mr. CANNON. Mr. President, I have an unprinted amendment at the desk. I call it up and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON) proposes unprinted amendment numbered 37.

Amending unprinted amendment No. 36 by striking the words "nor be interpreted as a right of".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. CANNON have 2 minutes and Mr. CHURCH have 2 minutes.

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

Mr. CANNON. Mr. President, this amendment would simply eliminate any possibility of confusion, either on the part of the Panamanians or on our own part, as to how it might be interpreted. I think the amendment without that provision is absolutely clear that if we take any action, it should be for the purpose stated in the DeConcini amendment, to keep the canal open.

Therefore, if we leave the language in relating to how it might be interpreted, we open it up to all kinds of differing interpretations.

I submit it is a good amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, I hope very much that the Senate will reject this amendment. This language that has been chosen by the leadership has been carefully crafted. Every possible consideration has been given to it.

The point I emphasize is this, we are not claiming the right of intervention in the internal affairs of Panama. Never have we claimed that. In fact, we are committed in the United Nations charter, in the Rio Treaty, and all the major treaties with the members of the Organization of American States, against intervention in the internal affairs of Panama or any other Latin country.

All we claim is the right to intervene for the purpose of keeping the canal open and neutral and accessible and secure.

The language could not be plainer as it now stands, and if we strike "nor be interpreted as a right of intervention in the affairs of the Republic of Panama" it could only be subject to the interpretation that we intend to set aside Ameri-

can policy since the time Franklin Delano Roosevelt first declared the good neighbor policy for this hemisphere.

I do hope the Senate will reject this amendment.

The PRESIDING OFFICER. All time has expired.

Mr. ALLEN. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. The yeas and nays are called for. Is there a sufficient second?

Mr. ROBERT C. BYRD. Is the Senator satisfied with a voice vote?

Mr. ALLEN. I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Nevada would be satisfied with a voice vote.

I merely want to point out we are impinging, as we did on the last vote on the tabling motion, upon the time of the Senators who yet have amendments to offer, and impinging on the time of the debate.

Mr. ALLEN. I ask for the yeas and nays. It is an important amendment and I think we should have a rollcall.

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

The yeas and nays were ordered.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I move to lay on the table the amendment of the Senator from Alabama (Mr. ALLEN) 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 to lay on the table the amendment of the Senator from Alabama (Mr. ALLEN). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, may we have the well cleared?

The PRESIDING OFFICER. The clerk will suspend the rollcall until the Senate is in order. Will Senators take their seats? Will Senators clear the well?

The clerk will proceed.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND) is necessarily absent.

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 115 Ex.]

YEAS—58

Abourezk	Danforth	Hodges
Anderson	DeConcini	Huddleston
Baker	Durkin	Humphrey
Bayh	Eagleton	Inouye
Bellmon	Glenn	Javits
Bentsen	Gravel	Kennedy
Biden	Hart	Leahy
Byrd, Robert C.	Haskell	Long
Case	Hatfield,	Mathias
Chafee	Mark O.	Matsunaga
Chiles	Hatfield,	McGovern
Church	Paul G.	Metzenbaum
Clark	Hathaway	Moynihan
Cranston	Hayakawa	Muskie
Culver	Heinz	Nelson
Pearson	Ribicoff	Stafford
Pell	Riegle	Stevenson
Percy	Sarbanes	Stone
Proxmire	Sasser	Weicker
Randolph	Sparkman	Williams

NAYS—41

Allen	Griffin	Nunn
Bartlett	Hansen	Packwood
Brooke	Hatch	Roth
Bumpers	Helms	Schmitt
Burdick	Hollings	Schweiker
Byrd, Harry F., Jr.	Jackson	Scott
Cannon	Johnston	Stennis
Curtis	Laxalt	Stevens
Dole	Lugar	Talmadge
Domenici	Magnuson	Thurmond
Ford	McClure	Tower
Garn	McIntyre	Wallop
Goldwater	Melcher	Young
	Morgan	Zorinsky

NOT VOTING—1

Eastland

So the motion to lay on the table UP amendment No. 37 was agreed to.

Mr. SARBANES. Mr. 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.

The PRESIDING OFFICER. The question recurs on the leadership amendment.

Mr. ALLEN. Mr. President, have the yeas and nays been ordered? If not, I ask for the yeas and nays.

The PRESIDING OFFICER. They have not been ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

UP AMENDMENT NO. 36

The PRESIDING OFFICER. The question is on agreeing to amendment No. 36. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

The PRESIDING OFFICER. Will Senators take their seats? Will the Senate be in order?

The second assistant legislative clerk resumed the call of the roll.

The PRESIDING OFFICER. The Senate is not in order. The rollcall will be suspended until Senators have taken their seats.

The clerk will continue.

The second assistant legislative clerk resumed and concluded the call of the roll.

The result was announced—yeas 73, nays 27, as follows:

[Rollcall Vote No. 116 Ex.]

YEAS—73

Abourezk	Cranston	Hollings
Anderson	Culver	Huddleston
Baker	Danforth	Humphrey
Bayh	DeConcini	Inouye
Bellmon	Durkin	Jackson
Bentsen	Eagleton	Javits
Biden	Glenn	Kennedy
Brooke	Gravel	Leahy
Bumpers	Hart	Long
Byrd, Harry F., Jr.	Haskell	Magnuson
Byrd, Robert C.	Hatfield, Mark O.	Mathias
Cannon	Hatfield, Paul G.	Matsunaga
Case	Hathaway	McGovern
Chafee	Hayakawa	McIntyre
Chiles	Heinz	Melcher
Church	Hodges	Metzenbaum
Clark	Muskie	Morgan
	Nelson	Moynihan
	Nunn	Stennis
	Packwood	Stevenson
	Pearson	Stone
	Pell	Talmadge
	Percy	Weicker
	Proxmire	Williams
	Randolph	
	Ribicoff	
	Riegle	
	Roth	
	Sarbanes	
	Sasser	
	Sparkman	
	Stafford	

NAYS—27

Allen	Goldwater	Schmitt
Bartlett	Griffin	Schweiker
Burdick	Hansen	Scott
Curtis	Hatch	Stevens
Dole	Helms	Thurmond
Domenici	Johnston	Tower
Eastland	Laxalt	Wallop
Ford	Lugar	Young
Garn	McClure	Zorinsky

So UP amendment No. 36 was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the amendment 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. 103

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized to call up an amendment on which there will be 30 minutes debate.

The Senator from Michigan.

Mr. GRIFFIN. Mr. President, on behalf of myself and Mr. WALLOP I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan (Mr. GRIFFIN) for himself and Mr. WALLOP proposes Amendment No. 103 to the Resolution of Ratification in the nature of a substitute:

Resolved, That the Senate return to the President of the United States the Panama Canal Treaty, together with the annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Ex. N, Ninety-fifth Congress, first session), with the advice of the Senate that negotiations to develop a new treaty relationship with the Republic of Panama be resumed and continued until a treaty is agreed upon that better serves the interests of both nations.

Mr. GRIFFIN. Mr. President, this might be called the last-chance amendment. This is the last opportunity the Senate will have before a vote will be taken where the Senate, perhaps by only a one-vote margin, will take a very dangerous step.

Mr. President, I ask unanimous consent on behalf of the majority leader that the time for this amendment be limited to 20 minutes, 10 minutes to each side.

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

Mr. GRIFFIN. This step will be a dangerous gamble for the United States and the security of the United States.

Mr. CURTIS. Mr. President, may we have order.

Mr. GRIFFIN. I wish I could characterize the exercise through which we have gone today as something other than a charade. Our action today would be ludicrous were it not so serious. Today we adopted a leadership amend-

ment to a treaty that expires in the year 2000, as a way of trying to modify the DeConcini reservation that was attached to another treaty. That other treaty is not now before the Senate, and it does not assume great importance until after the year 2000, when this treaty will have expired.

It is a charade, also, in that the substantial wording and effect of this leadership amendment was already in the leadership amendment attached to the other treaty.

The Senate is being asked this afternoon to paper over the serious and obvious differences that exist with vague and ambiguous language, which both sides will be able to interpret to serve their own interests.

But let us be clear about what we are doing. We are not solving or clarifying anything—we are burying our heads in the sand like a bunch of ostriches, hoping all the while that the almost inevitable confrontation for which we have set the stage will be delayed until after we have left the scene.

What was wrong with the DeConcini amendment was that it underscored the differences of interpretation concerning the Neutrality Treaty that have existed all along. Actually the DeConcini amendment was relatively mild. It provided that:

> If the canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall independently have the right to take such steps as it deems necessary, in accordance with its constitutional precedents, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

That is milder language than the interpretation placed upon the Torrijos-Carter joint statement as put forth by the Committee on Foreign Relations in its own report, which said this:

> The meaning of these amendments, which together constitute the entire Joint Statement, is plain. The first amendment relates to the right of the United Sttaes to defend the Canal (*It creates no automatic obligation to do so. . . .*) It allows the United States to introduce its armed forces into Panama *whenever* and *however* the Canal is threatened. *Whether* such a threat exists is for the United States to determine on *its own* in accordance with its constitutional process. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act as it deems proper against *any* threat to the Canal, *internal* or external, *domestic* or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.
>
> The above-described rights are *not* affected by the second paragraph of the amendment, which provides that the United States has no "right of intervention . . . in the internal affairs of Panama", and which prohibits the United States from acting "against the territorial intergrity or political independence of Panama". (Emphasis supplied.)

But what the Panamanian reaction to the DeConcini reservation pointed up was that the Panamanians did not agree with our interpretation, and this was not the first signal we have had that the Panamanians do not agree with our interpretation concerning the U.S. rights to defend the canal.

We found out what their interpretation was on the eve of the plebiscite when General Torrijos, himself, told the Panamanians:

> . . . (I)f we are attacked by superior forces the United States is *obligated* to come to our defense.
>
> . . . (I)t is necessary for the United States to be committed so that *when we ring the bell* here, *when we push the button*, a bell rings over there, and the United States comes in defense of the Panama Canal. . . .
>
> I repeat, we *push the button*, the bell rings, and the United States is *obligated* to come to our defense. (Emphasis supplied)."

In the General's view, we do not have a unilateral right, but rather an obligation to respond, when they ask us.

There were many other interpretations put forth by Panamanian spokesman before that plebiscite interpreting the Neutrality Treaty as meaning that we could defend the canal in the event of a threat to the canal by "a foreign power," but never acknowledging that we could defend the canal against an internal Panamanian threat.

We proceed to a vote now, and the treaty may carry by one vote, perhaps, two. But what will happen if there is a labor strike after the year 2000, closing down the canal? What will happen if the Government of Panama then refuses to act? What will happen if an anti-American labor union refuses to operate the canal for the transit of U.S.-bound cargo and the Government of Panama refuses to act? Will that be an "internal affair?" I do not think that we have resolved that question. So I think that we are taking serious risks here.

I fervently hope and pray that if this treaty is ratified, the President will be proved right by history, and those who support him in the Senate will be proved right. My great fear is that they will be proved wrong.

The hope that we are going to guarantee peace and contentment in Panama by approving this treaty may be a vain hope, and if so what will we have accomplished? We will have terminated the 1903 treaty—because that will happen as soon as this treaty is ratified. We will have set in place the machinery to transfer the canal to the Panamanians. But will have really achieved the objectives that those who vote for this treaty desire?

I think this is a dangerous gamble. The right approach is to adopt this substitute, and to say to the President, "We do not want to reject the treaties outright, but we do not think these treaties serve the interests of the United States. We give the advice of the Senate that you send the negotiators back to the negotiating table, taking into account the debate of the Senate, and try to fashion more acceptable treaties."

Mr. President, I hope this substitute will be adopted. I yield to the distinguished Senator from New Mexico.

Mr. SCHMITT. I thank the Senator from Michigan for yielding.

Mr. President, most efforts to improve the treaties during Senate consideration have been resisted successfully. The questions which I and many of my colleagues and, I believe, the majority of the American people have about these treaties remain unanswered.

Mr. President, many of the amendments proposed to both this treaty and to the Neutrality Treaty received the support of 35 to 40 Senators. This could only mean that less than the two-thirds needed for ratification are fully satisfied with the treaties in their present form. Yet, if we ratify this treaty today, these unresolved problems will remain to plague our future.

I suspect and hope that the President of the United States is listening to the conclusion of this debate. I am now addressing my remarks to him.

A few weeks ago when Senator GRIFFIN offered this renegotiation amendment in the form of a substitute for the resolution of ratification it had become clear that the Neutrality Treaty would be ratified by one or two votes. Therefore, I can understand why there was insufficient support for this substitute.

Today, however, things have changed. No one is sure how the votes will fall between 6 and 6:15 this evening. That many in this hemisphere will lose is the only certain thing. Proponents and opponents are thus playing a form of senatorial Russian roulette.

This renegotiation substitute is our last opportunity to work together with Panama to create and ratify a new treaty in the best interests of the United States, Panama, and the Western Hemisphere.

It is clear to me that renegotiation has been in order ever since the President signed the treaties. During the week of March 13 I described the preferable conditions under which this renegotiation should occur: Namely, in consultation with all the major interested parties of the hemisphere. A proposal for such consultation goes to the heart of both the political and economic needs of our hemispheric friends.

I call on President Carter to ask his supporters on this treaty issue to back away from the brink. I call on the President to help the Senate lay the foundation for a brighter and more cooperative future for all the people of the hemisphere.

The PRESIDING OFFICER (Mr. SASSER). The 10 minutes of the Senator from Michigan have expired. The Senator from Idaho has 10 minutes.

Mr. SCHMITT. Mr. President, I ask unanimous consent that I be permitted to proceed for 1 more minute.

The PRESIDING OFFICER. Is there objection?

Mr. CHURCH. Mr. President, I have no objection as long as we retain our 10 minutes on this side, in fairness to my colleague from Maryland.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from New Mexico has 1 additional minute.

Mr. SCHMITT. The Griffin amendment, with a Presidential commitment to immediately begin new negotiations with the major user nations of the hemisphere, will give the Senate, Panama, the hemisphere and possibly the world

a new lease on their economic and political lives. It is the only way we can now defuse the time bomb these treaties have created. At the same time, we can take the most positive step ever taken toward a new hemispheric relationship; a relationship of hope and trust; a relationship for the future.

Mr. President, the Senator from Michigan has agreed to accept my amendment to his substitute for the Resolution of Ratification. I send the amendment to the desk. This amendment would require that other hemisphere nations be included in the new negotiations mandated by the distinguished Senator's substitute resolution.

Mr. GRIFFIN. Mr. President, is it in order that I accept this as a modification of my amendment?

The PRESIDING OFFICER. It would require unanimous consent.

Mr. GRIFFIN. I ask unanimous consent that my amendment be so modified.

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

The modification (UP amendment No. 38) is as follows:

On page 7, after "Panama", insert, ", involving all the nations of North and South America who wish to participate,".

On line 9, after "nations", strike the period and add ", and all the nations of the Western Hemisphere."

The PRESIDING OFFICER. The Senator from Idaho (Mr. CHURCH) is recognized for 10 minutes.

Mr. CHURCH. Mr. President, after 14 years of negotiations between the United States and the Republic of Panama, directed by four different Presidents of this country, and after 38 days of debate on these treaties in the Senate of the United States, we are asked to approve a motion to return this treaty to the Committee on Foreign Relations and to the President of the United States, in order that it might go back again to the bargaining table.

If there is one thing clear, it is this: Should the Senate adopt the motion of the distinguished Senator from Michigan, these treaties will not go back to the negotiating table. We will go back, instead, to a condition of deadlock and defiance. It just is not any longer possible for one country to maintain a colony in another against the wishes of the inhabitants of that country.

We began negotiations back in 1964, when 24 people died in riots in Panama, because the overwhelming sentiment of the Panamanian people finally flared into open flames. Since that time we have undertaken to negotiate at arm's length a just set of treaties, a fair bargain fairly arrived at.

As each Senator prepares to cast his vote on the pending resolution, let him consider that the treaty before us is right for the United States, right for the Republic of Panama, and right for the times in which we live. And let him take into account what his final vote will mean.

A vote against this treaty represents a vain attempt to preserve the past.

It represents a futile effort to perpetuate an American colony in Panama against the wishes of the Panamanian people, in an age when colonies have disappeared elsewhere, gone with the empires of yesterday.

It represents an ill-destined desire to cling to American ownership and control of an aging canal, which, by the end of this century, will be able to accommodate less than one-tenth of the commercial tonnage then on the high seas.

It represents a sentimental journey back to the era of Teddy Roosevelt, the Big Stick, and the Great White Fleet, in a day when our modern aircraft carriers and nuclear submarines can no longer even use the present canal.

It represents a dangerous folly that will exacerbate an old Panamanian grievance stemming from the Treaty of 1903, in an age when such grievances can readily deteriorate into endless harassment and guerrilla war.

But a vote for the treaty looks forward to a new day.

It would restore to Panama jurisdiction over her own soil and thus lay the basis for a close and friendly cooperation between the United States and Panama in the years ahead.

It would give us the best guarantee available of dependable use of the canal from now until the end of the century, and beyond.

It would enhance the prospects for the construction of a sea-level canal to meet our naval and commercial needs of the 21st century.

It would protect our security interests by insuring that our right to go to the head of the line will be preserved in case of need, and by guaranteeing our right to defend the canal with military force if ever that should prove necessary.

It would create a sense of mutual respect and trust, nurtured from the knowledge that this is a just treaty, fair to both sides, which will make for better relations throughout the hemisphere and redound to our benefit everywhere in the world.

Yet the vote, Mr. President, will be a difficult one. Every Senator knows that ratification of these treaties will not be popular, given the deep division in public opinion. But the Senate was envisioned by our Founding Fathers as the legislative body where unpopular decisions might be made, when the long-term interests of the Nation demanded it.

Today I pray that the Senate will defeat this amendment, and then, by approving this treaty, will rise to its historic responsibility, as each Senator is called upon to put the country first—above personal and political considerations.

Mr. President, the moment of truth approaches. The outcome will either cast our future relations with Latin America and the developing world in a bright new light, or plunge it under a gathering shadow that could last for years to come.

I yield the remainder of my time to my good friend and able colleague, to whom I am so deeply indebted for the past 2 months of cooperation on this floor, the able Senator from Maryland.

The PRESIDING OFFICER. Senator SARBANES, of Maryland, is recognized.

Mr. SARBANES. Mr. President, 10 weeks ago tomorrow we began on the floor of the Senate the consideration of these treaties. The question which we are now about to answer is whether we have the maturity of judgment, the wisdom, the understanding, and the vision of ourselves as a people, and our role as a leader of the free world to seize the opportunity which is before us.

We are a powerful country, and we can use our power to protect our interests. But we should seek to use that power in accordance with a legal and a moral basis which makes its exercise justified. We should seek such a basis for the exercise of our power. These treaties give us that basis and thereby bring might and right into harmony.

These treaties are a positive opportunity for this country. They are not a retreat. They are not a flight from leadership. They are an assertion of what American leadership should be all about. They are a chance for America to move forward. They are an opportunity to bring forth the best, the very best, in the American people, to call upon the finest traditions for which this Nation stands and to do it in such a way that our defense interests, our economic interests, and our foreign policy interests are all served. More importantly, what we stand for as a people will be well served.

The treaties give us an opportunity to join with Panama in a cooperative relationship which will stand as an example to the entire world. An example of the proper and just relationship between a great power and a small nation, a relationship based on self-respect and dignity.

David McCullough, the author of that superb book, "The Path Between The Seas," said in his testimony before our committee:

The Panama Canal is expressive of one of the oldest, noblest desires in the human heart, to bridge the divide and to bring people closer together. These treaties are expressive of that same desire. They are a progressive step, an act of strength, and confidence, and of good will.

We ought not to lose today the opportunity which the treaties offer to the American people. I hope the Senate will advise and consent to this treaty.

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

The question is on agreeing to the amendment of the Senator from Michigan.

Mr. SCHMITT. Mr. President, I ask for the yeas and nays.

Mr. CHURCH. Mr. President, I move to table the amendment. 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 to lay

on the table the amendment of the Senator from Michigan as modified. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 64, nays 36, as follows:

[Rollcall Vote No. 117 Ex.]

YEAS—64

Abourezk	Hart	McGovern
Anderson	Haskell	McIntyre
Baker	Hatfield,	Metzenbaum
Bayh	Mark O.	Moynihan
Bentsen	Hatfield,	Muskie
Biden	Paul G.	Nelson
Bumpers	Hathaway	Nunn
Byrd, Robert C.	Hayakawa	Pearson
Cannon	Heinz	Pell
Case	Hodges	Percy
Chafee	Hollings	Proxmire
Chiles	Huddleston	Ribicoff
Church	Humphrey	Riegle
Clark	Inouye	Sarbanes
Cranston	Jackson	Sasser
Culver	Javits	Sparkman
Danforth	Kennedy	Stafford
DeConcini	Leahy	Stevenson
Durkin	Long	Stone
Eagleton	Magnuson	Talmadge
Glenn	Mathias	Weicker
Gravel	Matsunaga	Williams

NAYS—36

Allen	Goldwater	Roth
Bartlett	Griffin	Schmitt
Bellmon	Hansen	Schweiker
Brooke	Hatch	Scott
Burdick	Helms	Stennis
Byrd,	Johnston	Stevens
Harry F., Jr.	Laxalt	Thurmond
Curtis	Lugar	Tower
Dole	McClure	Wallop
Domenici	Melcher	Young
Eastland	Morgan	Zorinsky
Ford	Packwood	
Garn	Randolph	

So the motion to lay on the table amendment No. 103 (as modified) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD addressed the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I ask that the distinguished Senator from Nevada be recognized to call up an amendment at this time and that there be 1 minute to the side to be equally divided in accordance with the usual form on the amendment.

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

The Senator from Nevada (Mr. CANNON) is recognized.

UP AMENDMENT NO. 39

Mr. CANNON. Mr. President, I withdraw my unprinted reservation No. 35 and ask that a substitute reservation be stated, which the clerk has at the desk.

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

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON) for himself, Mr. BENTSEN and Mr. PAUL G. HATFIELD, proposes an unprinted amendment numbered 39:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof the following: "subject to the following reservation:

"After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless it is otherwise provided by legislation enacted by the Congress, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government and not reimbursed before the date of entry into force of the Treaty. Such reimbursement of such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase 'funds or other assets directly invested' shall have the same meaning as the phrase 'net direct investment' has under section 62 of title 2 of the Canal Zone Code."

Mr. ROBERT C. BYRD. Mr. President, I ask that there be 1 minute for Mr. CANNON and 1 minute for Mr. CHURCH.

Mr. LEAHY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, how about my request?

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

Mr. CANNON. Mr. President, I ask unanimous consent that Senator NUNN be added as a cosponsor of this amendment.

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

Mr. CANNON. Mr. President, according to the Comptroller General, this amendment would save a loss to the Treasury over the next 22 years of approximately $505 million. It simply insures that no waiver of the interest payments from the Panama Canal Commission to the U.S. Government can be made unless it has the affirmative action of the Congress.

I think that is very important, that we have the opportunity to act on it if any waiver is to be made. Therefore, I believe it is a good amendment and I hope the leadership will accept it.

Mr. CHURCH. Mr. President, since the reservation offered by the distinguished Senator from Nevada provides that the final decision on the reimbursement of interest will be left to the Congress when it passes upon the enabling legislation to implement this treaty, we see no objection to the adoption of the reservation.

It is my understanding the sponsor desires a rollcall vote and we are happy to oblige in that regard.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to unprinted amendment No. 39 of the Senator from Nevada (Mr. CANNON). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 90, nays 10, as follows:

[Rollcall Vote No. 118 Ex.]

YEAS—90

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

NAYS—10

Abourezk	Gravel	Long
Clark	Griffin	Weicker
Culver	Hart	
Durkin	Kennedy	

So Mr. CANNON's amendment (UP No. 39) was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CANNON. 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, under the schedule that was outlined on yesterday there was to be 1 hour for general debate before the final vote on the resolution of ratification.

Every Senator who was known to have a reservation at that time was allotted some time in the schedule.

There have been at least two rollcall votes that were not anticipated yesterday, and they have eaten into the time.

I ask unanimous consent that the 1 hour for debate which had been originally scheduled be restored and that the vote occur at the expiration of that hour or upon the time being yielded back.

Mr. LONG. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I hope no objection will be heard. I hope the Senator will not object because there are Senators who have been promised time during the hour of debate.

Mr. LONG. I will be glad to give unanimous consent that all speeches made after the vote appear in the RECORD before the vote.

We did that on a tax bill some years ago. The public as a whole will not know,

except those in the Senate Chamber. But those who read about it in our history will think those stirring speeches changed the vote that made the outcome what it was. [Laughter.]

We have debated these treaties for almost 2 months now. Mr. President, it would be an insult to the intelligence of Senators to think anyone is going to change his mind at this late date.

We have people here who want to know the final vote count. Radios are tuned in all around the country. The galleries are packed. Everyone wants to know what will happen. Anyone who makes a speech now will be doing a very unpopular thing. [Laughter.]

I am not sure my vote will be popular, Mr. President, but I think my objection on this will be. [Laughter.] I must insist on my objection. But I am willing to give consent that anyone who wants to make a speech have it appear in the RECORD immediately following the vote, and the RECORD will show his speech is what determined the outcome.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time the distinguished Senator from Louisiana has taken not be charged against the time for debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. McCLURE addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I have listened——

Mr. McCLURE addressed the Chair.

Mr. ROBERT C. BYRD. Yes.

Mr. McCLURE. Mr. President, I was on my feet seeking recognition.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator.

Mr. McCLURE. I thank the Senator.

Mr. President, it was stated by the majority leader, and I think in good faith, that all Members who had reservations that were known were allotted time. The junior Senator from Idaho had a reservation and it was not included on the list. There might have been time had we not run into three rollcall votes that were not anticipated, and I have made arrangements with the managers of the treaty that if as a matter of fact there is an extension of time for debate the junior Senator from Idaho will have at least time to explain what would have been offered had it been possible to offer it.

With that, Mr. President, I will not object to the request, but I thank the Senator for yielding to me at this time.

Mr. TOWER. Regular order.

Mr. BURDICK. Regular order.

The PRESIDING OFFICER. Regular order has been called for.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be one-half hour for general debate before the vote occurs.

Mr. SCOTT. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be 10 minutes equally divided.

Mr. SCOTT. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from South Dakota (Mr. ABOUREZK) be allowed to speak for 5 minutes.

Mr. SCOTT. Mr. President, I object.

Mr. ROBERT C. BYRD. Mr. President, I hope the Senator will not object. There will come a time when the Senator will want 5 minutes, and the majority leader has never, never objected to any Senator on this floor having at least 5 minutes to speak.

Mr. SCOTT. Mr. President, if the distinguished majority leader——

Mr. ROBERT C. BYRD. I am giving up my time. I would like for the Senator from South Dakota to have 5 minutes and the Senator from Virginia may have 5 minutes under my request.

Mr. SCOTT. Mr. President, if the Senator will yield——

Mr. ROBERT C. BYRD. Yes.

Mr. SCOTT. Reserving my right to object, I have listened here the last few days to amendments being offered and accepted by the leadership, in my estimation, in an effort to placate some of the Senators and obtain some votes, and frankly it is disgusting to me, and I am going to continue to object to anything except the final vote on the treaty.

Mr. ROBERT C. BYRD. Very well, Mr. President.

I ask that the Senator from South Dakota be recognized for the remaining minutes before the vote.

The PRESIDING OFFICER. The Senator from South Dakota (Mr. ABOUREZK) is recognized for 1 minute.

Mr. ABOUREZK. Mr. President, I thank the Senator from West Virginia for yielding.

I only want to say that starting last week after the closed meetings of the so-called Senate-House conference committee on natural gas met at the White House in secret with the Secretary of Energy and with the President, at different times, I became determined after that, because of the fact that for the last 50 or so years oil policy in the Government has been made behind closed doors, that I would vote against this treaty on the Panama Canal.

Now, the treaty itself, while it may be important, I do not believe is as important as the issue of deregulation of natural gas and the economic impact that will have on the people of this country. I believe it is much more important.

I have had discussions with the White House for the past few days, and I have in those discussions learned from the White House that they intend to try to encourage an open democratic process in spite of the fact that they have committed what I would call great many transgressions in the past weeks on this natural gas issue, and I am convinced that although the treaty itself is only marginally better than the treaty that we are living under, in fact it does nothing but it legitimizes the imperialist aspect of the way that we are intervening in the affairs of Panama and other Third World countries, I might add, it is not the reality that is important here. It is the perception that the defeat or the passage of this treaty will have on the people of Panama and the people of the United States itself.

I asked for this time from the leader to announce that I intend to vote for the treaty for those reasons.

Mr. TOWER. Regular order.

Mr. ROBERT C. BYRD. Mr. President, regular order has been called for, but, Mr. President, I thank the Senator from South Dakota. I congratulate him on his courage, and I want the Senator from Virginia to know that I forgive him.

Mr. SCOTT. I appreciate the kindness of the distinguished majority leader.

Mr. TOWER. Regular order.

Mr. ROBERT C. BYRD. The Senator from Virginia may want 5 minutes sometime. I will try to help him get it.

Mr. GRAVEL. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all Senators who had statements they were prepared to make orally be permitted to insert them in the RECORD, and that they appear as though made orally.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I believe it was Justice Oliver Wendell Holmes who once observed that close decisions make bad law. It is no less true that close votes make bad legislation and poor treaties.

The vote on this treaty will be very close. And why? Because there is no public support for it. The American people are against this treaty. There is no national consensus. Even the Congress may be opposed to this treaty, because the House of Representatives has been deliberately pushed aside and the Constitution ignored if not abused.

And because neither Congress nor the American people favor this treaty, the treaty—like the war in Vietnam—is doomed to failure, no matter how many votes the proponents receive today.

And why are the American people against this treaty? Because it has the stench of defeat, withdrawal, and weakness. Because it is poorly drafted, ambiguous, filled with translation difficulties, and does not protect American interest and rights. Because, Mr. President, it is even unconstitutional.

When another Edward Gibbon appears on the scene to chronicle the decline and fall of the United States, the Panama Canal Treaty, if it is approved will be remembered as one of the darkest days in the history of this country.

Should these treaties be ratified, our hemispheric problems are just beginning. Hostile forces will then begin winning. And America will be perceived as a receding power—unwilling to stand anymore, while its citizens weep, and watch the fall.

Mr. LAXALT. Mr. President, this is, indeed, a historic occasion. As Senators,

we will soon be called upon to decide a question that will go a long way toward determining the kind of people we are and the role we wish to play in the world. Many thoughtful presentations on both sides of the Canal Treaty question have been made during the past 2 months. But, I would like to take this opportunity at the close of a truly historic debate to speak to the significance of what we are about to do.

HISTORIC OCCASION

It is rare that this Senate comes to showdown votes on momentous questions with the outcome possibly hanging on a single vote. Any Senator thinking back historically, can easily think of votes such as that on the North Atlantic Treaty in 1949 which were important but not close. And, each of us has his own examples of cliffhangers of no particular moment. But, make no mistake about this one. Like the Versailles Treaty in 1919, the vote we are about to have on the Panama Canal Treaty is of immense import.

My good friend, the distinguished majority leader, in his customary learned fashion, spoke of Philippi and the Rubicon in underscoring the importance of the vote on the Neutrality Treaty. As usual, his allusions were right on point. The Rubicon sounded the death knell of the confusion and vacillation of the late Republic while Philippi set the stage for the emergence at Rome of the golden age of Augustus.

In my judgment, a negative vote on the pending resolution of ratification could signal a similarly hopeful turn in our foreign policy. From our weak and vacillating current position, where we seem unable to determine where we are or where we wish to go, we are now afforded an opportunity to move in the direction of a mature, strong and self-confident posture which our people so clearly deserve.

In his campaign, President Carter promised a government as good as the American people, but he has not yet delivered. Certainly, the Panama Canal Treaty fails to measure up. Our people know we cannot buy friends. Our people know that capitulation under threat of force simply merits graver threats. And, most importantly of all, our people know that in international affairs, while it is nice to be appreciated, it is even more important to be respected. And, this treaty in no way adds to the diminishing stock of respect in the world.

Mr. President, our people oppose this treaty. Although some effort was made in the debate on the Neutrality Treaty to argue that the American people had come around, that they had shifted from a position overwhelmingly in opposition to one slightly in favor, that effort was abandoned in the debate on the second treaty. This is because it has become clear that no such shift occurred. Indeed, if the American people have moved at all during the course of these debates, they have only grown more strongly opposed.

Perhaps, reply the proponents, but, echoing Burke, they argue that a Senator owes his constituents his judgment. They say a Senator is more than just a seismograph for registering the depth and intensity of his constituents' feelings. As far as it goes, this is certainly true. But, the mere fact of being opposite one's constituents on an important issue cannot so lightly be assumed tantamount to good judgment. Quite the contrary. For those of us with strong faith in the character and good sense of the American people, it is a most perilous position and one not to be assumed without the deepest reflection and the most serious conviction.

It is well for my colleagues to remember that the very same Edmund Burke, whose quote on the judgment of the representative outweighing that of his constituents was so bandied on the debate on the Neutrality Treaty, also said in a letter to the Bell-Club of Bristol on October 31, 1777:

> We members of the House of Commons are like other men who all want to be moved by praise or shame; by reward and punishment. We must be encouraged by our constituents and we must be kept in awe of them or we shall never do our duty as we ought.

JUDGMENT

Mr. President, those among my colleagues who genuinely feel that our canal in Panama is some kind of colonialist anomaly, who really believe that the Neutrality Treaty provides adequate safeguards for our vital defense interests, who honestly think that the economic provisions are fair and workable and who truthfully see our relations with Latin America being improved and strengthened by this pact; they should in good conscience vote "aye."

Needless to say, I do not believe any of these assertions. Our canal in Panama is a circumstance unique to world history. Dating virtually simultaneously from the birth of the Republic of Panama and conveying enormous benefits to the Panamanian people, it is in no sense a colonial possession. Unlike the Suez situation, where an ancient nation was dispossessed of its territory to create a canal, in Panama the canal and the neighboring nation came into being at the same time.

It is also difficult to see how anyone can feel comfortable with our defense rights as set out in the Neutrality Treaty for after the year 2000. Indeed, it is not even clear at this juncture whether we will have a Neutrality Treaty, because recent disturbances in Panama indicate that the Panamanian Government may ultimately have to reject it regardless of what it now says. Thus, far from being the finely honed diplomatic triumph pleasing to everyone, that was initially sold to us, it now appears as though that section of the Neutrality Treaty dealing with U.S. defense rights has succeeded in offending nearly everybody. Some Senators see it as insulting to Panama. Others see it as inadequately guaranteeing U.S. rights. And, almost no one is happy with it.

The economic provisions are no better. Despite the acceptance of certain reservations, the uneasy feeling among our people that we are literally paying the Panamanians to take a multibillion-dollar asset off our hands persists. I personally believe that certain reservations accepted by the Senate have gone some distance toward improving what once were totally unacceptable confusions and ambiguities. But, the fact remains that we are turning over our canal to Panama in a manner which will bring considerable profit to the present regime.

Proponents argue that our relations with Latin America will be enhanced immeasurably should the Panama Canal Treaty be agreed to. As a Latin myself, I doubt it. Even more so than most peoples, we Latins respect firmness and are suspicious of vacilliation and weakness. What is more, although Latin American leaders have to adhere publicly to a kind of antigringo solidarity on this issue, privately they have let it be known that they are concerned about an economic asset as valuable as the Panama Canal being left in the hands of the present Panamanian regime.

SIGNIFICANCE

At any rate, Mr. President, no one here should underestimate the significance of what we are about to do. However we vote, we can be certain that our constituents will remember. And, more importantly, we will all have our own consciences to contend with.

The press attention which the Canal Treaty issue has drawn, the groups mobilized both for and against, and the general intensity of feeling within the electorate virtually guarantee that this issue will be remembered for a good long time. Although the public is supposed to be fickle and short of memory, on this issue, none of us should count on it.

But, each of us, in the final analysis, must make up his own mind. The ultimate burden of decision rests with us, which is as it should be. Our Founding Fathers wisely afforded to the Senate the advise and consent function on treaties in order to ascertain after due deliberation and mature reflection whether treaties negotiated by the Executive are truly in the national interest.

All the debate will soon be over. The final amendment has been offered. Let us now proceed to deciding whether the Panama Canal Treaty measures up to this exacting standard.

Mr. CHILES. Mr. President, today I cast my vote for the ratification of the Panama Canal Treaty.

My decision in support of the Panama Canal Treaty and the Neutrality Treaty has not been an easy one for me. My decision was made only after careful examination of all the public and private information made available to me. I have been briefed by our defense and intelligence gathering agencies. I have closely followed the congressional hearings. I have listened to my constituents on visits to Florida and have examined my mail. I have listened to the arguments put forth by both proponents and opponents. Based upon all this information, I have to come down on the side of supporting the treaties with the amendments and reservations the Senate has adopted.

As I have examined the treaties over

the last several months, my major concern has been whether or not the provisions insured that the canal would remain open for our ships and those of all nations. The adoption of two major amendments to the Neutrality Treaty has insured that the United States has the right and the responsibility to defend the canal militarily against any aggression which might threaten the ability of our ships to transit the canal. The second amendment insures that our vessels will be able to transit the canal as quickly as possible, and in times of need or emergency, it would insure that our warships would go to the head of the line.

While these amendments assured our rights in a secure and a neutral canal after the year 2000, it was unclear to me and to many other Members of the Senate just what rights our country had should the canal be closed or its operations interrupted from internal causes. To make it ironclad that the United States has the unilateral right to reopen the canal in such cases, I joined with 74 other Senators in supporting the DeConcini reservation which spells out America's right to act independently to take the steps necessary to use military force to reopen the canal.

With the DeConcini reservation attached to the treaty, there's absolutely no question as to what action the United States can take to keep the canal open.

I am firmly convinced that ratification of the Panama Canal treaties with the amendments and reservations which have been adopted by the Senate are in our best national security interests. It will serve our best national security interests in terms of our overall relations with all of Latin America. It will remove an issue which has been a rallying point for the Communists, and will thus help to curb the possible growth of communism in Panama and Latin America.

As a U.S. Senator, I have been elected to represent the people of my State, and to do this properly I must to the best of my ability fully inform myself on all the aspects of these proposed treaties, listen to all the arguments for and against, weigh all consequences of accepting or rejecting the treaties and having done this, I must vote in the way my conscience dictates is best to protect the interests of the United States. I am doing this today by casting my vote in support of the treaties.

PANAMA CANAL TREATY: AN ANALYSIS

Mr. CLARK. Mr. President, one of the experiences that impressed me most during the prolonged hearings and debate over the Neutrality Treaty was the extent to which, as George Gallup wrote in an analysis:

> The more Americans know about the Panama Canal treaties, the more likely they are to favor Senate ratification . . .

This was parallel to my own experience, meetings and talking with people of my State. In many instances, persons would begin by being very much opposed to the treaties but, after a discussion of the pros and cons, would swing around and be much more friendly toward them.

This experience leads me to the conviction that there are still a lot of people in this country who have not yet read the treaty texts, who do not really know what they provide for, and who are in fact taking a position based on bits and pieces of information that they may pick up through the media. As a matter of fact, it occurred to me that even those with the patience to listen to this debate on the radio would not, from the broadcasts alone, have heard what is in these treaties. There is not even the formal reading of the articles—here on the floor we normally dispense with the reading after a few passages. Instead, they have heard debate on isolated items, often in the critical formulation of what is not in the treaties, and what may be added to them.

Mr. President, in my judgment, I think it is imperative that the American people become familiar with the substance of these treaties so that they may better judge what we are undertaking.

I am reminded of Woodrow Wilson's comment that the responsibility of the legislative branch to inform is as great as its responsibility to legislate.

For that reason I have undertaken a lengthy and detailed analysis of the Panama Canal Treaty. I want to spell out right here what is said in this treaty, what it means, why it is phrased in that fashion. I want to look right into the heart of this treaty to try to demonstrate, as I have learned myself, that there is an awful lot of painstaking negotiation embodied in this treaty, a lot of reflection on how best to establish a machinery for the gradual assumption of Panamanian control of the canal, while at the same time protecting the interests of this Nation, and of those American citizens now working in the canal.

Article I of the treaty is entitled "Abrogation of Prior Treaties and Establishment of a New Relationship." Upon entry into force of the new Panama Canal Treaty, the old Treaty of 1903 would be abrogated, as well as two subsequent revisions of that treaty, one in 1936 and 1955.

It would also abrogate a whole host of earlier treaties, conventions and exchanges of notes between the United States and Panama concerning the Panama Canal. This is a housecleaning provision; if you are going to have new treaties, the old ones have to be abrogated.

The second section describes the extensive rights the United States will enjoy during the period of this treaty, that is, for the rest of the century (until the year 2000):

> In accordance with the terms of this treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America . . . The rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal.

Panama further guarantees to the United States "the peaceful use of land and water areas" necessary to carry that out.

Section 3 says:

> Panama shall participate increasingly in the management and protection and defense of the Canal . . .

Section 4 says simply that the United States and Panama—

> . . . shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

To sum up this article, we agree to abrogate the existing treaties, but, in response, Panama guarantees us a broad range of rights necessary to continue operating the canal. These general principles are subject to clarifications and limitations elsewhere according to other terms of the treaty, but these are the broad principles on which this treaty is based, and on which it would be interpreted in an international court of law.

Article II is the "Ratification, entry into force, and termination" clause. This is the clause that provides that—

> This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties.

Without editorializing there, I would think it is fair to say that the treaty does not give the United States any authority to interpret the constitutional processes of Panama any more than it gives Panama authority to govern the constitutional processes of the United States; nor should it. These are domestic Panamanian issues.

Article II also links this treaty to the Neutrality Treaty the Senate already has voted to ratify, just as that treaty has a clause linking it to the Panama Canal Treaty. These two are linked so that one cannot come into force without the other. And rightly so, for the Panama Canal Treaty is designed to prepare Panama to assume control of the canal, under the arrangements in the Neutrality Treaty, after the year 2000; and the United States would not transfer operation to Panama absent the ongoing rights and guarantees provided to us by the Neutrality Treaty.

The article also provides that the treaties will enter into force 6 months after the formal ratification.

It also provides that this Treaty, the Panama Canal Treaty, terminates at noon on December 31, 1999, from that point on our relations will be governed by the Neutrality Treaty, which has no cutoff date.

Article III establishes the ground rules for "Canal Operation and Management."

In this article, Panama grants to the United States the rights to manage, operate, and maintain the Panama Canal in order to provide for the orderly transit of vessels through it. Among the specific rights are: First, to use the specific lands and waters necessary for this purpose; second, to make improvements and alterations; third, to establish the rules and regulations governing such matters as navigation; fourth, to establish, modify, collect, and retain tolls; fifth, to regulate relations with employees of the U.S. Government; and sixth, to issue and enforce regulations.

In short, the United States will retain full authority over all aspects of canal operation and management; helping the

setting of tolls and establishment of wages, vacations, et cetera, for our employees. All of these matters—and this is extremely important—will remain subject to the legislative jurisdiction of the U.S. Congress.

Moreover, the broad U.S. rights established here are reinforced in great detail in separate agreements and protocols which regulate details in much the same fashion as our status of forces agreement maintained with many countries throughout the world. These agreements provide extremely specific rights and protection for our agencies and employees, and this too is a very important point, our employees are not going to be worse off as a result of these treaties, their status will be different than it is now, but it will not be worse. Indeed, their situation will be better in many respects.

For example, an employee today who leaves the Canal Zone and goes into other parts of Panama has no specific protection under the existing treaties and agreements, under the new treaty they will have extensive protections wherever they may go throughout Panama, the status of force formula is a proven one, it has worked extremely well in protecting our employees—both civilian and military—in all sorts of environments in various countries throughout the world for 30 years, there is certainly no reason to believe that these modern and proven types of protections cannot work equally well in Panama.

An extremely important provision of section 3 is the provision for establishing a Panama Canal Commission to manage, operate, and maintain the canal.

I think it is vitally important that everyone concerned with this treaty recognize that the commission, which will run the canal, will be a U.S. Government agency, created by and subject to U.S. law.

Thus, it will be subject to the continued legislative jurisdiction of the U.S. Congress. Its Board of Directors will be composed of nine members, "five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals * * *." This is not for 6 months; this is not for 30 months. From the time this treaty enters into force to the time it expires at the end of the year 1999, the United States will run the Panama Canal Commission which runs the canal and will have a voting majority on its board.

Section 3 has a further provision for facilitating the transfer of control while at the same time providing for ultimate U.S. responsibility. It provides that the Administrator of the Canal, the individual who manages the canal under U.S. direction, will be American until 1990, with a Panamanian deputy, after that, the administrator will be Panamanian, but it will be a candidate of Panama's which is appointed by the United States. If we find him unacceptable, if we do not like him, we do not have to appoint him; Panama has to nominate a candidate acceptable to the United States, or he simply would not be named to the post. In fact, if the United States accepts a Panamanian nomination, and names the man as administrator, and then finds him unacceptable, the United States can remove him. Moreover, whatever the nationality of the administrator, or for that matter any other officer or employee of the commission, he will be a U.S. Government employee whose duties and authority will be defined by U.S. law, and his activities will be fully subject to the policy direction of the U.S. Government. This is not unusual. Our big multinational corporations operate throughout the world with local managers. Indeed, the U.S. Government employs foreign nationals both in the United States and in other countries where we have activities. They key to control is not the nationality of the employee, but who directs them. In this case it is clearly the United States which retains this control.

This section of the treaty also provides that the United States will reimburse Panama for a variety of public services in the canal operating area and in some housing areas. I understand that the United States will actually be saving about $8 million over the current costs of these services. This clearly would be to our advantage. Our agencies and employees deserve high quality public services.

The next section provides for the establishment of a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States and Panama, with the task of advising the United States and Panama on matters affecting the operation of the canal. I would certainly expect that this committee could evolve as a valued and useful advisory board. However, I wish to emphasize that its role is strictly advisory; decisions will be made by the United States and our agency, the Canal Commission.

Section 8 provides for growing participation of Panamanian nationals at high management levels, and throughout the administration. I find this perfectly justifiable, but must emphasize that again there are certain limitations and restrictions on this mandate, designed to protect current employees of the Canal Company, as spelled out in article X, which I will turn to later. The principle is stated, subject to reservations designed to assure proper operation of the canal and protection of its employees.

Finally, article III provides that when this treaty enters into force, the existing agencies—the Panama Canal Company, and the Canal Zone Government—shall cease to operate in Panama. As we have seen, the administrative and managerial functions performed by these agencies will be taken over by the Canal Commission. The municipal government function become the responsibility of the Panamanian Government.

Mr. President, I turn now to article IV, "Protection and Defense," which I consider one of the most vital provisions in this treaty. There are two specific points worth emphasizing:

First of all, the United States and Panama "commit themselves to protect and defend the Panama Canal. Each party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it."

Again, as in the Neutrality Treaty, both countries bind themselves to protect the canal, but each—and I repeat, each—acting alone, determines what actions it will undertake "to meet the danger resulting from an armed attack or other actions * * *"—let me repeat, "or other actions"—which threaten the canal. These "other actions" are wisely, in my judgment, left without further definition. It is the diplomatic way of doing things. Panama knows; the United States knows, that this means the same thing as article IV of the Neutrality Treaty, that is, that the United States can take action against any threat to the canal.

Second, article IV says the United States shall "have primary responsibility to protect and defend the canal." Again, primary responsibility for the protection of the canal. For this purpose the United States is assured the right to station troops, to train troops, and to move troops as necessary. The rights under this article are spelled out in considerable detail in an agreement in implementation of this article—a standard status of forces agreement such as we have with many nations—which contains provisions which our military leadership says flatly are quite sufficient to carry out our responsibility for defending the canal.

Finally, article IV provides for the establishment of a combined board of U.S. and Panamanian military officers, to work together—in the spirit of this treaty—in matters pertaining to the protection and use of the canal. This relates to the basic defense rights I just mentioned. Each party has the right to act independently if necessary, but both contemplate working together and cooperating to protect their common interest in the canal. The combined board will in no way affect the chain of command of the U.S. forces in Panama.

There is one other provision in this article IV of considerable significance: Section 5 provides:

> To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

Let me emphasize these words, Mr. President, "to the extent possible * * *" the United States "will endeavor * * *" "in normal time * * *" to maintain force levels "* * * not in excess * * *" of those levels which exist when the Treaty goes into force. Absolutely right; absolutely correct. A good faith statement of policy that is perfectly consistent with the spirit of this treaty. Neither we nor the Panamanians want any more U.S. troops around than necessary to do the job. But in an emergency, where neces-

sary, the U.S. has the right to increase these levels.

Mr. President, article V contains the "Principle of Non-Intervention" in Panamanian politics which was criticized at various times during the hearings on the treaties. Let us look at just what it does. "Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this treaty. Accordingly, they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama."

I do not see what is so unusual about this restriction. It is not strange that Panama does not want these U.S. citizens, who are in Panama, because they work for the U.S. Canal Commission, to be fooling around in their domestic politics. Nor do our NATO allies, who have essentially the same restrictions on the activities of the large numbers of U.S. citizens in their countries, because of the alliance.

This language is no different than that in our status of forces agreements with many countries.

Lest there be any misunderstanding, this provision does not in any way restrict the activities of the U.S. nationals with respect to the American political scene, except, of course, that they will be, as they now are, U.S. Government employees, and subject to the same restrictions of the Hatch Act as any other U.S. employee.

Mr. President, article VI is brief, but of considerable importance in the discussion of particular concern to a broad segment of our population that is particularly alert to environmental issues. In brief, in this section the U.S. and Panama pledge themselves to give due regard to "protection and conservation of the environment" and agree to establish a joint commission to deal with these issues in the operation of this canal or any other which might be built. The two parties agree to submit to the Joint Environmental Commission an impact statement on any action they take which might have environmental ramifications.

Article VII dealing with "flags" is brief and to the point. The entire area will be under the flag of Panama which will always occupy the position of honor. The U.S. flag will fly along side the Panamanian flag at the headquarters of the Canal Commission. The U.S. flag will also fly on U.S. defense sites, and the U.S. flag can fly elsewhere if both parties agree. I think this is an entirely appropriate reflection of Panamanian sovereignty, and is consistent with normal, international practice.

Mr. President, article VIII on "Privileges and Immunities" is vital to the effective and independent operation of the Canal Commission. It states clearly that the installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this treaty and related agreements, "and their official archives and documents, shall be inviolable." This means that the Panama authorities cannot enter our facilities or inspect our records without our consent. Special arrangement will be made between Panama and the United States to handle criminal investigations at such locations.

Furthermore, although Panamanian law shall generally apply in these areas made available for use by the United States, the agencies and instrumentalities of the United States will be immune from the jurisdiction of Panama. And finally Panama has agreed to give the privileges and immunities accorded to diplomatic agents and their dependents under international law to the top 20 officials of the commission.

In short, throughout the period of this treaty, the Canal Commission's archives will be inviolable, the agencies of the U.S. government will be immune from jurisdiction of Panama, and 20 top officials and their families will enjoy diplomatic immunity. All this in addition to the very specific and extensive jurisdictional arrangements provided for all of our personnel under the implementing agreements which include specific procedural and due process guarantees for American employees of the Canal Commission, the military and their families. This in my judgment is a carefully drafted and thought out guarantee of our ability to run the canal without harassment by the Panamanians or anybody else.

Mr. President, sections 1–7, article IX, which deal with "Applicable Laws and Law Enforcement" are of vital interest to those American citizens who live and work in Panama or in what is now the zone.

Basically, the article provides for a transition period of 30 months during which private business or nonprofit activities established in the zone prior to March 7, 1977, may continue their operation on the same terms and conditions as now. They will be subject to Panamanian law generally, but have this 30-month period to bring their operation into full compliance with the laws of Panama. At that point, they become fully subject to Panamanian law, but, and I emphasize, "without discrimination." They will be treated as similar private enterprises in Panama. Panama further agrees to recognize private ownership of buildings in what is now the zone, though this does not apply to the real estate, since with one exception, private business and organizations in the zone do not own the land they occupy today.

Panama has agreed, however, that they can continue to rent the land at reasonable rates, and if Panama decides to sell the land, the present occupants will have the first option to purchase at a fair price. Nonprofit enterprises can buy the property on which they are located at nominal costs. If Panama should ever find it necessary to exercise eminent domain powers, the owners will be compensated at fair market value for their property.

Section 8 of article IX relates directly to the fear expressed earlier in this debate that Panama might, by administrative or legislative action, take steps which infringe on U.S. rights. Under this section, "The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right under this treaty or related agreements." I think it is essential to quote this at length, because it certainly should assuage the fears of those who are anxious about Panama's intentions.

In section 10 of this article, the two parties commit themselves to take such steps as are required to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents. In short, everyone working on the canal will be protected, and Panama agrees to pass any additional legislation that may be needed and to punish offenders. Finally, the two nations agree to negotiate a treaty providing that the nationals of either state, who are sentenced by the courts of the other state, and do not live there, may serve their sentence in their own country and agree to enter into a specific treaty on this subject along the lines of our recent treaty with Mexico. This should allay the concerns of those who fear that American citizens would have to spend time in Panamanian jails. Let me emphasize that this is a fillip, a gain for American citizens in general. Do not forget, though, that elsewhere it is provided that in the cases of crimes allegedly committed by U.S. citzens employed by the Canal Commission, Panama will as a matter of general policy waive jurisdiction to the United States.

Mr. President, article X is one of the longest and most detailed articles in the treaty, and well it might be for it deals with the terms and conditions for "Employment with the Panama Canal Commission."

Let me emphasize one point to begin with: Section 1 declares that—

> * * * the United States of America shall establish employment and labor regulations which shall contain terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission.

Thus, the United States retains legislative jurisdiction on all employee matters. Let me very briefly enumerate the other key guidelines:

The regulations shall include a system of preference for hiring Panamanian applicants. This is as it should be. We want to employ more qualified Panamanians so that they are fully in a position to operate the canal by the year 2000. (Of course, 80 percent of the employees of the Panama Canal Company are already Panamanian.)

The terms and conditions to be established will be no less favorable to persons already employed than those currently in effect. In a word, no present employee of the Panama Canal Company will be disadvantaged in working for the Canal Commission.

Employment policy will "generally limit" the recruitment of personnel outside Panama to those with special skills not available there. This provision clearly enables the commission to hire outside Panama whenever persons with the requisite qualifications are not available inside that country.

The United States will establish training programs for Panamanians.

After 5 years the number of present U.S. employees who will still be there at that time must be lowered by 20 percent. Frankly, when allowing for attrition, I find this a perfectly acceptable figure. It does not constitute any sort of ceiling on the total number of U.S. employees we may have at any time during the life of the treaty.

The Coordinating Committee is assigned the function of serving as a liaison on job openings between the Panamanian Government and the United States.

The United States agrees to accept Panamanian professional licenses, but reserves the right to require additional professional skills. Like so many other provisions in this treaty, this provision recognizes the legitimate pride and status of the Panamanians, while at the same time reserving the right to establish whatever standards are necessary for running the canal.

This same balance holds for section 4, the provision for periodic rotation, at a maximum of every 5 years, of non-Panamanian employees hired after the entry into force of this treaty. Again, there is an exception made for administrative reasons in the cases of employees with special skills. And note, too, that it does not apply to persons currently employed by the Panama Canal Company.

So here we have another instance where the general principle of turnover is stated and reinforced, but where in practice the Canal Commission will have the authority to hire necessary individuals and keep them longer than 5 years if their skills are needed.

Regarding wage and fringe benefit policy, section 6 states flatly there "shall be no discrimination on the basis of nationality, sex or race." Interestingly, and consistent with the treaty's special concern for U.S. employees, the benefits now enjoyed, such as home leave, will not be considered as discrimination within the meaning of this paragraph. Again, this is a protection for the U.S. citizen now working on the canal.

Section 7 has received considerable attention already, and properly so, for it deals with the fate of those persons displaced from their employment, because of the terms of the treaty. As we know, Panama will assume certain functions now handled by the Canal Company or Zone Government, including municipal services such as police and certain aspects of fire protection.

Where this happens, the U.S. Government itself is committed to relocate these displaced persons "to the maximum extent feasible, in other appropriate jobs with the Government of the United States, in accordance with U.S. Civil Service regulations." Furthermore, Panama obligates itself wherever possible to retain non-Panamanian employees in activities transferred to Panama, and to maintain current pay rates and working conditions.

Article 9 contains a provision widely misrepresented in this country. Because it is so vital, I will quote it in its entirety:

(A) 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.

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

Let there be no doubt about this point. Employees will continue to have the right to collective bargaining, and employee unions will be able to maintain affiliation with international labor organizations. The terms for collective bargaining will be worked out between the United States and the unions.

Section 10 outlines yet another consideration for current canal employees:

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.

The section goes on to note that due to special circumstances arising from this treaty the United States will make it easier for employees to retire under existing law, and seek legislation to provide more liberal entitlement to retirement annuities than is currently provided for by law if the employee himself decides he would prefer to go this route.

Again, this represents sincere effort to compensate those many dedicated U.S. citizens who have worked for the Canal Zone Company or the government. This program is expensive; its estimated cost (which ranges up to $150 million) is one of the major expenses incurred in the turnover. But it is just, and it is necessary. It is a benefit not to Panama, but to our own citizens.

Mr. President, article XI is so clearly a provisional arrangement, being the "Provisions for the Transition Period," that I will not go into a detailed section by section analysis. I would call attention only to the provision in section 1 that—

The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this treaty and in related agreements.

Now, Mr. President, we come to article XII, relating to "A sea level canal or a third lane of locks." Let me confess at the outset that I do not think any provision of the treaties has been more misunderstood and misrepresented than this article. Again, for the sake of accuracy, let me quote exactly what this article provides. After recognizing in section 1 the possible future importance of a sea level canal, and committing themselves to a joint feasibility study during the duration of this treaty, the two parties agree that if such a waterway is necessary, "They shall negotiate terms, agreeable to both parties, for its construction." As is obvious from the text, this is not a commitment necessarily to build a sea level canal; it is an agreement to negotiate the terms for such a canal if it is deemed desirable.

Then comes the much disputed passage:

2. The United States of America and the Republic of Panama agree on the following:

(A) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this treaty, except in accordance with the provisions of this treaty, or as the two parties may otherwise agree; and

(B) During the duration of this treaty, the United States of America shall not negotiate with third states for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two parties may otherwise agree.

Now, the fact is that this section is a straight trade off, The United States, and I emphasize that it was we who initiated this particular provision, knows full well that if and I say "If" because few persons I know believe the sea level canal will ever prove economically feasible—but "if" the canal is built, it would most certainly be constructed in Panama.

A U.S. commission spent 5 years and some $22 million before concluding in 1970 that of the 34 routes from Atlantic to Pacific, only eight were worth serious investigation, and of these the two best by a huge margin were in Panama. A Department of Transportation study in 1977 reconfirmed these findings. The route in Nicaragua is 140 miles long; through Colombia it is 100 miles long; the path through Panama is about 40 miles long. As I said, most experts I have talked with doubt that the sea level canal will be built anywhere. But if it is built, there is no option except Panama. Plowing through Nicaragua would cost four times more than through Panama. As a matter of fact, the judgment that Nicaragua was unfeasible was so persuasive that the Senate of the United States approved by 66 to 5 the abrogation of the Bryan-Chamorro Treaty which gave us that right. Many of the Senators now concerned with that right voted to renounce the Nicaragua rights 6 years ago.

The United States, aware of the significance of the Panama route, persuaded the Panamanians to pledge that if any canal is built in Panama, it must be by the agreement of the United States. Now, this is a significant restriction on Panama. It cannot build a canal in its own territory or let any other nation build a canal without our agreement. So, in agreeing to this provision, Panama wanted to quid pro quo. That was that the United States agree during the same period not to construct a canal elsewhere in Central America.

In my judgment this provision is highly favorable to the United States. As I said, I do not expect in any case that the sea-level canal will be built, and therefore do not find this "right" all that significant. But it is decidedly a point in our advantage. As a matter of fact, we have heard General Torrijos' com-

ment that he would be glad to dispense with this provision—cutting it would make him a national hero.

Let me add in concluding my remarks on article XII, that other sections of this article would permit the United States to build a third lane of locks to the existing canal, and would bind the United States not to use nuclear excavation techniques without the prior agreement of Panama.

Frankly, I think neither of these provisions is particularly important. Nobody speaks seriously of constructing a third lane of locks—but we would have the right to build them under this treaty. And in 1970 the Anderson Commission concluded that the use of nuclear explosives was not particularly feasible; nuclear excavation is contrary to U.S. worldwide policy; and we are prohibited from nuclear excavation by the Test Ban Treaty.

I come now to one of the most discussed articles of the treaty, article XIII, providing for "Property Transfer and Economic Participation by the Republic of Panama." This is the article which describes what we turn over to Panama on that last day of operation, and under what terms.

And, it is in this article where the payments to Panama by the Canal Commission are described.

First, section 1, providing for the turnover upon the termination of the treaty:

1. Upon termination of this treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two parties may otherwise agree.

I know that the issue of "free of liens and debts" has been widely discussed here during the debate on the Neutrality Treaty. Again, without attempting to argue the case here. I want to emphasize that the United States will have control over the Canal Commission throughout the duration of the treaty, and it is that U.S.-controlled Commission which will manage the canal in a fashion which will insure that the operation is free of liens and debts.

This provision means that we will not mortgage the canal or its equipment before we transfer it to Panama. It also means that if in 1995 we find it desirable to make large capital improvements in the canal, but do not want to pay the entire bill, Panama can agree to assume a pro rata share of the cost.

Upon entry into force of the treaty, the United States under section 2, "transfers to Panama all right, title, and interest the United States may have with respect to all real property, including nonremovable improvements" located in areas not reserved for U.S. use under the treaty, except for property made available for our use in these outlaying areas. Title to housing owned by the Panama Canal Company is transferred the day the treaty goes into effect, but the United States retains the use of such housing as is necessary.

I am told that the 1977 book value of Canal Company/Canal Zone Government property involved on this initial transfer, and those to be made over the life of the treaty, is roughly $96 million.

Upon termination of this treaty, Panama will assume total responsibility for the canal. All real property, nonremovable improvements and equipment related to the operation of the canal are transferred to Panama at that time.

The book value of the existing property to be transferred at the end, according to the State and Defense Departments, will be approximately $98 million. Panama will also receive all capital improvements made during the treaty's lifetime. With regard to military properties, facilities to be turned over at the start of the treaty have an acquisition cost of $27.5 million. During the treaty's life, additional property with an acquisition cost of $33.5 million will be turned over, and at the treaties and the remaining military facilities with an acquisition cost of $291.9 million will be transferred.

The payments to Panama during this period are supposed to be a "just and equitable return on the national resources which it has dedicated to" the Panama Canal. The payments, by the Canal Commission, from canal revenues, are:

(a) A share of tolls amounting to 30 cents per Panama Canal ton of shipping transiting the Canal;

(b) A fixed amount of $10 million per year; and

(c) An additional sum of up to $10 million per year if there is a surplus from operating revenues.

Why these particular figures? One Senator has an amendment which would cut the payments in half. Many critics describe this as "paying Panama to take the canal off our hands."

To set the record straight, Let us understand clearly that these will be payments from revenues. I grant that there are expenses involved from the U.S. Treasury, in the implementation of the new treaty, but the payments to Panama are not part of them.

To understand the significance of these figures, it is necessary to go back into the negotiating history of these treaties.

You will recall that initially Panama was asking for incredible sums—a billion dollars—as compensation for the presumed losses to Panama which resulted from the years in which the United States kept tolls at an artificially low level to accommodate the world's shippers, and consequently paid Panama a pittance for use of the canal territory.

The U.S negotiators went into these discussions with a basic position: Payments to Panama would have to be based on what the canal could earn, not on its theoretical value to the world's shippers, or some abstract value of Panama's contribution—through geography—to the world. Economic research indicated that the canal could absorb toll increases of up to perhaps 75 percent and still increase revenue. The United States took a very conservative position, opting instead for a projected toll increase of about 30 percent, on that basis, it was determined that a payment to Panama of roughly $50 million annually could be sustained. But rather than making this a flat across-the-board figure, this was divided into a payment (30 cents) based on traffic, a fixed $10 million, and a $10 million conditional payment if revenues are sufficient.

The point I want to make is simply that these are not arbitrary figures. They are a compromise between what Panama would like to receive, and the U.S. position that payments must be sustainable by canal revenues.

Mr. President, this brings me to the final article, No. XIV, which provides for the "Settlement of Disputes." I can dispense with this very briefly. In a word, Panama wanted provisions for compulsory arbitration of disputes. The United States felt it would do better without compulsory arbitration. The language in article XIV provides that where the parties are unable to resolve a particular matter, "* * * they may, in appropriate cases, agree to submit the matter to conciliation * * *." In short, there is no compulsory arbitration. That was what our negotiators were instructed to seek, and that is what they achieved. It was quite an achievement.

Mr. President, that concludes my section-by-section analysis of the treaty. I hope that by going through this in such detail I have made it clear why in my judgment this Panama Canal Treaty—as modified by the leadership amendment—represents a balanced and reasonable mechanism for transfer of the canal to Panamanian operation. It is highly protective of American interests during this period. Indeed, for all intents and purposes the United States runs the canal and has full responsibility for its defense through the end of this century. I would hope that the decision on this treaty takes this into full consideration, and that this treaty is seen as being in the best interests of both the United States and Panama. Taken together with the treaty on neutrality, it represents the most effective way, in my judgment, of guaranteeing what the United States wants in the future; that is, the open and free use of the canal by the navies and commercial fleets of all Nations.

NONINTERVENTION AND THE PANAMA CANAL TREATIES

Mr. KENNEDY. Mr. President, we are considering today the last of the reservations and understandings to the resolution of ratification of the Panama Canal Treaty, before that treaty is hopefully adopted by the U.S. Senate.

The most important of these is clearly the amendment introduced today by the Senate leadership and floor managers of the treaties. The amendment provides that any action by the United States shall be only—I repeat only—to keep the Panama Canal "open, neutral, secure, and accessible." It provides that the United States will not—I emphasize will not—intervene in Panama's internal affairs or interfere with its "political independence or sovereign integrity."

I shall support this leadership amendment. It has equal application to both Panama Canal treaties, although it is adopted in the course of action on the

second treaty. This is a judgment confirmed in a memorandum of law prepared by the Department of State, which I ask unanimous consent to be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. KENNEDY. This provision is consistent, Mr. President, with the obligations on neutrality and nonintervention in the two Panama Canal treaties as amended. Our obligations are clearly defined in the Neutrality Treaty as follows:

Any United States action will be directed at ensuring that the canal remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

The United States has long been committed not to intervene in the internal affairs of any other state under the United Nations charter, which we have agreed prevails over all other international agreements. Article 2, section 4 of the charter provides that:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations.

The United States has long been committed not to intervene in the internal affairs of any other State under the charter of the Organization of American States. Article 18 of the OAS charter provides that:

No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the state or against its political, economic and cultural elements.

It is my hope that President Carter will also reaffirm these commitments when he moves to exchange the instruments of ratification with Panama. A protocol of exchange, covering both Panama Canal Treaties and signed by both parties, will be a particularly valuable instrument for the United States to state unequivocally its opposition to intervention in Panama's internal affairs.

So I believe that an adequate basis has been established for Panama and the United States to develop a new treaty relationship over the Panama Canal. This relationship must be based on partnership and mutual respect, above all respect for the sovereignty of Panama over its territory which has always included the canal.

This is a relationship of friends and allies, not of patron and client states. This is a relationship which will insure that the canal remains so open and so secure that there will never be a need for us to take military action in that part of the world.

With these understandings, I believe that we can turn from the difficulties and misunderstandings of the past to future friendship and cooperation with the people of Panama.

EXHIBIT 1

MEMORANDUM OF LAW

The question has been raised whether an interpretation of the Neutrality Treaty expressed in a reservation or understanding in the Senate's resolution of ratification of the Panama Canal Treaty would be legally binding on the parties with respect to the Neutrality Treaty.

We are not aware of any reason why such an interpretation, concurred in by Panama, would not be binding. The essential inquiry is whether there is a meeting of the minds. If both parties to a bilateral treaty agree in a separate instrument to an appropriate interpretation of that treaty, there is no legal reason why the separate instrument should not be fully effective in accordance with its terms.

In my opinion, such an interpretation of the Neutrality Treaty would be legally authoritative and binding on the parties.

HERBERT J. HANSELL,
Legal Adviser.

Mr. SPARKMAN. Mr. President, we are about to conclude debate on the most controversial treaty to come before the Senate since I have been a member of this body.

I hope that the Senate will give its advice and consent to this treaty as it did to the Neutrality Treaty and that, subsequently, Panama will accept the Senate's modifications. The adoption of the leadership amendment today should go far in reassuring the citizens of Panama that the United States has no intention of intervening in Panama's internal affairs.

The two treaties which the Senate has been considering for the last 2½ months are more significant than the words they contain. In our relations with the nations of Latin America, these treaties symbolize the end of an era of paternalism and the beginning of a new era of equality and partnership.

I commend the President for his courage in moving expeditiously to work out a genuine partnership relationship with Panama. The treaties are a fair and equitable bargain for both countries.

Many others deserve credit for bringing the Panama Canal issue to this moment of decision.

Without the active support of the majority and the minority leaders these treaties would not have had a chance for approval by the Senate. Throughout this long debate, both the majority and the minority leader have demonstrated the highest qualities of political leadership. After careful study of all the issues, they decided to support this unpopular cause, because they believed it was right, and then set out to convince their colleagues and the public of the wisdom of their decisions. Their work on the treaties has been in the highest tradition of great Senate leaders.

I wish to express my gratitude to Senators CHURCH and SARBANES who have carried the major burden here on the floor for the Foreign Relations Committee for the 38 days of this debate. Day in and day out, since February 8th, Senator CHURCH and Senator SARBANES have handled these treaties in a masterful manner. As my colleagues know, there is no political mileage in being a floor manager for such a controversial measure. I know that I speak for all members of the committee in expressing my thanks for their able and conscientious efforts.

Many members of the committee staff have assisted in the work on these treaties, under the guidance of Norvill Jones, the Chief of Staff. In view of the limited time, I will not name all of them. However, I do want to mention several whose efforts should not go without notice. Mike Glennon, the committee's legal counsel, has provided sound advice on many legal questions. Bob Barton, Ralph Nurnberger, Joel Johnson, and Bill Ashworth have also assisted on various matters. But, throughout, the primary staff burden has been on the shoulders of Bob Dockery and Ralph McMurphy. They have been on the Senate floor constantly during the debates, providing expert assistance and advice to the floor managers and other Senators. They are true Senate professional. Both the committee and the Senate are fortunate to have their services.

I also wish to thank all of the personnel of the executive branch who have worked so closely with members of the Senate and staff in providing assistance during the committee's and the Senate's consideration of the treaties.

Finally, I wish to pay tribute to National Public Radio for broadcasting the Senate debate on the treaties. These broadcasts have made a substantial contribution in educating the American public on the issues involved. I hope they will be a forerunner of other live broadcasts of Senate debates. I wish to pay tribute, especially to Linda Wertheimer and her associates for their competence and patience in interpreting for listeners the events taking place in the Chamber.

The Senate's work on these treaties has been in the finest tradition of the meaning attached by the authors of the Constitution to the advise and consent clause. In great detail the Senate has worked its will on these two treaties. For the first time in more than half a century it has amended a treaty. It has also given its advice to the President in the form of a number of other provisions included in the resolution of ratification. A byproduct is that the debate has pointed up the need for a fresh look at the Senate's rules governing the handling of treaties.

Mr. President, with the approval of this resolution the Senate will have done its work well. It will have demonstrated once more the constructive partnership role that the Senate can play in the making of foreign policy.

Mr. THURMOND. Mr. President, I rise this afternoon to warn the U.S. Senate one last time of the troubles ahead if this treaty is ratified today.

These troubles are sure to come. This is a bad treaty. It is poorly conceived to accomplish what it purports to accomplish. Its flaws are numerous and remain in place because the treaty supporters have allowed no substantive amendments during over 2 months of debate.

In my 24 years in the Senate I have never seen this body so totally reject the obvious wishes of the American people

on such an important matter. The Senate should listen to the people because the people are right in opposing these treaties.

PANAMA SOVEREIGN IN 1978

The Senate should also realize that the American people will soon learn, if they have not already, that Panama becomes sovereign in the Canal Zone 6 months after the exchange of the documents of ratification. This will occur in about November of this year, 1978, not the year 2000. At that time, in this very year, 1978, the Panama Canal and other lands in the zone become the property of Panama. In the year 2000 the United States merely passes operating control of the Panama Canal to the Panamanians.

Mr. President, why do the American people oppose this treaty despite Presidential TV appearances and unprecedented lobbying?

REASONS OPPOSED

They oppose it because:

First. It surrenders control of the canal to Panama.

Second. It violates the Constitution on transfer of property.

Third. It transfers a $9 billion asset without any payment to the United States.

Fourth. It could cost the United States up to $2.3 billion to transfer the canal to Panama.

Fifth. It denies the United States base rights from which to defend the canal and protect U.S. interests in the Caribbean.

Sixth. It weakens U.S. ability to be assured of the transfer of Navy ships from ocean to ocean in times of national emergencies.

Seventh. It fails to provide explicit rights for U.S. forces to enter Panama to defend the canal if closed or threatened.

Eighth. It does not assure priority of passage for U.S. ships in times of emergencies.

Ninth. It opens Panama and the canal to Communist subversion and control.

Tenth. It has vast economic disadvantages to U.S. exporters, shippers, ports and consumers.

Eleventh. It represents a retreat of American influence from the Caribbean area in which Communist forces are gaining yearly.

Twelfth. It makes uncertain the availability of a vital Pacific-Atlantic maritime link.

Thirteenth. It permits ships of a nation at war with the United States to use the canal to patrol waters in our hemisphere.

Fourteenth. It places a heavy burden on the American people through direct appropriations, loss of payments to the Treasury, and higher costs of goods by increased tolls.

Fifteenth. It fails to make clear what it purports to do and thereby will create trouble and even conflict between the United States and Panama.

Sixteenth. It is morally wrong because it places the United States in the position of making an important contract with a dictator whose power over his people and denial of their human rights will be strengthened by ratification of this treaty.

Mr. President, these are but a few of my concerns. Many more have been expressed by myself and other opponents during this lengthy debate. This treaty is the great giveaway of the century—a giveaway of U.S. property, prestige, economic strength and defense strength.

NO TRUST OF TORRIJOS

Mr. President, I do not trust the Panamanian dictator, General Omar Torrijos. He has strong Communist ties. His rule has brought huge debts on the Panamanian people. His rule has placed his people at the bottom of the list on human rights. I ask the Senate, why should we trust him with the operation and ownership of the Panama Canal, a vital international waterway?

Mr. President, the recent indecision and bargaining over the DeConcini amendment to the first treaty merely highlights the ambiguities, uncertainties and misunderstandings which riddle these treaties. The main purpose of the treaties, the advocates claim, was to develop a clear, concise and fair relationship with Panama. These treaties fail completely in this regard.

The Senate has not been allowed by the advocates of these treaties to improve them because of the very weakness of General Torrijos in his own country. The proponents have argued, in effect, it cannot be changed because General Torrijos is too weak to win approval in a new plebiscite. Practically every change, even the reservation attempting to change the reservation offered by Senator DeConcini has had to be cleared by General Torrijos. This is a mockery of the responsibility of the Senate.

I believe the people of Panama should have a new treaty, but one negotiated with a freely elected government truly representative of their concerns—not one designed to pay off the debts of a dictatorship.

CHANGES ATTEMPTED

Mr. President, during the course of this debate I have spoken at length on the defense, financial and economic consequences of these treaties. I have offered amendments, reservations and understandings in an attempt to shape these treaties in a way to better reflect the interests of the American people and the people of Panama.

For the most part, the treaties have not been improved except for the DeConcini reservation to the Neutrality Treaty. This reservation improved the U.S. situation, but now the treaty proponents have weakened it because General Torrijos finds it unacceptable.

Never have I seen a foreign figure hold such sway over the Senate. This will be a fateful day in U.S. history if the Senate pays more attention to the wishes of General Torrijos than to the wishes of the American people.

Again, I remind this body that if the Senate ratifies this treaty, later this year of 1978, probably sometime after the November election, Panama becomes sovereign in the zone. As territorial sovereign, Panama becomes owner of the canal. This happens in 1978, not the year 2000.

Mr. President, I urge my colleagues to search their minds and their hearts and place the interests of the people of America and the people of Panama first by sending this treaty back to the President for further negotiation.

INTERNATIONAL DEBT, THE BANKS, AND U.S. FOREIGN POLICY AS IT RELATES TO PANAMA

Mr. HELMS. Mr. President, in debating the proposed Panama Canal treaties, no attention whatever has been given to some of the as yet unexplained circumstances surrounding the intended giveaway of the Canal Zone and Panama Canal.

By that I mean the strong support—nationally orchestrated support, I might add—that has been given to the treaties by financial institutions and multinational corporations in the United States which have a direct stake in the economy of the Republic of Panama.

While the American taxpayers who over the years have underwritten the canal and its associated facilities, overwhelmingly oppose the treaties, the American banking and big business communities seem almost solidly for them.

The people want to know, why? U.S. Senators want to know, why?

The citizens of this country made the investment that built the canal, and its defenses, not the bankers and the giant corporations.

The interest-bearing balance on the net direct investment of the United States as of June 1976 was $319,005,661. The non-interest-bearing balance was an additional $18,051,630.

Mr. President, that totals $337,057,291—over one-third of a billion dollars.

In other words, the American people have over a third of a billion dollars still unrecovered in their Panama Canal investment.

The treaty proponents have demonstrated their intention to deprive the American people of the opportunity to recover that third of a billion. The toll rates will have to be greatly raised to meet the promised payments to Panama. But the administration and the Senate leadership fear correctly that the basis for such toll rates cannot also include provision for repayment of interest on the people's investment, or amortization of that investment over the 22-year life of the new treaty. That probably would drive the rates up to the point of diminishing returns and canal traffic would begin to go elsewhere.

Naturally, the interests of the American people must be put in second place. I and others have tried, all too unsuccessfully, to put those interests back into first place.

Mr. President, if the American people cannot get back their own hundreds of millions of dollars as yet unrecovered from their creation of the Panama Canal, why should they be forced to pay the Republic of Panama hundreds of millions more for taking over this tremendous national asset of the United States.

We would be already turning it over gratis—but we have not gotten our investment back out of the canal.

The national support for the treaties

by American based international banking groups and other multinational institutions includes support for the funding arrangements they contain. By those arrangements Panama benefits greatly. But the American taxpayers are equally—I should say, unequally—mistreated. Some have called the giveaway a "pay-away."

Mr. President, because of these circumstances, the American people look askance at the attitude of the international bankers and industrialists who have been promoting this giveaway.

Their own suspicions have been more than a little heightened by numerous articles which have appeared in the national and international press intimating or charging self-interest on the part of the giant banking institutions. These articles have presented a broad picture of the world's international banks being overextended in their loans to the world's underdeveloped nations. Those nations are going deeper and deeper in the red. They are becoming more and more unlikely to be able to repay those debts which grow larger, not smaller.

Mr. President, these articles have appeared in responsible publications, and they have helped to influence the thinking of our people and they have pinpointed questions for them that still remain unanswered.

An article in the London Daily Telegraph, March 3, 1977, stated flatly:

Apart from political considerations the Carter Administration is also believed to be under pressure from American banking interests to hand the canal over to Panama.

An article appeared in Inquiry for December 5, 1977, entitled:

The Treaty That Wall Street Wrote.

The author, Dr. Murray N. Rothbard, the distinguished economist and philosopher, wrote:

And so we should not be surprised to discover that U.S. government action in Panama today is for the purpose of subsidizing the Wall Street Bankers. . . . Commercial banks refuse to make public the details of specific loans, like those to Panama, and the Panamanian government is not exactly generous with such information, either. . . .

We might well ask, why did the New York banks pour all these loans into Torrijos' Panama? It seems clear that the money was a quid pro quo for Torrijos' decision—on the advice of leading New York banks—to reorganize Panama's banking laws in July 1970. This reorganization provided a favorable haven, free of taxes and onerous regulations, for foreign banks in Panama, much as Panama has long provided a flag of convenience for world shipping.

Dr. Rothbard then makes a statement and asks a question which go to the very heart of our debate on the new treaties, but which to date have not even been touched upon in the debate.

It was a deal that benefited the U.S. banks and the Torrijos regime, which could thereby expand its wealth as well as its political power in Panama. But now the U.S. taxpayer is being subtly asked to pick up the tab.

If a handful of large U.S. banks will be the major beneficiaries of the Panama Canal treaty, have they also had any role in lobbying for or negotiating the treaty itself?

Mr. President, this article raises the central, but yet unanswered question behind my remarks today.

The Honorable GENE SNYDER, U.S. Representative from Kentucky's Fourth District, last year put over 200 questions to the State Department and the Treasury Department on this matter of international banking interests relating to Panama.

Those questions were based on some 22 published articles, including Rothbard's, and also on some 7 additional news stories and memorandums from official sources. I have received from the Library of Congress additional material now known of or utilized by the Representative from Kentucky.

Congressman SNYDER's questions and the answers covering several hundred pages soon will be published in the House Panama Canal Subcommittee hearings, under the title, "Panama Canal Treaty Ramifications, Part 2, International Banking Interests Relating to Panama, and Other Treaty-Related Matters."

The hearings of the Panama Canal Subcommittee of the Merchant Marine and Fisheries Committee on November 30 and December 1, 1977, were devoted to the subject, "The economic and financial ramifications of the proposed Panama Canal Treaties."

Quite a few of Congressman SNYDER's questions were evasively answered in a most unsatisfactory manner.

We know, of course, of the banker/lawyer, Sol Linowitz, who played a major role in finalizing the treaty negotiations. We know, all too well, how the Carter administration appointed him as Ambassador for but a 6-month period, thereby avoiding the necessity of allowing the U.S. Senate to pursue the normal process of approving the appointment.

Dr. Rothbard closed his long article with the following words which might give pause to the majority in this body which is so set on disposing of the Panama Canal:

There are several ironies that emerge from a careful look at the Panama Canal treaty fight—especially the picture of this country's liberals and progressives battling to pour money into the coffers of a handful of Wall Street banks in the name of a treaty they mistakenly believe represents a withdrawal of U.S. power abroad. It doesn't, and those who automatically oppose anything the right wing favors, need to do some hard rethinking of their reflexive support for the new Panama Canal treaties.

Mr. President, another informative title appeared on an article by Ms. Cheryl Payer in Bankers Magazine, Spring 1977:

Will the Government Have To Bail Out the Banks?

That article opened with the following paragraph:

American banks with large loan exposures to third world countries are like the person astride the tiger: The dangers of continuing the ride are matched only by fears of what will happen if an attempt is made to dismount. Although most bankers would clearly prefer lending to better credit risks than the deficit-ridden less-developed nations, they are into a number of countries so deeply that a failure at this point to roll over previously extended loans could precipitate the crisis which everyone is trying to avoid. To extricate themselves from their dilemma, the banks are looking toward Washington.

Mr. President, Panama certainly is a deficit-ridden, less-developed nation. Does the Senate know how deeply U.S. banks are into Panama? I do not mean just what appears on the surface, and in statements for public consumption. I mean the real story behind the scenes.

The article in Bankers Magazine states further:

The bankers who are willing to admit that they are in deep trouble because of their Third World exposure are also nearly unanimous about the solution they expect. They propose that the governments of the creditor countries (primarily the U.S., of course) come to the aid of their Third World dependents and their own capitalists by increasing official aid programs, bilateral and multilateral, by massive amounts. The banks also hope that governments will bear the main burden of debt rescheduling as they did in the previous wave of Third World debt crises in the 1960s, when private debt was mainly in the form of supplier's credits. That is, they want the taxpayers of the creditor countries to pay the bad debts, with the money passing—in theory only—through the hands of the debtor governments on its way to repay bank loans. If this does not happen, they warn, we risk a 1930s style collapse of the banking system when the defaults become numerous.

Mr. President, that is not an article from some irresponsible far-out scandal-mongering publication. That is from Bankers Magazine. That periodical is for bankers, and talks to bankers about bankers and banking developments and problems.

Let us pay close heed to what is stated in this article.

I repeat:

They want the taxpayers of the creditor countries to pay the bad debts, with the money passing—in theory only—through the hands of the debtor governments on its way to repay bank loans.

Mr. President, Ms. Payer is telling us that the over-extended banks have used as their leverage on Washington to get taxpayer aid, a taxpayer bailout of their bad loans, the fear of another 1930's-style banking collapse.

SENATOR CHURCH REPORT: INTERNATIONAL DEBT, THE BANKS, AND U.S. FOREIGN POLICY

Official U.S. government sources have added depth to the picture presented in the articles in the press.

Not the least important of these sources is the Senate's own Committee on Foreign Relations.

The able advocate of the new treaties, the distinguished Senator from Idaho, Mr. CHURCH, as chairman of the Subcommittee on Foreign Economic Policy, has himself issued one of the most exhaustive documents dealing with this entire matter. The Senator from Idaho authored the introduction to a staff report dated last August and illuminatingly titled, "International Debt, the Banks, and U.S. Foreign Policy."

Mr. President, the Senator from North Carolina could very well entitle these remarks: "International Debt, the Banks,

and U.S. Foreign Policy as it Relates to Panama."

I shall quote extensively from the Church report of August 1977 in a few moments.

Mr. President, many of the articles I have mentioned have implied or charged that the international bankers want the treaties to bail out the Republic of Panama. The Torrijos regime owes a third of a billion dollars to American banks, another third of a billion to international banks abroad, and another three-quarters of a billion dollars to governments and quasi-official lending agencies such as the World Bank, International Monetary Fund, and the like.

Senator CHURCH in his introduction to that August 1977 staff report, wrote:

The Subcommittee on Foreign Economic Policy of the Committee on Foreign Relations has initiated an inquiry into the relationship between international indebtedness and the foreign policy interests of the United States.

Mr. President, just what is the role of our big banks in promoting these treaties at such an enormous detriment to this Nation's security and at such an enormous cost to our taxpayers?

That is what the citizens of this country want to know.

That is what many Senators in this Chamber want to know.

This particular Senator will present a number of facts today as background for this issue as yet totally unexplored by this body. And, Mr. President, I believe it is an issue that should be fully explored before the new treaties are approved.

Mr. President, I have heard more than one U.S. Senator state his own suspicion of the banking connection with the treaties, not only privately, but publicly.

Those of us who cannot fathom any legitimate reasons for disposing of the Canal Zone and the Panama Canal are asking, what is the quid pro quo?

The Senator from Idaho is familiar with bankers' doctrine of quid pro quo.

In his report on "International Debt, the Banks and U.S. Foreign Policy," there is specific mention of one such quid pro quo. The report discloses that Zaire leveraged the huge National City Bank in New York into an additional loan of some $250 million under the threat of otherwise never repaying earlier loans.

In the words of the Church report:

The Zaire Government is thus holding the money it owes the banks hostage for a $250 million ransom.

The report continues:

The Zaire case raises some interesting questions about just who has the greatest leverage at this stage of international debt buildup—the creditor banks or the debtor countries?

Mr. President, the Senator from Idaho deserves our compliments for having lifted a little bit the veil that covers the behind-the-scenes impact on government policy of powerful money interests and for focusing attention on the world banking situation exemplified by the Zaire case.

Can the distinguished Senator from Idaho adequately assure the Senate that the situation with Panama and the international banks to which that country is indebted to the tune of two-thirds of a billion dollars is not a parallel to the Zaire case?

The sentence following the one I just quoted from the Church report, addresses the problem still more fully with another question:

Was Citibank's willingness to undertake the task of raising another large loan for Zaire a prudent and sensible response to restore the creditworthiness of a borrower, or a desperate attempt to avoid as long as possible having to write off a substantial loss on an international loan, and perhaps thereby set a precedent for other debtor countries to follow suit?

Let me paraphrase that question.

Is the willingness of America's giant bankers to promote and support our giving away the Panama Canal enterprise a truly disinterested endeavor on behalf of the United States and a generous effort to aid a small Latin country—or is it a desperate attempt to forestall having to write off substantial losses on their international loans to Panama which is experimenting economic stagnation?

Mr. President, the American people want to know the answer to that question.

The Senator from North Carolina wants to know the answer.

Numerous Senators want to know the answer.

Mr. President, I now want to quote Senator CHURCH and his report at length to lend additional substance to the various articles I have mentioned in these remarks to raise this extremely important issue in the debate on the Panama Canal treaties. Here is our very own in-house source.

I repeat, the issue is simply presented in the very title of the Senator CHURCH—subcommittee document—"International Debt, the Banks, and U.S. Foreign Policy." This report alone provides a more than sufficient basis for any Senator to demand a full-scale Senate investigation into the matter of U.S. financial interests and the Panama Canal treaties.

In his introduction, the Senator from Idaho points out that there has been an economic revolution—not a gradual evolution—that in his words "has effected not only the United States but the whole international economic system."

That revolution has developed from the enormous hike in oil prices levied by the oil producing nations. The Senator writes:

In the first full year after the oil price increase, over $90 billion in oil payments was transferred to the 13 OPEC oil producing countries, from the rest of the world. As a consequence, the oil exporters had a current account surplus of over $65 billion, while the industrial countries had a collective deficit of $33 billion and the developing countries a deficit of $21 billion.

Official lending institutions such as the International Monetary Fund, which are the traditional source of balance of payments financing, have been able to meet only a fraction of the demand for international credit since 1973; it is the commercial banks which have filled the gap.

The distinguished Senator points out that the banks had found:

A vast new clientele made up of foreign central banks, state and municipal governments, public utilities, and other official entities.

"However," Senator CHURCH continues in his introduction to the report:

The commercial banks have become increasingly wary of extending their exposure to oil deficit borrowers. Consequently the U.S. Congress is being asked by the administration to appropriate additional funds for the IMF as well as other public lending institutions. Specifically, a proposed $10 billion facility, the so-called Witteveen facility is being negotiated for the provision of such additional resources. * * * However, the amount contemplated—approximately $10 billion—is nowhere near the magnitude necessary to cover the balance of payment deficits of the oil importing countries. Consequently, it is anticipated there will be future requests for additional congressional appropriations.

Mr. President, there you have part of the developing picture. More bad news for the hard-working taxpayers.

The American taxpayers are about to be hit up for a substantial chunk of this new $10 billion bank bailout fund. Their actual share, $1.72 billion, has already been approved by the House of Representatives. Not only that, they will be subjected to future appropriations. All this is to help bail out the banks. Note well, Senator CHURCH himself says this new IMF facility was proposed consequent to the problems of the banks.

Is that not what Senator CHURCH is telling us? He is telling us exactly what Cheryl Payer has told us in Bankers Magazine would happen. He forecasts continuing appropriations by which our citizens would continue to bail out the banks—by bailing out the countries deeply indebted to the banks. Is it any wonder many of us are worried that the Panama Canal giveaway is just another aspect of the overall bailout of the banks?

There it is: bail out the banks which have been underwriting the underdeveloped countries' oil consumption.

Would the OPEC countries be able to raise and hold up their oil prices if the IMF were not so ready to increase credit which validates the increase?

The law of supply and demand are such that when a producer finds no buyers at his prices, he is forced to lower those prices. Here we see the continued extension of credit which enables OPEC to continue their hold up. It is the taxpayer who pays.

Senator CHURCH gives these details in his very important report:

But what we have been dealing with since the oil price increase of 1973 are not temporary deficits but a structural defect in the world economy in which enormous financial surpluses are concentrated in the hands of a very few countries which cannot spend them for goods and services. They are thus deposited in the "strong" industrial countries. The "weak" oil deficit countries then borrow from the major financial institutions in the strong countries. And there is no end in sight to this cycle of a few permanent financial surplus oil producer countries and burgeoning international indebtedness by weaker oil importing countries.

Mr. President, I want to repeat the words of Senator CHURCH:

And there is no end in sight to this cycle of a few permanent financial surplus oil producer countries and burgeoning international indebtedness by weaker oil importing countries.

The distinguished Senator from Idaho is telling us that poor little nations like Panama have only greater indebtedness ahead, not less.

This, of course, Mr. President, means greater precariousness, not less, for the international banks which have overextended themselves in lending to such nations.

Now, I am not saying they are overextended, on my own authority. Senator CHURCH's fine report is one of my main sources for that statement.

The able Senator draws his introduction to the report to a close by expressing the purpose of his subcommittee and the report itself in these words—words by which, indeed, he throws down the gauntlet to the incumbent administration which, ironically, he so earnestly supports in the Panama Canal giveaway:

Nothing proposed by the present administration—or its predecessor—is likely to correct this underlying structural imbalance. That is the basic issue which confronts the Subcommittee, the Committee and the Congress as they consider, the various stopgap finger-in-the-dike measures proposed by both administrations. For that reason, the Subcommittee on Foreign Economics of the Committee on Foreign Relations has initiated an inquiry into the relationship between international indebtedness and the foreign policy interests of the United States.

As part of this inquiry, the Subcommittee is publishing this staff report which analyzes the major issues the Committee, the Congress and this country will confront in the years ahead.

We are confronting an issue right now—in this treaty debate—which I believe is heavily influenced by the international indebtedness that concerns our colleague from Idaho.

Mr. President, Senator CHURCH pinpoints a tremendously important issue. We here in the Senate should know much more about it as it relates to Panama. Before we agree to give that debt-ridden tiny country control over the Panama Canal we should unravel the mystery of the banking and other multinational self-interest in Panama. The canal holds very great importance for the United States in a world one-third of which is under the domination of an increasingly powerful Soviet Union. That nation's Cuban-based naval and air power is evident in the waters and skies of the Caribbean, the Gulf of Mexico, and the Atlantic Ocean.

Mr. President, Senator CHURCH has brought to our attention an extremely important matter which directly relates to the matter of the Panama Canal treaties.

His report does not address our Panama policy. Nevertheless it poses for us Senators these questions: What is the exact situation with regard to Panama's indebtedness to the banks? What is the influence of those banks under the pressure of that indebtedness—and the attractiveness of Panama as an offshore financial center and tax haven—on U.S. policy toward Panama?

Those are the questions we should address before we agree to turn our enormously important and valuable property over to Panama.

There may be no link behind banking interests and the treaties at all.

But bankers, like all of us, come under pressures from time to time. Senator CHURCH with no mention of Panama, tells of these pressures at great length in his report. How the banks have been and will continue to react to those pressures should be of very great importance to us Senators in this debate on the Panama Canal treaties.

Senator CHURCH bestowed his blessing on his subcommittee's staff report in these final words in his introduction:

The paper was prepared by Ms. Karin Lissakers, a professional staff member of the subcommittee. The paper presents in a lucid, thorough and thoughtprovoking manner the relevant facts and issues for public discussion. We are indebted to Ms. Lissakers for her outstanding work in researching and writing this paper.

Mr. President, we should take this time for the public discussion Senator CHURCH calls for.

This should be the precise time for a very public discussion, Mr. President, of the question I ask, based upon his report:

What is the situation regarding international debt, the banks, and U.S. foreign policy as it relates to Panama and the Panama Canal treaties?

According to the Church report, the world's international banks have become heavily overextended in making loans to oil importing developing nations. The bank's financial positions, the report indicates, are growing increasingly more precarious.

The report states:

Doubts are therefore raised about the ability of some countries to ever repay their foreign loans, or, in the long run, even to continue to meet interest payments on those loans.

The report asks, "whether this process of deficits, recycling, borrowing, and debt rescheduling can go on indefinitely," and makes this answer:

The viability of the whole international financial system is premised on the assumption that all the players stay in the game; that the banks continue lending, and the borrowers keep repaying the interest, so that although the principal may be refinanced or "rolled over" for individual borrowers, the money continues to circulate. The biggest threat to the system lies in the possibility that one of the passengers on the merry-go-round will decide to get off—that one of the large debtors finally decides to repudiate its debts, or one of the lenders says "no more" and calls in the chits. Other lenders then following in order to protect their interests and a domino effect sets in. As the crisis created by the collapse of Herstatt and Franklin National several years ago illustrates, even the disappearance of a relatively minor player can set the multinational banking system teetering.

Then the report issued by our colleague pointedly raises several questions. I believe that each of us should ask these questions in relation to the giveaway of the Panama Canal before finally determining how to vote on the treaty.

The question arises of how prudent the banks have been in their lending . . . Has the profitability of this activity blinded them to the underlying risks? Or has the banks willingness to lend to foreign countries for balance of payments purposes been premised on the unstated assumption that in the event of a real debt repayment crisis, the governments of the wealthy industrial countries will have to come to the rescue because they cannot afford to see either the debtor countries or their own large banking institutions go under?

Mr. President, we should be asking ourselves the question Congressman GENE SNYDER asked, "Is the Panama Canal vulnerable to international bankers?"

CHURCH REPORT FOCUSES ON BANKS "BEING BAILED OUT"

Mr. President, in these remarks the Senator from North Carolina has utilized the words, "bail-out," in connection with the international banks.

But this Senator is in distinguished company. The report approved and issued by our able colleague from Idaho, Senator CHURCH, uses the words, "bail-out."

It discusses an agreement made in July 1974 by the Board of Governors of the Bank for International Settlements at their meeting in Basle, Switzerland. It describes the BIS as the "central banker's central bank."

By the terms of that agreement, the Church report says:

Consortium banks which have multinational bank participation will be bailed out on a pro-rata basis by member parent banks, again backed by their own central banks.

Then the Church report makes an extremely important point.

It notes the obligations incumbent on these banks in making their international loans in return for this guarantee of a bail-out.

Unbelievably, Mr. President, there are no obligations required of the banks for this guarantee.

The report of the next chairman of the Senate Committee on Foreign Relations says this:

It is worth nothing that the central banks asked nothing from the private banks in return for their guarantee, at least officially. * * * Commercial banks can continue to compete on the euromarket at margins which do not insure profitability, to take on deposits and external credits without adequate capital reserves and to roll over hundred million dollar loans to underdeveloped countries who have little or no hope of ever being able to pay them back, without interference from any governmental authority. And if such practices lead to disaster the governments are pledged to come to the rescue.

Mr. President, the Church report says the United States, though not a member of the Bank for International Settlements, agreed to subscribe to the Basle accord at the annual IMF meeting in Washington in October 1974.

Therefore, the United States subscribes to the concept of governments guaranteeing a bail-out of the banks without imposing any reciprocal obligation on the banks to exercise prudent judgment in making their overseas loans.

Mr. President, by that agreement, our Government has signified that it will go

to the aid of the bankers who get in too deep regardless of whether their "practices lead to disaster."

The unprecedented drive of the administration to ram these treaties through the ratification process without amendment must be viewed against the background of this agreement.

Mr. President, these are only a few of the more significant points made by by the report of Senator CHURCH.

I regret that this report was not given full attention by the Senate early in its deliberations on the treaties.

Mr. President, here we are voting on treaties by which the Panama Canal will be torn from the American taxpayers, whose property it is, and we who shall cast our votes still have no clear idea as to what is really behind this absurd and suicidal policy.

What we do know, however, is that the banking community and the multinational business community seem to be almost solidly lined up behind the dispossession of the people of their tremendous asset in the Canal Zone.

The question we should ask, Mr. President, before voting to approve the treaties is quite simple and direct: What, is in it for the big bankers, and the big industrialists who have been pushing these treaties?

We know what is in the deal for the people, for the taxpayers.

The American people will be deprived after the year 2000—when babies born this year will have just reached maturity—of any control over a tremendously important national defense asset.

The American people will be deprived of a very important commercial asset.

The American people will be subjected, as consumers, to higher commodity prices because of higher canal toll rates because of treaty pledges to Panama.

The American people will be deprived of the opportunity of having their outstanding investment in the Canal of one-third of a billion dollars returned to them.

The American people will be subjected to future appropriations to make up for deficits in Panama Canal income because of financial payments to Panama far in excess of what canal traffic can bear.

That is what is in the deal for the American people.

But, Mr. President, what is in the Panama Canal giveaway deal for the international bankers and multinational corporations?

The facts are that Panama is a highly profitable offshore financial center. It is an unregulated banking center in which, from which, and through which the huge international banks can legitimately carry on activities which are not allowed in this country by U.S. law.

There, U.S. investors can legitimately avoid current U.S. tax liabilities—the real legitimate purpose of a tax haven.

There, unscrupulous individuals and corporations can evade U.S. taxes, and sequester their legally or illegally acquired funds in secret, numbered bank accounts.

Mr. President, an interesting overall view of tax havens is given in "Grundy's Tax Havens, A World Survey" (Matthew Bender & Co., New York, 1972). Editor Milton Grundy states in his preface:

> The general view which I have gathered is that the tax havens must cause some loss to the fiscal authorities throughout the world; but there must also be some truth in the proposition that a good deal of business is done via tax havens which, if the parties were contemplating a net-after-tax return, would not get done at all.

The Practicing Law Institute in New York City held a seminar on tax havens in January of 1973. The institute published a book entitled "Foreign Tax Haven," based on the edited transcript of that seminar. A Miami attorney, Marshall J. Langer, discussed Panama. Here are some excerpts from his remarks:

> It is important to highlight the fact that Panama has for many years been a successful major tax haven. Even though they have high tax rates for their domestic source income, they have made it clear over a period of time that there is no taxation of foreign source income, and that there is no taxation of dividends paid with respect to foreign source income. They have never taxed any such income nor is there any likelihood that they ever will.
>
> * * * * *
>
> They have a corporation law which is extremely liberal compared to that of many countries.
>
> One of the interesting factors about Panama . . . is the currency situation. There is no exchange control. The so-called Panamanian balboa does not really exist. The Panamanian balboa, when it comes to anything other than coins, is the U.S. dollar bill.
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> * * * * *
>
> Panama has become an increasingly important international banking center. Literally millions and perhaps billions have been flowing through there.
>
> * * * * *
>
> Compared to some of the other tax havens, Panama has a huge number of companies. Two of the law firms represented at this seminar each serve as resident agent for more companies than all of the companies existing in the Cayman Islands. Each serves as resident agent for about 5,000 companies at a standard fee of $100 a year plus whatever else comes up. It's a good business. There are believed to be some 35,000 companies presently registered in Panama, significantly more than most of the places that we have discussed.
>
> Panama is not a party to any income tax treaty. There is no exchange of information between the Panamanian government and other government.
>
> * * * * *
>
> Panama is a less developed country for both U.S. income tax and U.S. Interest Equalization Tax purposes. It is a schedule A country for OFDI purposes. It is a major haven for U.S. ship owners. Literally hundreds of American owned ships are registered under the Panamanian flag.
>
> Captive insurance companies can also be established in Panama.

In Appendix O of the book we find the following remarks:

> In recent years Panama has adopted banking legislation patterned after Swiss law which permits numbered bank accounts and offers complete assurance of bank secrecy. If Panama has a problem it is probably due to the political unrest which has occurred there in recent years.

Mr. President, that last is of the utmost importance. The new treaties will, in the opinion of everyone I know, unquestionably assure the continuation in power of the Torrijos regime.

That, of course, would offer stability to the banking community, despite what it would do for, or I should say, do to, the Panamanian people.

Early in the seminar the book records we find the following statement by Lawrence A. Freeman, also from Miami:

> The element of stability is quite important. If someone is going to set up a company or a trust for a period of 10 or 15 years, or if a major company, such as American Express, is going to set up a holding company or a bank or a finance company to handle its operations in a number of countries, they want to know the company can safety remain in the particular jurisdiction for a long period of time. They are going to be uphappy if they have to move the bank or finance company or holding company two or three years hence. They are interested in the long-term picture from the standpoint both of political and economic stability.

Mr. President, from this we can see the natural, built-in self-interest concern on the part of the international bankers and multinational corporations that have established themselves in Panama, that political and economic stability in Panama be assured.

The dictatorial Torrijos grip on the country has, indeed, brought a measure of stability not previously known in Panama which had some 59 changes of Presidents in its first 70 years of existence.

However, we all know the enormous price exacted of his subjects for the stability Stalin brought to Soviet Russia, and that which Mao extracted for the stability he brought to China. Torrijos has been exacting more and more a price of similar nature.

It is only natural for the international capitalists to prefer the known to the unknown—the existing regime which, despite its unpleasant aspects, favors their operations, as opposed to an unknown successor regime whose policies, of course, cannot be predicted at all.

Economically, Panama today is going deeper into debt, with no promise for economic rejuvenation other than U.S. aid. That promise which falsely is held out as a cornucopia by Torrijos—acquisition of the canal and the zone—would prove to be unable to produce the prosperity he dangles before them.

On February 22, 1977, I introduced into the CONGRESSIONAL RECORD a memorandum sent by the American Embassy to the State Department dated October 26, 1976. It was in regard to the economic situation in Panama. A pertinent paragraph from that memorandum is the following:

> (B) Increased external financial flows per se, regardless of concessionality, permit Panama to defer grappling with the core problem of low productivity until a later date when the problem will probably have worsened, unless such financing bears specifically on some aspect of costs. Indeed, much of the capital inflow of the past three years has aggravated Panama's economic malaise by exacerbating its debt service burden without enhancing overall productivity. Moreover, total inflows greatly exceeded the current ac-

count deficit of Panama's balance of payments, resulting in large negative "errors and omissions" (around $100 million annually) most of which probably represented outflows of domestically-owned capital.

Mr. President, the continuing loans to Panama, according to the American Embassy in Panama, have only served to worsen the economic situation in that country.

What the Embassy did not point out, of course, is how much of those foreign funds that have poured into Panama have been siphoned off by the Torrijos regime.

Ironically, the banks not only have not helped the economic situation in Panama, but they have worsened their own financial positions by lending to that country which is increasingly unable to repay their loans.

The bankers and international capitalists have pushed the line openly and consistently to the American people that Panama needs the Canal Zone and the waterway's income to prop up its economy.

That much we know.

What we do not know is to what extent that propping up is necessary to their own continued operations in Panama.

Anyone with common sense knows that gaining control of the zone and canal will not help a country for long whose leadership has skimmed off the cream for its own bulging pockets.

That Torrijos is involved in many businesses was brought out in the secret session on drug trafficking in Panama. One of those businesses is that very drug traffic, as we all know, participated in by members of the Torrijos family itself.

Mr. President, the January 1974 issue of the quarterly publication of the American Bar Association's Section of International Law "The International Lawyer," carried an article entitled, "Panama and the Multinational Corporation: Tax Haven and Other Considerations." It was written by Robert Y. Stebbings, J.D., M.B.A

He sets forth the manifold legitimate features of the tax haven provided by Panama. Stebbings also reports on certain practices, however, engaged in by certain persons or companies that reflect on individuals and corporations legitimately utilizing Panama as a haven for avoiding current tax liability. He writes of the laundering of dinero negro, dirty money:

Prominent practitioners from two Latin American countries have privately expressed the view that the above tax-haven characteristics of Panama should hold little interest for a truly legitimate Latin American multinational committed to conforming to the legislation, tax and otherwise, of the jurisdictions in which it operates. They first point out that operating from Panama may create a bad image. Panama has been used by Latin Americans as a place to which, like Switzerland, money fleeing from tax or other national authorities may find its way, since there is no question of taxation upon entry or exit, and corporate and banking laws permit complete secrecy in all operations. The situation is reportedly such that certain of Panama's neighbors are wary in their approval of business dealings with the country. Mexico, for instance, will not allow royalty payments to a Panama-based company unless fully documented.

A Common procedure involves the flow to Panama of *dinero negro* which is then loaned to a real or dummy corporation in another country which can then relend the funds to the original party in the first country or elsewhere without arousing the suspicions that a loan made directly from Panama would create. The person or firm which makes this complete circle thus illegally sends money from his country to Pamana without paying taxes, earns tax-free interest on it while it is in a Panama bank and eventually may pay himself tax-free interest when he borrows it back from a dummy company in another country. (Actually there may be withholding on the interest payments.) Additionally, he may deduct his interest payments as business expenses in the country in which he is operating.

Freedom to conduct such illegal or questionable operations may be an important element in Panama's success as an international business and financial center. However, there may be other reasons for setting up headquarters in Panama: the country's tax policies permit a legitimate company's presence in the country for non-tax reasons while not penalizing it for its decision to be there.

* * * * *

Of fundamental importance is the fact that interest on the Panama bank accounts of foreigners is not subject to taxation by Panama. Equally, the interest income on bonds held by foreigners is not subject to Panama taxes which makes the country a feasible jursdiction for the establishment of so-called finance subsidiaries by means of which loan funds may be raised on international or regional capital markets.

This sort of operation (an international bond flotation) would not require the establishment in Panama of headquarters for a regional multinational, but merely the creation of such a finance subsidiary.

POTENTIAL RESOURCES LOCKED UP AND DISGRACEFULLY UNDEREXPLOITED BY CANAL ZONE AUTHORITIES

Mr. President, the next item I wish to call to the attention of the Senate deserves close attention, indeed. It just may give us some of the answers we all should be seeking.

The Banker for May 1973, published in London, had a revealing article called "Panama and the Canal," by a Robin Adams which reported on Panama's banking boom. However, more to our interest today, Adams made some prophetic observation of a pessimistic note:

Perhaps the most significant feature of the present structure of Panamanian banking is that, unlike some of the Caribbean islands, its progress is only partly of an offshore nature. There is a sharp imbalance between foreign and local assets and liabilities. At the present time, of the total assets of the banks, approximately two-thirds are Panamanian and approximately one-third are foreign. On the other hand, of the liabilities the proportions are reversed—one-third Panamanian and two-thirds foreign. Since by the end of 1972, assets and liabilities were well in excess of $1,000 millions, the result of this structure is that these international banking operations are financing the Panama economy to the tune of at least $300 millions, *an enormous sum in relation to the gross domestic product*, which in 1972 just passed $1,000 millions." [emphasis added]

The rationale for this policy is not purely philanthropic. The foreign banks are taking deposits from residents of Latin America and lending this money on in New York. In doing business in New York they have an edge over New York banks by the fact that they lend a significant proportion of their funds at higher interest rates on the local Panamanian market which subsidize their New York business. This has certainly sweetened profits, *but it depends of course on the continued availability of sound lending opportunities in Panama itself.* [Emphasis added]

Mr. President, Robin Adams went on back in 1973 to tell of funds being available for almost any profitable venture. Adams told of the "massive property boom with tower blocks of offices and flats going up all over Panama City." Adams asked then "whether an economy as small as that of Panama can continue to sustain a boom of current proportions."

Next Adams described the expansion of "secondary banking activities":

In this, the licensed banks lend to creditworthy business houses, who in turn lend on to less secure propositions, at higher interest rates, and they in turn lend on to yet more doubtful ventures, quite often the whole process only coming to rest with a large unsecured consumer loan to a middle to low income worker. With urban unemployment well over 10 percent, despite the growth of the past four years, this practice could be dangerous if there is any downturn in business conditions.

Mr. President, now in 1978 we all know there was a great downturn in Panama's economy. The housing boom burst and the economy today is stagnating.

What else did Robin Adams say in that 1973 article?

On the other hand, if the government is forced to curtail its development effort due to lack of funds, there could be a rather nasty recession with one or two expensive property losses, and bad debts. *This would undoubtedly be a setback to the banking industry.* [Emphasis added.]

But then, Mr. President, listen to this:

The main hope of avoiding such an eventuality is for Panama to get its hands on the potential resources that are now locked up and disgracefully underexploited by the Canal Zone authorities. Alternatively, the United States may choose to buy off Panamanian pressure with further generous aid. The future prosperity of the young, and extremely vigorous, international financial community in Panama City therefore depends like most other elements in the economy on the outcome of the struggle to regain the canal.

Mr. President, I do not know who Robin Adams is.

Of course, Adams in May 1973 knew nothing of the forthcoming Kissinger-Tack agreement of February 1974 by which the unauthorized agreement was made to give Panama the Canal Zone.

The Senate should be indebted to Robin Adams, however, for giving us a background that could very well help to assemble the missing pieces of the puzzle of intrique surrounding the canal giveaway so vehemently opposed by the vast majority of the American people.

Mr. President, let us dwell for a moment of two on the following words of Robin Adams which may, indeed, have great significance, realizing, of course, that they appeared in a highly respected banking journal in London, the Banker.

This (recession) would undoubtedly be a setback to the banking industry. The main hope of avoiding such an eventuality is for Panama to get its hands on the potential resources that are now locked up and disgracefully under-exploited by the Canal Zone authorities.

Now, Mr. President, either Robin Adams was totally ignorant of the laws of the United States under which the canal is operated at a nonprofit basis and the zone is maintained much as a military reservation to sustain the operations and defense of the canal, or did not care. In any event, the language used, "disgracefully under-exploited" has a very pointed meaning, coming as it does after the expression of a fear of "a setback for the banking industry."

Mr. President, could it be that the banking industry has had its eyes on the future exploitation of the Canal Zone?

Is the real reason for the inexplicable giveaway of our taxpayers' property in the Canal Zone the opportunities for profit that the big bankers see there?

I do not know the answer, Mr. President.

The American people do not know the answer.

One thing is for certain.

We Senators should know—and know for certain—before voting to approve this treaty.

EARLY STATE DEPARTMENT OPPOSITION TO TORRIJOS EVAPORATES

Mr. President, articles in the press told of strong opposition in the White House and State Department to the Torrijos regime for some time after he came to power. But later on, the policy was completely reversed, and the reason, some writers have claimed, was because of the bankers' growing interest in him.

I believe this is demonstrated sufficiently by the fact that, according to the New York Times of September 2, 1969, State Department officials said the United States cannot engage in long-term commitments on military and politically sensitive issues with the military type provisional government in power in Panama, despite pledges by Torrijos and the Junta that free elections would be held in 1970. Those officials said the United States is waiting to see if those promises would be honored.

Well, Mr. President, how well those promises by Torrijos have been honored is a matter of public record. To this day they remain promises. It is almost a full decade since the State Department had that position.

But the State Department not only did not wait for the pledges to be honored, it has almost succeeded in giving that very same regime everything they added in the Canal Zone.

What on earth changed them, Mr. President?

The Dictator Torrijos has not changed.

What did change U.S. foreign policy toward Panama, Mr. President?

Could it have been something the able Senator from Idaho has labeled "International Debt, the Banks, and U.S. Foreign Policy?"

Frankly, Mr. President, this Senator from North Carolina thinks Senator CHURCH may well have provided us with the answer to all the questions regarding the giveaway of the Panama Canal Zone and the Panama Canal.

Its title alone may give us all the answers we need.

Certainly the Senate should consider all the implications of Senator CHURCH's report as those implications apply to Panama before it votes for final approval of this treaty.

The subtitle of an article in Financial World for March 27, 1974, "Beware the 'Gnomes' of Panama", warned, "The new Switzerland, attracting banks and individuals alike, may not be nearly as safe."

Mr. President, pressures would certainly build upon the international bankers doing hundreds of millions of dollars worth of business by way of Panama if when they found Torrijos capable of restricting their operations. Making it less safe, that is!

What they might feel compelled to do to try to safeguard their positions in that obviously profitable offshore financial center is anyone's guess.

I do not know what individual bankers might do under such pressures.

There should be no doubt, however, about the capabilities of Omar Torrijos to put pressure on the bankers.

In this Senate chamber we have day after day witnessed the results of his pressure on the entire U.S. Government.

The administration would not allow a single amendment to pass, except its own meaningless ones, so as not to offend Torrijos and his corrupt regime.

Business week of October 3, 1977, carried an article entitled "Panama, High Economic Hopes if Ratification Comes."

That piece quotes Panama's Planning and Economic Policy Minister, Nicolas Ardito Barletta, as saying ratification of the treaties would open up what he called, "the biggest opportunity for growth and development in the history of Panama."

Business Week went on:

Adds a U.S. banker in Panama City: "But I know of several companies that may pack up and leave if the (U.S.) Senate vote against it."

The article pointed out the sluggishness of the Panamanian economy and quoted a local accountant as saying "Nobody has wanted to commit himself until the issue was resolved. Business Week wrote,

Doubts about the stability of the regime of General Omar Torrijos Herrera lie at the heart of that uncertainty.

Again, the magazine quoted a banker:

But if the treaty is not ratified, warns a U.S. banker in Panama, "This will not be a safe place to do business any more."

These statements go directly to the concern of bankers and industrialists for security in their operations.

They feel it important to maintain the status quo, and giving the canal to Torrijos certainly would assure the continuation of his regime.

There is another significant quote from the article:

Panama is counting on this improved financial situation to boost its international borrowing potential. Expanded lending means greater profit for the banks.

The Panama Star & Herald for December 5, 1977, carried a story datelined Mount Pleasant, Mich., which contained these highly pertinent remarks by Panama's Ambassador to the United Nations, Jorge Illueca, who spoke at Central Michigan University:

"The Government of General Omar Torrijos faces the danger of being overthrown if the U.S. Senate rejects the New Panama Canal Treaties", said the Panamanian Ambassador. The treaties are "an insurance policy for Torrijos' government."

Mr. President, it seems that ratification of the treaties fit into the category of an insurance policy for the big banking institutions as well.

Mr. President, another matter relating to international debt, the banks and U.S. foreign policy, has not been discussed in these debates.

That is the matter of the nonconfirmation by the Senate of the Ambassador who as conegotiator, drove the treaties through the final 6-month stage of negotiation, Mr. Sol Linowitz, of Marine Midland Bank.

The administration that now wants the Senate to rubberstamp the treaties, evidently was fearful of sending Mr. Linowitz before us to examine his credentials. Why?

Was the administration afraid the banking connections of the designee, as well as certain other connections, would mitigate against his appointment, and, perhaps, we would disapprove it?

It is a fact that Mr. Linowitz did not resign as a director of Marine Midland when he went on the treaty negotiating team.

He resigned only after a lawsuit based on his conflict of interest was instituted by our colleague, the Senator from Idaho, Mr. MCCLURE.

Mr. Linowitz's connection with a bank to which Panama owed at least $8 million, certainly would have been a highly controversial matter in his confirmation hearings.

Was the administration afraid that penetrating cross-examination of Mr. Linowitz might reveal reasons behind the Panama Canal giveaway that would make more sense than the reasons aired for public and congressional consumption?

On May 24, and October 21, 1977, the American Security Council's Radio Free Americas mentioned certain connections of Mr. Linowitz that would have merited close attention by the Senate in the Ambassador's confirmation process—had there been one.

Radio Free Americas named Linowitz as lawyer for Jose Gelbard, former Minister of Economic Affairs in Argentina under Peron, who was then living in the United States.

Gelbard has since died.

Gelbard fled Argentina because of judicial procedures by the post-Peron government against him, and the United States did not honor Argentina's demand for his extradition.

According to Radio Free Americas, Gelbard was a native of Lithuania where his close friend was Abraham Simcowicz, known as Fabio Grobar in Cuba where he has been Moscow's man since 1929.

Gelbard as Peron's economic minister signed a credit agreement with Fidel Castro's adviser, Grobar, by which Argentina extended Cuba up to $800 million to purchase Argentine agricultural and industrial goods, including Argentine-made General Motors cars whose delivery the United States had to authorize.

Radio Free Americas has informed me that Sol Linowitz got the special permit by which this was accomplished.

Since Cuba is in arrears on the payment of this sizable credit, the interest in the Argentine Government in Gelbard was readily apparent.

Linowitz was trying to get him U.S. citizenship when he died of a heart attack.

But what Radio Free Americas calls the "Argentine Watergate" also involves a key banking figure, David Graiver, who is supposed to have died in an airplane crash near Acapulco, Mexico in 1976.

Graiver had connections with the guerrillas of Argentina, the Montoneros, and it is alleged he secretly financed them.

Mr. President, in today's Washington Post, there is an article on the release of Argentine newspaper publisher, Jacobo Timmerman, by the Argentine Government. Of interest to us is that the article mentions David Graiver as owner of 51 percent of the stock in the paper Timmerman formerly published. The following paragraphs are taken from today's Post article:

> Most of the rest of La Opinion's stock—51 percent—was owned by David Graiver, whom Argentine authorities believe served secretly as investment banker for leftist groups that kidnapped wealthy executives for ransom before the military seized control of Argentina in March, 1976.
>
> It was Timmerman's association with Graiver—who was indicted last week in New York City for violating banking laws there—that was ostensibly the reason for the publisher's arrest.

Mr. President, David Graiver's bank in New York was the American Bank & Trust Co. When it failed in 1976, at least $18 million and perhaps as much as $40 million was missing, leading some to believe that David Graiver chose to vanish, and was not really dead.

Evidently New York authorities believe that in proceeding to indict him.

American Bank & Trust Co.'s failure was the fourth largest in U.S. history. The New York Times examined the bank and its failure on September 25, 1976 in an article entitled, "Financial Intrigue, Mystery Shroud American Bank and Trust Collapse."

The Graiver-Belbard-Grobar-Linowitz implications remain a mystery to the Senate.

Mr. President, I can but touch on these matters which many Americans feel should have been thoroughly investigated in Senate hearings on Sol Linowitz before he was permitted to undertake the treaty negotiations.

President Carter avoided such an examination, of course, by limiting the Linowitz appointment to 6 months.

I believe that was a direct slap at the Senate and its right to advise and consent on the appointment of ambassadors.

Mr. President, in his introduction to his report, "International Debt, the Banks and U.S. Foreign Policy," Senator CHURCH mentioned the proposed $10 billion Witteveen facility and the appropriations sought in the Congress for the American taxpayers' share of that amount.

I would like to call the attention of the Senate to an article in the Washington Star for February 12, 1978.

It was called "Bailing out Banks that Straitjacket the Third World," and was authored by Howard M. Wachtel and Michael Moffitt.

That article closed with this paragraph:

> In opposing the Witteveen Facility, the Wall Street Journal editorialized that "American taxpayers, in other words, will be asked to cough up a few billion for the IMF to loan to the poor countries so that they can pay off the banks . . . Imagine the flap if the problem were solved honestly and directly," they ask, by calling the Witteveen Facility "The Bankers Relief Act of 1977".

Mr. President, I wonder if, indeed, the Panama Canal giveaway treaties, might be one of the principal titles in the Bankers Relief Act?

Mr. President, a signing ceremony was reported in La Estrella De Panama for March 1 of this year, whereby a $36 million loan to a Panamanian company to build an oil terminal facility was finalized. On that occasion, a Chase Manhattan Bank official made a comment very pertinent to my remarks today.

Chase Manhattan put up $15 million of that loan, Panama's Government agency, COFINA, put up $1 million, and five other banks lent the remaining $20 million. The newspaper reported:

> In his address, the Director of the Chase Manhattan Bank, Lic. Luis H. Moreno, emphasized "the strength that the businessman derives from the backing of a Government which has a conscience with regard to the best use of its resources *and which also has a very strong support from the international banking world.*" (Emphasis mine)

I consider that to be a very significant statement. That statement expresses a truth which I believe every Senator would have to admit, bears directly upon the theme of my address to the Senate and the American people today.

Why should the international banking world give "very strong support" to the regime of Omar Torrijos—a regime whose unsavory links to the underworld is clear to anyone who refuses to deceive himself about the drug trafficking of members of the Torrijos family itself.

Why should American and other capitalists support so strongly a regime that works so closely with Fidel Castro—who like his masters in Moscow, is dedicated to the demise of capitalism?

Why, Mr. President, unless there is something in it for them?

Why else would our internationally oriented big businessmen give such strong support to a regime that has the complete support of the Communist Party of Panama?

Mr. President, before voting for the new treaty, every U.S. Senator should give extremely careful attention to an official statement issued recently by the Communists of Panama. The Communist Party of Panama, as we all know, is called the People's Party of Panama. On September 7, 1977, the very day of the signing of the new treaties by President Carter and Omar Torrijos, the Political Bureau of the People's Party of Panama issued an official document entitled, "Message of the People's Party of Panama in Connection with the Carter/Torrijos Treaty."

Mr. President, on March 6 I placed this entire message of the Panamanian Communist Party in the CONGRESSIONAL RECORD at page 5608. I want to bring the following words to the special attention of the U.S. Senate. I consider them to be of enormous significance:

> The People's Party urges strengthening the process of national liberation, improving the life of our people, consolidating the government headed by General Torrijos and deepening the anti-imperialist alliance.

There is more in the Communist Party's message that signifies its full support of Gen. Omar Torrijos. But what I have read is more than sufficient.

The Communists in every nation where they have not yet come to power, simply do not talk of consolidating the government. The Communists, by definition, are dedicated to the supplanting or overthrow of any government they themselves have not yet taken control of.

The Communists in any country in which they have not yet come to power speak of liberation from the control of the regime in power. Here we find the Communists of Panama speaking eloquently of "strengthening the process of national liberation" under the government headed by General Torrijos.

Where the Communists have not yet come to power in a nonsocialist country, they link the regime in power with capitalists everywhere under the synonym, imperialists.

Yet the Communists of Panama speak eloquently of "deepening the antiimperialist alliance" under the government headed by Torrijos.

Mr. President, in my opinion the sentence I have just read may well be the single most important sentence spoken on the floor of the Senate in this entire debate.

It signifies, explicitly, total support of the Torrijos regime by the Communists of Panama.

Implicitly, it signifies the Panamanian Communists either already control, or wield very great influence over, the Torrijos regime. In either case, the Senate has no business whatsoever turning the Panama Canal over to such a regime.

In my opinion, this body should vote 100 to 0 against the new treaties, if only because of this single sentence and its ominous significance to the security of the American people.

Mr. President, the treaty message of the Panamanian Communists states without equivocation:

> The People's Party urges . . . consolidating the government headed by General Torrijos.

Mr. President, passage of the treaties will most certainly consolidate the regime of General Torrijos. Freedom House has determined human rights and civil rights in Panama to be on a par with the Soviet Union and Communist Cuba. We will show no good will toward the people of Panama under Torrijos by approving the new treaties.

Mr. BAKER. Mr. President, in a short time the Senate will vote on the question of whether to consent to the ratification of the Panama Canal Treaty. I am in favor of ratification, and I will vote in support of ratification, and I doubt that there is anyone in this Chamber who does not know how he will vote when the bell rings at 6 o'clock. So I will not spend this time exhorting my colleagues to vote in support of ratification. Rather, as we are on the brink of an historic undertaking, I would like to confine my comments to certain personal observations.

First, whatever the outcome of the vote, I believe the Members of this body should be commended for their mature and reasoned deliberations on the issue of the Panama Canal traties and would like particularly to commend those on both sides of this issue who have participated day to day, who have argued forcefully and well on all aspects of the issues raised by these treaties and by doing so have elevated the stature of the U.S. Senate in the discharge of its constitutional obligations to advise and consent.

For my own part, I have attempted to insure that every Member of the minority, whether for or against the treaties, has had a full and fair opportunity to participate in the debate; to offer amendments and reservations; to bring to the debate perspectives of many diverse constituencies; and to have the benefit of every piece of available information that the administration could provide that might bear on the Senate's consideration of these treaties.

I would like to particularly acknowledge the role of the distinguished majority leader in this historic debate. Throughout our consideration of these treaties, his task has been a most difficult one and he has discharged his obligations fully, faithfully, and well. The majority leader has exhibited an exquisite sense of fairness to all and we have all benefited from his leadership. I thank him and commend him for his labors on behalf of this body and our country. This debate will stand as a tribute to his leadership.

Second, I believe that restraint, Mr. President, has been the hallmark of these debates. For this I am thankful. This has not been an easy or pleasant issue for many of us in the Senate, but for all of its contention, for all of the emotions that have marked this issue, the character of the debate has been exemplary in both form and substance. No one in this Chamber needs to apologize for the conduct of the Senate or any single Senator throughout the course of these extremely difficult and important deliberations.

Third, I would observe that the treaties issue is one upon which reasonable and well-motivated men might differ for good and sound reasons. There are so many aspects of these treaties that require a subjective judgment. Neither consent nor lack of consent to ratification affords any Senator a clear and unobstructed view of future developments. In a very real sense, all of us must speculate on which of the courses of action now before us offers the United States the best opportunity for constant and unimpeded use of the Panama Canal and the better merit from a national security standpoint. Those of us who support the treaties believe that ratification offers the better chance, the better odds, but we all must humbly realize, opponents and proponents alike, that no course of action guarantees the desired results.

If it were theoretically possible to foretell with certainty, to guarantee if you will, the course of future events, Mr. President, we might have the liberty of debating a perfect treaty. But this is an impossibility and I will be the first to acknowledge that these treaties are not perfect treaties. However, it has been said that "perfection is the enemy of the merely good." I believe, Mr. President, that these treaties are good. And, Mr. President, I believe these treaties are far better than attempting to maintain the status quo.

The treaties represent a pragmatic blending of the legitimate aspirations, emotions, and best interests of two proud and determined nations, and are in the best interest of the United States, particularly when balanced against available alternatives. I am prayerful that the Panamanians will see these treaties, as modified by the Senate, in their best interest as well—for I believe that it would be unfortunate, indeed, to squander this momentous opportunity after having come this far and it may be a long time before we reach this point again.

Fourth, I recognize that acceptance of these treaties will be the subject of much debate in Panama, as it has been in the United States. This is as it should be. In fact, the very nature of our own national debate on this issue says a great deal about the character of our country. It reflects our people's abiding will and determination to remain unchallengeably strong and willing to protect our national interest. The American people have signaled their contempt for decisions perceived as not reflecting that will and determination.

I believe these treaties are consistent with the aspirations of the American people. It is a measure of our strength, not weakness, that the United States can deal fairly, at arms length, and in the spirit of true partnership with a smaller, less powerful nation in a manner consistent with our own peace and security. This is a testimony to our strength and, I would suspect, a significant embarrassment to our foes.

Finally, and importantly, I would observe that while these treaties provide a viable framework for a constructive and cooperative future operation of the Panama Canal, they in no way diminish the pride that every American should feel in the achievement the Panama Canal represents. The Panama Canal, new treaty or not, stands today and for all time as an incredible physical accomplishment and a lasting monument to the thousands who have built, maintained, managed, and operated the canal for the benefit of mankind since the turn of the century. This American achievement will never be diminished in the eyes of the world.

Mr. President, I would like to read two quotes from David McCullough's "Path Between the Seas" which provide, I think, a fitting end to these remarks. The first is a paragraph that follows a description of the beginning of the difficulties that would arise between the United States and Panama over the years:

> To the average American at work on the canal, the aggrieved pride or "smoldering wrath" of the Panamanian was of only marginal concern. There would be time enough later to resolve such difficulties. For now the work was going too well, morale was too high, the end was much too plainly in view to think much about anything else.

The second, in the final section of the book, speaks for itself:

> The creation of a water passage across Panama was one of the supreme human achievements of all time, the culmination of a heroic dream of four hundred years and of more than twenty years of phenomenal effort and sacrifice. The fifty miles between the oceans were among the hardest ever won by human effort and ingenuity, and no statistics on tonnage or tolls can begin to convey the grandeur of what was accomplished. Primarily the Canal is an expression of that old and noble desire to bridge the divide, to bring people together. It is a work of civilization.

To my colleagues in the Senate, I will say that I believe that the time has come to resolve past difficulties, to bridge the divide between the United States and the Republic of Panama, and to further ennoble this great work of civilization.

Mr. MATHIAS. Mr. President, throughout this long debate on the Panama Canal treaties, two lines from Macbeth have haunted me:

> If it were done, when 'tis done, then 'twere well,
> It were done quickly.

Those lines have haunted me because no matter what the outcome here today we will not be done, when we are done.

The defect of our debate is that it has been almost entirely retrospective. We should have been considering the requirements of the merchant marine of the 21st century, but instead we have occupied ourselves rereading the fine print of the 1903 treaty, pouring over musty court decisions, and wallowing in the subjective reaction of the American and Panamanian people to one another.

In the 2½ months of our deliberations, we have been so preoccupied with the past, so mired in ancient history, that we have barely glanced at the future.

We should more profitably have been considering the requirements of merchant shipping in the years ahead. For, as marine commerce is developing, it is clear that 19th century engineering will not be adequate to the demands of 21st century shipping.

Obviously, we must either build a new canal, or rebuild the existing canal. We cannot simply stand pat, with or without new treaties.

And so, while the vote we take today may write "finis" to a chapter of our past, it will not carry us a single step into the future.

For that we must concentrate our thoughts and our creative energies on seeking the new solutions that the supertankers of our merchant fleet of the future will demand.

We are, however, left with the necessity of casting a vote on the restricted and foreshortened issue that is before us, and I shall address that question very briefly.

Today we vote on the Panama Canal Treaty which covers the period between now and the year 2000, when joint United States/Panamanian operation of the canal will cease. I intend to vote in favor of this treaty.

The Panama Canal today operates with the cooperation of the Government of Panama and the Panamanian people. Over 70 percent of the work force in the Canal Zone is Panamanian. In the future, the need for Panama's cooperation may well increase. For example, to widen the present canal or to build a sea-level canal within the Republic of Panama we would certainly require Panamanian cooperation. If the supertankers and the super carriers designed for the 21st century are to transit from ocean to ocean across the isthmus, then an alternative to the present canal will be necessary.

This sort of cooperation is needed at a time when the canal has become a nationalist issue among Panamanians. Americans, above all, should understand the aspirations of the Panamanian people. We cannot hope to have Panamanian cooperation in the future in the absence of a new relationship between Panama and the United States. Four successive U.S. Presidents have recognized this fact.

At the time of the vote on the Neutrality Treaty, I indicated that I had certain reservations about the Panama Canal Treaty. These have been dealt with through amendments or reservations to the treaty which I have supported. Yesterday, we decided that we would not be bound by article XII to build a sea-level canal only in Panama. We have also cleared up some of the financial ambiguities which were troubling me. For example, we clarified U.S. obligations regarding the $10 million surplus payments.

I have been very concerned about the possible negative effects on the Port of Baltimore resulting from higher canal tolls. I have examined this issue very carefully. I believe that the impact will not be serious. Ultimately, if these treaties lead to a continuation of uninterrupted traffic through the canal, we will all benefit.

The Senate has devoted a great deal of attention to the issue of the Panama Canal Treaties. It is an important one, but only one of many pressing concerns facing this country. I hope that we can now turn our attention to some of the other problems; many of which relate directly to our national security.

But, before we move on to the important work ahead, I would like to note that, although many deserve credit for the role they have taken in these deliberations, none has made a greater contribution to the orderly process of debate or to bringing that debate to a timely conclusion than has my distinguished Maryland colleague, Senator SARBANES.

Mr. McCLURE. Mr. President, the proposed Panama Canal treaties have been debated at great length and in great detail not only in the Senate Chamber, but in almost every forum in the country.

Public interest in these treaties is higher than for any issue to come before us in recent times.

I am sure that each Member of the Senate has received a great volume of mail on this subject. I certainly have, and as I read through my mail, I was struck by intelligent and thoughtful study so many people have made. Many of those who have written me have carefully analyzed the treaties and read everything they could obtain about Panama. Frequently, they have asked probing questions and brought to my attention crucial points about the treaty.

For the first time, the debates taking place in the Senate have been brought into people's living rooms through live radio coverage. Similarly, the letters to the editor section of Idaho newspapers reveals the careful attention given to the subject by large numbers of people. The level of public knowledge is extremely high. This presents us with a unique opportunity to bring all Americans directly into the decision-making process. The reservation I am proposing provides for a national referendum before the Panama Canal treaties can be ratified. A referendum on this issue is especially appropriate since the treaty transfers to a foreign government a valuable national asset which belongs not just to Government officials in Washington, but to every American. I think they should have a voice—direct voice—in deciding whether these treaties enhance or diminish America's just national interest.

In no way can this proposal be seen as an attempt to avoid the Senate's advise and consent responsibility. Far from being a devise by which the Senate can duck a hot issue, a national referendum will undoubtedly heighten public awareness of every action we have taken on these treaties.

Referenda are widely used at the State and local level. Recently, several Senators introduced a constitutional amendment which could establish the procedure for national referendum. The Panama Canal Treaty provides us with an excellent set of circumstances for our first referendum. It is an important issue, there is a high level of public interest, and most importantly, it is an issue which the people should have a direct role in deciding.

It is unfortunate that the people in a country noted for its repression of political discussion or dissent are permitted a vote, while in this country, the most free in the world, a vote of the people is denied.

It is, also, unfortunate that the time constraints caused by unforeseen rollcalls has made it impossible for me to offer my amendment. I ask that my proposed amendment be printed in the RECORD.

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

Before the period at the end of the resolution of ratification, insert a comma and the following: "And subject to the reservation that before the date of exchange of the instruments of ratification of the Treaty, the Congress shall have adopted appropriate legislation to hold a national referendum on the question 'Shall the United States transfer the Canal Zone to the Republic of Panama?', and an affirmative vote shall have occurred in such a referendum."

Mr. HUDDLESTON. Mr. President, it should not be surprising that the question of ratification of the new Panama Canal treaties has generated considerable controversy among the American people. Nearly everything about this important waterway between the oceans has evoked controversy since its inception.

From the suggestions of a Spanish priest in a book published in 1552 through the seven expeditions authorized by President Ulysses S. Grant between 1870 and 1875, the ill-fated efforts of the French, which collapsed in 1888, and the remarkable triumph by the United States in 1914, about the only thing that was agreed upon by engineers, businessmen and political leaders of the times was that a passage from the Atlantic to the Pacific across the isthmus between North and South America would be useful and desirable.

The location, the type of canal, the method of construction, the cost and how to combat the illnesses peculiar to the tropical climate were subjects of bitter controversy right up to the final construction phase.

Of all the locations considered from Darien near the present border of Colombia to Nicaragua, Panama was seen as the least feasible through most of the early construction. Yet, mostly through the power of one man, Ferdinand de Lesseps, the hero of Suez, the route across Panama from Colon to Panama City was to be the chosen one.

The French venture in Panama was not just a failure, it was an unmitigated disaster. Thousands of investors lost their life savings. The country was rocked by scandalous revelations of misdeeds by many of the principals in the enterprise. Ferdinand de Lesseps, himself, the most celebrated Frenchman after his success with the Suez Canal; his son, Charles; and Gustave Eiffel, builder of the great tower in Paris that bears his name, were all convicted of bribery and fraud. Thousands of workers died from tropical diseases, mostly malaria and yellow fever.

The French effort was doomed from the beginning due to their underestimation of the magnitude of the task, underfinancing, tenacious belief that it must be a sea level canal and failure to come to grips with the health hazards.

One man emerged from the French debacle who was to play a significant and somewhat suspect role in decisions by the United States to take up where

the French left off in Panama. Philippe Bunau-Varilla worked tirelessly in this country on behalf of French interests and to salvage what he could of his own substantial investment in the French company. As Envoy Extraordinary and as minister plenipotentiary of the new State of Panama, he negotiated and signed the Panama Canal Treaty of 1903 on behalf of Panama. It is possible, too, that he was the master mind of the Panamanian revolt against Colombia that established its independence after Colombia had rejected the U.S. treaty.

Sentiment was strong in the U.S. Congress for the U.S. to undertake the construction of a canal between the seas after the French failure. But, the assumption was that the canal would be across Nicaragua. The chief proponent of the Nicaraguan route was Senator John Tyler Morgan of Alabama who believed such a route being closer to this country would favor shipping to and from our Gulf ports. But the shrewd and persistent lobbying efforts of Bunau-Varilla and a lawyer by the name of William Nelson Cromwell, who was employed by the French company, turned the matter around in favor of Panama, then still a part of Colombia.

The key factors in the lobbying success were the reduction in the asking price for the French holdings in Panama from the original $70 million to $40 million and the convincing of President Theodore Roosevelt that Panama offered the best chance to expedite the U.S. effort to construct a canal.

The treaty between the United States and Colombia, negotiated by Secretary of State John Hay and Dr. Tomas Herran, authorized the French company to sell its "rights, privileges, properties and concessions" to the United States, and Colombia granted the U.S. control of an area 6 miles wide from Colon to Panama City. Colombian sovereignty over the zone was specifically recognized, but the U.S. was permitted to establish its own courts of law within the zone and to enforce its own regulations concerning the canal, ports and the railroad. Police protection was to be supplied by Colombia with the United States empowered to help out if Colombia was unable to carry out this objective. The United States was to pay $10 million to Colombia in lump sum and an annual rent of $250,000. The franchise was for 100 years and was renewable at the option of the United States.

The Congress of Colombia rejected the Hay-Herran treaty to the consternation of President Roosevelt and in spite of thinly veiled threats from the Secretary of State and from the President himself.

The resourceful Bunau-Varilla and Cromwell moved quickly to encourage the revolt against Colombia, dealing with Dr. Manuel Amador and his associates and promising both money and military support from the United States. There was no official declaration of support from the U.S. Government, but, in fact, U.S. warships were sent to Panama ostensibly to protect the Panama railroad with orders to prohibit the landing of any troops "either government or insurgent." Thus, Colombia reluctantly accepted creation of Panama.

The United States quickly recognized the new country of Panama. Dr. Amador was named President and Envoy Extraordinary. Philippe Bunau-Varilla, the Frenchman, who had not been in Panama for 18 years, was designated as the sole negotiator for Panama on a canal treaty.

He moved swiftly and the terms of the document he devised with Secretary of State John Hay were far less favorable to Panama than the terms of the rejected treaty were to Colombia. The Canal Zone was to be 10 miles wider rather than 6; the United States was given control of sanitation, sewage, water supply and maintenance of public order in the terminal cities of Colon and Panama City.

More importantly, the United States was granted within the Canal Zone "all the rights, power and authority which the United States would possess if it were the sovereign of the territory—to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." And the rights were granted "in perpetuity" rather than for 100 years as the Colombian treaty.

Also, four small islands in the Bay of Panama were granted to the United States, and we had the right to expropriate any additional land or water areas "necessary and convenient" for the construction, operation, sanitation, or defense of the canal.

The compensation for Panama was the same as offered Colombia. Additionally, the United States guaranteed the independence of Panama.

During the final days of negotiations by Bunau-Varilla and Secretary Hay, Dr. Manuel Amador and a delegation from Panama were rushing to Washington expecting to review the treaty before it was finalized. They arrived about 2 hours late.

The Panamanians protested bitterly to Bunau-Varilla about the terms of the treaty and refused to assist in its ratification in Panama. But under the threat of withdrawal of U.S. protection of the new Republic, Panama formally approved the pact on December 2, 1903.

On February 23, 1904, the U.S. Senate ratified the Hay-Bunau-Varilla treaty by a vote of 66 to 14 after much acrimonious debate led by Senator John Tyler Morgan. But, one senator summed up the lack of significant opposition from the members by conceding that the treaty "comes to us more a liberal in its concessions than anybody in this Chamber ever dreamed of having * * * in fact, it sounds very much as if we wrote it ourselves."

Thus, the United States was launched upon the most stupendous public works project in history, and it was to succeed although the obstacles were gigantic and the price in lives and dollars was horrendous.

The project took 10 more years to complete, although it was opened ahead of schedule; cost 352 million—four times as much as Suez; exacted 5,609 more lives; and required the excavation of some 262 million cubic yards of rock, dirt and other material.

Since it opened in August 1914, it has seen steadily increasing use, with ships now transiting the canal at a rate of more than 1 per hour for every hour of every day of the year.

The question understandably then arises—why should we change a treaty which has been in force for 75 years, which specifies that it is to remain in force in perpetuity and which has apparently served United States and other interests well?

There are several answers.

One is that the 1903 treaty was born in controversy, and negotiated by a Frenchman, much to the displeasure of the Panamanians. While the United States did not precipitate all the events which led to the conclusion of the treaty and its somewhat pressured acceptance by Panama, it was a knowing bystander, ready and willing to benefit from transpiring developments. It acquired Canal Zone property and rights, but even according to President Roosevelt, Secretary of State Hay and the French Treaty negotiator, it did not acquire sovereignty.

Second, the accepted diplomacy of 1903—which undoubtedly made the United States moves of 1903 not uncommon or outside the then-existing norms of international life—is not the accepted diplomacy of 1978. Just as our individual daily lives are far different from those of our fathers and grandfathers in 1903, international relations, modified by communications, expanding technology and increasing interdependence—are also far different.

Third, might simply does not make right. I have no doubt that we could insist on the current treaty and use our military power to impose it, although the resources required would be great. But, the mere possession of strength and force does not inspire respect. The ability of a great nation to deal equitably and justly with smaller nations can do more to inspire respect than the unnecessary use of military force.

By far the most important answer is that there is an easier, more reliable, more assured way to protect U.S. interests in use, access and special privileges than under the present treaty. That way is to enter into a new arrangement with the country through whose land the canal runs and a partnership with the people of that country. That is what the two treaties seek to do.

Treaties are, by their nature, the product of negotiation and compromise. They represent efforts by two sides to come to terms which each can accept, even if they cannot wholeheartedly endorse.

The treaties before us represent 14 years of work by four administrations—two Republican and two Democratic ones. They embody principles which, if one will review Eisenhower statements, the Johnson-Robles guidelines which Eisenhower and Truman publicly endorsed, and the Kissinger-Tack agreement, are remarkably consistent.

They are treaties which the Senate

Select Committee on Intelligence, on which I serve, reviewed line by line to determine if there had been any blackmail or undue pressure during the negotiating process. Both members of the committee who support the treaties and members who oppose them agree there was none.

This does not mean that each and every provision is to our liking or even completely in our favor. But, it does suggest that it is the best arrangement we could now devise to protect both United States and Panamanian interests.

In the defense area, I believe United States interests are amply protected. Should there be a strategic threat, the canal would probably be vulnerable—regardless of what kind of treaty we had or if we had one at all. As Admiral Holloway noted in testimony before the Senate Foreign Relations Committee, "* * * in a strategic nuclear war, the importance of the canal in relative priority diminished to an inconsequential position."

On the conventional level or in connection with the possibility of sabotage, guerrilla warfare or terrorism, I think we have to look at the situation first in terms of the next 22 years during which the Panama Canal Treaty provisions will govern and then in terms of the period beyond the year 2000 when we will have only the Neutrality Treaty.

During the rest of this century, the United States will retain its existing military force in Panama—at whatever troop level we deem sufficient. In short, we are there. We are there in sufficient force to protect our interest and rights under the new treaties, and we have the right to be there.

But, what we envision during that time is not a confrontation with Panama but the development of a new partnership both in the defense and operation of the canal which would enable us to work jointly for the security and efficiency of the canal.

The defense situation after the year 2000 has been widely debated. The Carter-Torrijos communique, added as an amendment which made it an integral part of the treaty states precisely, "* * * *each* of the two countries shall, in accordance with their respective constitutional processes, defend the canal against *any* threat to the regime of neutrality and, consequently, shall have the right to act against any aggression or threat directed against the canal or against peaceful transit of vessels through the canal." (Emphasis added.)

In the Foreign Relations Committee report, our interpretation of this is set out in some detail as follows:

> . . . The first amendment relates to the right of the United States to defend the Canal. (It creates no automatic obligation to do so. See p. 74 of this report.) It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.
>
> Second, the prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first. The Joint Statement recognizes that the use of Panamanian territory might be required to defend the Canal. But that use would be for the sole purpose of defending the Canal—it would be purely incidental to the Canal's defense; it would be strictly a means to that end, rather than an end to itself; and it would not be carried out for the purpose of taking Panamanian territory. . .

And, finally, the understanding offered by Senator HAYAKAWA and adopted by the Senate on March 16 further explains the U.S. right to determine when it must act to defend the canal as a unilateral right.

Furthermore, after the year 2000, only Panama will have the right to maintain troops and military sites in Panama—a protection we do not have under the existing treaty. And U.S. vessels of war or auxiliary vessels clearly have a right to go to the head of the line, a privilege accorded only to the United States and Panama. These provisions should allay the fears of those who are concerned that foreign powers might establish military bases in Panama after U.S. forces are withdrawn.

Turning to the operation of the canal, the Panama Canal Commission, a U.S. Government agency, will have responsibility for managing the canal, setting tolls and enforcing rules of passage until the year 2000. After that time, the responsibility will shift to the Panamanians; but it will be to their advantage to keep tolls reasonable and operations efficient. Otherwise, users will look for alternative means of transporting goods which could reduce use and revenues.

At first glance, the revenues to be paid to Panama under the new treaty appear extreme. Assistance is to increase from some $2.3 million to as much as $50 to $60 million annually. Indeed, this portion of the treaties, in my judgment, is beneficial to Panama just as I believe the defense provisions are beneficial to us.

Several other factors should, however, be remembered. First, the payments are to come from canal revenues, not from the U.S. Treasury. Second, these payments, made from tolls, are not out of line with a number of agreements we have made with other countries under which we provide aid in exchange for base rights, such as we will have in Panama during the remainder of this century. Third, Panama will assume the costs of numerous services now paid for by the United States within the Canal Zone. These costs plus declining revenues in recent years resulted in operating losses of between $7 and $8 million.

Many persons are deeply concerned about the dictatorial aspects of the Panamanian Government, and I share those concerns. We cannot as a nation, however, impose governments of our preference upon other parts of the world. Dictators of both the left and the right rule in many areas. We do not like that; we do not approve of that. We can to some extent bring pressures to bear in order to try to influence developments in those nations. But, we work in this imperfect world with a number of leaders we would prefer not to because it is in our interest to do so. With the canal running through Panama, it is to our interest to try to work with the Government there with or without the new treaties.

"But General Torrijos is untrustworthy" some persons respond. Perhaps he is and perhaps he is not. But, if he is untrustworthy it would seem much more logical for him—or any other political leader—to abrogate a treaty such as the existing one which has so many provisions which irritate his people, than a treaty which resolves many of the conflicts, between his nation and ours, and, also provides Panama with many economic advantages.

Perhaps more to the point, however, is that the major changes under these treaties occur in the year 2000 and between the nations of Panama and the United States; they do not occur between Omar Torrijos and Jimmy Carter. The question, then, is what is best for the two nations, not for any two leaders or any individuals, at that time.

There are many other issues which have been raised in this debate, but it is not my intention to go into them further. As I have said, the treaties represent negotiation and compromise, and where that has occurred, I think the pros and cons of the final provisions have been more than adequately examined.

I would close with one final note. I have been dismayed at times by the harsh and bitter tones of this debate. Emotionalism, anger, rhetoric have been used on occasion to inflame rather than inform. I have also been disturbed by those who ascribe evil motives to those who disagree with them on this single issue—whether it be for or against the treaties.

We have many interests, many views in this Nation. Consensus building—which involves compromise and conciliation—is important to our system. We need only look to other countries to see the enormous potential for harm when consensus building breaks down and the dichotomies of the left and right become too great.

Reasonable men and women all along the political spectrum have taken differing positions on these treaties. I think we have to assume that each exercised his or her own judgment and respect that decision. If we stop to reflect for only a moment on our relations here in the Senate, we rapidly realize that our allies on agriculture might not, for example, be our allies on defense, or the coalition that works together on steel is not the one that operates on housing. We shift as interests shifts, issue to issue—and that is important.

Our Nation was built on some very basic precepts—freedom of each to pursue his own religion, freedom for each to choose his own political affiliation, freedom to assert ones own views.

We have and will disagree—that is part of the political system—but, in doing so we should remain ever alert to the

importance of how we disagree and how we reconcile our disagreements as we move from one issue to another.

Mr. President, there has been no issue before the Senate which I have studied more thoroughly or carefully. I have listened to all the arguments, explored every concern, every charge made. I have concluded that the treaty of 1903 is no longer workable and that the interest of the United States will be better served by ratification of the new treaties.

Mr. STEVENS. Mr. President, I stand before this body as one who has always maintained that the United States of America and the Republic of Panama must find a new relationship through which their respective interests in the Panama Canal can be accommodated. It is not without a sense of great frustration that I now vote.

Though I favor a new relationship with Panama, it is clear to me that the treaties presented to the Senate are so ambiguous and so subject to differing interpretations by Panama and the United States that we do both countries a great disservice by ratifying them. Mr. President, we are engaged in a debate in which neither side will win. Irrespective of whether the Panama Canal Treaties are ratified, in my opinion the people of the United States and the people of Panama will be the losers. When the negotiators of these treaties and the President signed these documents they committed the United States to a horrible legacy. We are all aware that if the Senate rejects this treaty that in the short run we will be faced with the prospect of violence in Panama. Mr. President, I maintain that if the Senate ratifies these treaties, we will be faced with the prospect of long-run violence in Panama. Violence which would stem from the misunderstandings that will grow out of these ambiguous documents.

Mr. President, I feel like a condemned man. Irrespective of how I vote, the outcome will be most distasteful.

I have on numerous occasions attempted to amend both the Neutrality Treaty and the Panama Canal Treaty in order to eliminate the ambiguities which could lead to confrontation. The proponents of the treaties have successfully thwarted all of our efforts to eliminate these ambiguities. I must cast my vote in opposition to the ratification of the Panama Canal Treaties.

Before yielding the floor, Mr. President, I would like to compliment the distinguished majority and minority leaders for the gentlemanly manner in which they have allowed this debate to take place. Throughout these difficult days, my good friends have gone to great lengths in order to assure that debate be carried out in a manner that was fair to all parties.

Mr. HASKELL. Mr. President, today marks the end of one of the most lengthy debates in the history of the U.S. Senate. Following the most extensive hearings on a treaty every held by the Foreign Relations Committee, we have been witness to 3 months of floor debate where each and every article and amendment has been thoroughly discussed.

Yet there remains a wide difference of opinion over what the Panama Canal treaties mean to America.

To opponents they represent the latest and most evident example of American capitulation to hostile forces.

To proponents the treaties embody the best impulses in the American tradition of dealing with friendly nations and offer the best opportunity to assure continued U.S. use and access to this vital waterway.

After the lengthy debate and despite volatile opposition, every major public opinion poll since last October has shown that the majority of the American people support the treaties if the U.S. right to defend the canal's neutrality is insured and American vessels are allowed priority passage in time of war.

I made my support of these treaties contingent upon acceptance of those vital amendments. They are essential to national security and have put to rest speculation that the United States would allow foreign intervention to close the canal.

Acceptance of the treaties is not a departure from the basic tenets of our foreign policy. It is simply a reaffirmation that our Nation can be a powerful force in the world without having to resort to arms to prove it.

If we are truly to be the beacon of democracy and a partner with the nations of Central and South America in keeping our hemisphere free, we must abandon notions of "gunboat diplomacy" and make our message to other nations a powerful one: The power of example.

Panamanian leftists and Communists, as well as other anti-American forces would probably like to see nothing better than our rejection of these treaties.

Their best hope for success is to keep alive the false issue of "Yankee Imperialism." A joint Panamanian-American agreement can scotch once and for all the outmoded accustations of American colonialism.

Our allies in the hemisphere are anxious that these treaties, representing U.S. commitment to cooperation with Latin America, will be ratified. Brazil, Venezuela, and other South American countries do not view the canal treaties as a sign of weakness.

Nor do our European allies view the treaties as an indication that the United States has weakened its support for NATO.

I continue to wonder at the extensive and ill-founded antagonism which has been directed at the Panamanian people. While no one in the Senate defends General Torrijos, the history of Panamanian-American relations does not invite the suspicions evident in much of the debate.

If the Panamanians are so hostile to us, why have they waited patiently through 14 years of negotiations?

If Panamanians are so bent on closing the canal why have not the 70 percent of the canal work force which is Panamanian walked off the job?

If Panama is so alined with Marxist countries, why does the government refuse to recognize the existence of the Soviet Union and Mainland China?

The only issue which divides us has been the disposition of the Panama Canal Zone. The two treaties provide a solution which is equitable to both nations and which protects America's strategic interests in the canal. The present Joint Chiefs of Staff, as well as many retired military leaders, agree that the treaties are in our best national interest.

But Panamanians have suffered many wounds to their national pride. Their sensitivity was recently demonstrated by their reaction to the DeConcini amendment. I, along with 74 other Senators, voted for that amendment because it appeared to provide further clarification involved in keeping the canal open in the future.

The interpretation of the DeConcini amendment adopted in Latin America led to widespread concern throughout that region.

When this became apparent, I expressed my conviction that it was incumbent on the Senate to dispel the fears of those countries. The Senate leadership and Senator DECONCINI have now cosponsored a resolution to clarify this point and allay those fears.

It seemed senseless to me to offend Panama and South America by wrongly implying that the U.S. Senate is reasserting a policy of intervention which was repudiated 45 years ago. At the turn of the century, the United States proclaimed the right to intervene throughout Latin America in cases of chronic wrongdoing or a general loosening of the ties of civilized society. We no longer believe that, and I am pleased that the Senate contends to reaffirm America's traditional commitment to the principle of nonintervention.

Finally, let me speak once again to the critics of the treaties. Rejecting the treaties is not going to remove Soviet and Cuban troops from Africa, it will not stop the development of Russian missiles and it will not slow the buildup of Warsaw Pact forces. Defeating the treaties, however, may gratify the Kremlin by indicating that America would rather alienate our long term allies rather than cooperate with them.

I am intensely aware of and concerned about our national security.

Keeping America strong has frequently required lengthy debates and difficult decisions. The ratification of the Panama Canal Treaties has provided an opportunity for a full discussion of the national security implications of devolving our interest in the Canal Zone.

Approving the treaties will retain American use and access to the canal and accomplish through diplomacy what we might not achieve through relying on military force.

Ratification of the Panama Canal treaties represents a wise, just and courageous decision by and for the United States.

U.S. CATHOLIC CONFERENCE STATEMENT ON PANAMA CANAL TREATIES

Mr. KENNEDY. Mr. President, the General Secretary of the U.S. Catholic Conference, Bishop Thomas C. Kelly, made an important statement last week

in support of the Panama Canal treaties, which I commend and wish to bring to the attention of my Senate colleagues in connection with today's vote on the second treaty.

Bishop Kelly rightly pointed out that—

> The attachment of a reservation implying a U.S. right to intervention in the internal affairs of Panama has threatened and may indeed have eroded the respect for sovereignty, dignity, and social justice which the treaties are designed to foster.

These were the concerns which led me to oppose the original DeConcini reservation to the Panama Canal Neutrality Treaty, and to welcome the reiteration today of our country's commitment to nonintervention in the affairs of Panama.

Mr. President, I ask unanimous consent that the USCC statement be printed in the RECORD.

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

STATEMENT ON PANAMA CANAL TREATIES

Since 1975 the U.S. Catholic Conference has energetically supported efforts to negotiate new treaties which would return to Panama full and effective sovereignty over the whole of its national territory. Successful conclusion of such efforts can symbolize and initiate a new cooperative relationship between the United States and the nations of Latin America—a relationship characterized by full respect for the sovereignty of each nation, the dignity of its people, and the requirements of international social justice.

Viewing the agreements negotiated last September as a positive step toward this new relationship, USCC has supported the treaties signed by President Carter and General Torrijos. We welcomed the Senate's passage of the Neutrality Treaty last month. But the attachment of a reservation implying a U.S. right to intervene in the internal affairs of Panama has threatened and may indeed have eroded the respect for sovereignty, dignity, and social justice which the treaties are designed to foster.

Our concern is still greater in view of reports that attempts may be made to attach further reservations to the basic treaty, which will be voted on April 18. Such reservations could eviscerate the substance of the treaties and lead to a major setback in the hoped-for new relationship.

The U.S. Catholic Conference therefore urges the President and the Senate to resist firmly any measures which, either explicitly or implicitly, would restrict the legitimate sovereignty of the Republic of Panama. Moreover, in light of the present circumstances, USCC believes there is need for a statement of clarification by an appropriate party, indicating the intent of the reservation to the Neutrality Treaty and making clear that its scope does not exceed the principles contained in the original treaty. Finally, the Conference urges that the U.S. government explicitly reaffirm its intention to adhere fully in its relations with the Republic of Panama to the principles of nonintervention contained in the Charter of the Organization of American States.

It is USCC's hope at this stage of the ratification process that no effort will be spared to assure that the new treaties do signify and begin an era of justice and peace in the Western Hemisphere.

Mr. BIDEN. Mr. President, it was no secret to the last minute that I supported the Neutrality Treaty as modified by the Byrd-Baker leadership amendment.

Nor is it secret that I will support the Panama Canal Treaty to be voted today. I am announcing this because I would like to underscore the fact that the issue being debated in both treaties is the continued American use of the canal. It is not a vote in support of or against President Torrijos. I support both treaties because I feel that the continued American use of the canal for our strategic and economic purposes is our first priority. Whether President Torrijos stays in power until the 21st century is irrelevant to the merits of the treaties. I do not want to see the treaties rejected, emasculated, distorted, or diminished because I believe they enhance America's vital interests. Failure to ratify these treaties may indeed produce insurrection, terrorism, or even revolution in Panama. I have no fear that the United States could put down any violence that would occur. I do, however, question whether a usable canal would emerge from conflict within Panama. And a usable canal is our first priority.

If we have to send the marines down to Panama, I wonder how many Americans—who today have not given much thought to the treaties—will question the wisdom of the Senate for not having chosen—for not having voted—for not having supported a more effective means of defending the U.S. interest. The United States obtained the Canal Zone in a manner quite appropriate to the turn of the century. The decision to build a canal was made with extraordinary foresight. The technological achievement of the canal itself was a major American engineering breakthrough.

America was first—not last.

What worked for the U.S. interest in Panama in 1925 will not work in 1995 nor in 2025. When old ways do not work, it becomes a test of American superiority, American ingenuity, and American strength to find new ways. Today the only effective way to defend American interests in the canal is through a spirit of cooperation. A unilateral decision—even for the common good—is just not going to work. A joint decision—whose common good is preceived by both sides—is one that works.

The Panamanians today are a nation. They are one of the smallest and weakest nations of the world. What test of strength is it for the United States—the strongest country in the world—to use brute force against the weakest?

On the other hand, I ask: What genuine leadership is demonstrated when a country which has the means and the will to use military force instead chooses an ingenious and peaceful means for achieving the same objective. And that objective is clearly the continued use of the canal through this and the next century.

Mr. President, I support the two Panama Canal treaties because they are a product of American strength. And I believe they are the most "advanced weapon" we could choose to protect the short- and long-term interests of the American people.

Mr. DOLE. Mr. President, we have considered a number of proposed modifications to both the Neutrality Treaty and the basic Panama Canal treaty. Two amendments, and several reservations have been adopted: many more have been rejected at the behest of the Carter administration and the Senate leadership.

Now, as the final vote of ratification draws near, we must take a long, hard look at the final product. And we must ask ourselves, in all candor: "is this the best example of American negotiating skill on a bilateral treaty? Is this the best we can offer the American people?"

For myself, Mr. President, I find the answer to these questions to be a clear, unequivocal "no." The reasons should be plain enough to anyone who has studied the canal treaties in detail.

IMPRECISION

Perhaps the single most adverse feature of both treaties is their imprecise, vague, ambiguous, and confusing features. Nowhere has this weakness been more apparent than in those sections dealing with future American rights to protect and defend the canal. With the leadership amendments, and the DeConcini reservations, we have made some improvements, but not nearly enough.

There are still conflicting interpretations about what the defense provisions allow us to do, and what they commit us to do. The same holds true for certain economic and transition features, as well.

All things considered, both treaties have reflected clear examples of poor draftsmanship. In sum, they represent everything a good treaty should not be.

Even the phrasing is surprisingly offensive in its style and manner. As one of my colleagues has aptly noted, those treaties read like documents of surrender drafted by a victorious Panama for a vanquished enemy, the United States. We find phrases like, "The Republic of Panama grants to the United States * * *" and "The Republic of Panama permits the authorities of the United States of America to exercise jurisdiction * * *". From a stylistic standpoint alone, these treaties are little short of an insult to the Nation that gave birth to the Panama Canal, and helped Panama achieve its own independence from Colombia.

RECOMMITMENT OF TREATY

Mr. President, I support the motion by the Senator from Michigan, Mr. GRIFFIN, to recommit the Panama Canal Treaty to the President. Recommitment would simply represent the exercise of the Senate's coequal role in treaty-making powers granted by the United States Constitution.

The action simply involves a directive to the President, from the Senate, to resume negotiations with the Government of Panama until a treaty is agreed upon that better serves the interests of both our Nations. This would give both our Governments the opportunity to reflect upon the most troublesome aspects of this treaty, and to work out a new arrangement which clearly and unambiguously spells out the rights of both countries.

I have every confidence that, once ne-

gotiations resume, Panama will better understand our concerns, needs, and intentions, and that we will better understand hers. By clearing up uncertainties, and carefully defining commitments, both Nations will benefit.

The Senator from Kansas believes his colleague from Michigan has performed a service in proposing the recommitment of this treaty, and I extend my earnest support for its approval.

If, on final vote, the treaty is approved, the American people have lost. We have lost more than a great waterway—we have lost an effort to prove that American opinion still counts for something in the White House and in the U.S. Senate.

This latest in a series of foreign policy retreats by our Government shows that we just have not listened to the American people. Nor, I suspect, have we listened to our own best judgment. The proposed Panama Canal treaties are defective in many respects, as has been pointed out repeatedly on the Senate floor.

Yet, every effort that I and other Senators have made to improve the treaties has been beaten back by the pro-administration, pro-leadership contingent. I could not justify voting for treaties that so ignored the opinion and the interests of the American people, and I will cast my negative vote accordingly.

Mr. PAUL G. HATFIELD. Mr. President, I will support the final Panama Canal Treaty today, because agreement between our two nations is the best way of assuring the continued accessibility and operation of the waterway.

The United States never intended to establish a colony on the isthmus or to deny the sovereignty of the Panamanian nation. In 1904, President Theodore Roosevelt said,

> We have not the slightest intention of establishing an independent colony in the middle of the state of Panama, or exercising any greater governmental functions than are necessary to enable us conveniently and safely to construct, maintain and operate the canal under the rights given us by the treaty.

The original canal treaty may have been acceptable under the political conditions that prevailed in 1903. There has been recognition for many years of the need to negotiate a new treaty between the United States and Panama for the operation of the canal. Negotiations with Panama have been conducted under four Presidents—Johnson, Nixon, Ford, and Carter. The treaties are the logical culmination of the understanding between the United States and Panama for a new and mutually acceptable agreement for the future neutrality, accessibility, and defense of the canal.

The fundamental responsibility of the Senate during the consideration of the treaties was to protect the vital security interests of the United States by providing for the neutrality, accessibility, and defense of the canal. I believe these responsibilities are fulfilled by these treaties, with the changes adopted by the Senate.

My affirmative vote on the first treaty—the Neutrality Treaty—was absolutely contingent upon the reservation which I cosponsored to provide the United States with the right to act independently, including the use of military force, to assure the continued operation of the canal. Approval of this reservation strengthened the position of the United States and made it possible for me to support the treaty in the firm belief that this was the right decision.

The right of the United States to act independently is preserved in this second, or Panama Canal Treaty being acted upon today. We will be able to assure that the Panama Canal shall remain open, neutral, secure, and accessible, and I believe this is an essential prerequisite to the approval of this final treaty.

Among my most serious concerns about this treaty were its financial implications—its cost to taxpayers.

Accordingly, I have worked on, and supported, measures to tighten the treaty and reduce its cost. These revisions were necessary to assure that the taxpayers of the United States were not obligated to a long term contract to subsidize the operation of the canal, or the Panamanian Government. These reservations for the treaty provide:

That the United States is not obligated for the balance of annual contingency payments in the absence of surplus canal revenues;

That Canal Commission payments to Panama for public services will reflect actual costs as determined by an independent audit;

That authority of the United States to make decisions regarding expenses necessary for canal management, operation and maintenance not be restricted;

That the treaties do not obligate the United States to provide any form of foreign assistance to Panama;

That funds may not be drawn from the Treasury for payment to Panama without congressional authorization;

That the Panama Canal Commission will pay interest to the U.S. Treasury on the funds and assets invested in the canal.

These reservations establish realistic limitations on the cost of operating the canal during the 21-year interim period and provide the protection to American taxpayers that I believed was necessary.

I was also concerned about a provision of the treaty that restricted the United States from constructing another interoceanic canal in the Western Hemisphere. This restriction has been removed from the treaty and the option of building another canal is open to the United States.

I support these treaties with the belief that there is a need to establish a new relationship with Panama—a relationship that recognizes the sovereignty of that nation, but also protects our interests and assures continued use of the canal.

Last month I met with the Secretary of Defense and the Acting Chairman of the Joint Chiefs of Staff who assured me that in the professional military opinions of the Joint Chiefs of Staff, the treaties were in our best national interests.

These treaties, as presented to the Senate, were deficient in many respects. I joined with other Member to sponsor and support amendments to provide the right to defend the canal from any threat of aggression, to assure U.S. ships priority passage during time of emergencies, to make arrangements to station troops in Panama, and, in this treaty, to greatly reduce the cost to the American taxpayers. These and other amendments substantially strengthened the treaties, but they are still not perfect instruments. It would be impossible to negotiate a treaty that would completely satisfy each of the 100 Members of the Senate and every person in the United States and Panama.

In the final analysis, I am convinced that these treaties are the most acceptable method of assuring that the Panama Canal remains open, neutral, secure, and accessible.

Mr. ROBERT C. BYRD. Mr. President, 110 years ago, the U.S. Senate made one of the most significant decisions in its history. By a single vote, the Senate failed to find President Andrew Johnson guilty of the impeachment charges brought against him.

Six Senators voted contrary to the wishes of the controlling faction of their party, and to this day they are honored for their integrity in the face of certain political doom.

Senator Edmund G. Ross of Kansas, the last genuinely uncertain vote as the rollcall began, later confessed that, after Chief Justice Salmon P. Chase called for his decision:

> I almost literally looked down into my open grave, Friendships, positions, fortune—everything that makes life desirable to an ambitious man were about to be swept away by the breath of my mouth, perhaps forever.

And they were largely swept away. By that vote, Edmund Ross ended his own political career. But Edmund Ross of Kansas will live forever in the honored memory of the American people, because he voted for conscience and justice, rather than expediency or political self-preservation.

Contemporary popular opinion in 1868 did not rally to rescue those six Senators; on the contrary, it was enraged at their actions.

One of those Senators was Peter G. Van Winkle of my own State of West Virginia.

Van Winkle had been one of the prime movers in establishing West Virginia as a new State in 1863 and he was one of its leading citizens.

His reelection in the next campaign had been a foregone conclusion.

But when Peter Van Winkle failed to vote to find Andrew Johnson guilty. His political career was destroyed; he retired from public life under a torrent of abuse and vilification.

The West Virginia legislature officially rebuked him and condemned his vote.

A Wheeling newspaper wrote:

> It seems impossible a man with a sense of honor which we have attributed to him could have done what he has done.
>
> Mr. Van Winkle's responsibility in this matter is one we would not care to shoulder.
>
> His single vote decided. In the hands of Mr. Van Winkle's cinstituents (though he may not be aware of their existence) we leave him.

In the many decades since that momentous vote was taken, history has changed the popular judgment of men concerning the trial of Andrew Johnson.

It is not that Andrew Johnson has been determined to be without fault, or that Thaddeous Stevens and Ben Wade are now considered to be without virtue.

The victory in opinion belongs not to party or faction, but to wisdom, foresight, and vision.

Johnson's supporters were striving for reconciliation, compassion, unity, and compromise, in the face of vengence, retribution, and partisanship.

There is a profound poem by James Russell Lowell which states:

> Once to every man and nation
> Comes the moment to decide,
> In the strife of truth and falsehood
> For the good or evil side.

Mr. President, I believe that we are verging on one of those extraordinary moments in our own history.

For more than 200 years, we have been blessed with leaders who have authored chapters of history that speak well of our people. Today, we are challenged to write another.

Ours is a people of magnificent vision. We have seen the purple mountains on the horizon and looked beyond. We have gazed on the stars and then reached out to them. Our real monuments are not of marble and clay, but are of the substance of our ideals and the imagination of our ideas. Our people have not only dreamed our dreams, but with sweat, blood, fortitude, and courage, have translated those dreams into the deeds of freedom, and liberty, and justice.

There is, however, in these tumultuous days of world uncertainty, a sense of national despondency—a feeling that we are, in a manner, retreating on the battlefield of greatness and that we are being swept by an outgoing tide of events, from the principles of our historic shore. This, I believe, is the most basic concern of our people today regarding these treaties. It is a concern expressed by honorable men who oppose the treaties. They picture ratification as the gestating germ of weakness and decay.

With great respect, but in complete candor, this, I believe, is a blindman's theory, for its vision halts at the end of a cane. It is not worthy of our people's imagination.

A vote today to approve the treaty will not be a surrender to this pervasive malady which has haunted our national spirit since Vietnam. We would demonstrate strength, not weakness; confidence, not insecurity, by voting to approve the treaty.

We come now to the final moments. Through 38 days of debate, both sides have presented strong arguments. It has been an historic debate, and its impressions have been carried through the rippling waters of public opinion by the first audio broadcast from the U.S. Senate. In this country, as well as in Panama, this has been a compelling drama for many.

The world this afternoon hears the creak of a chair, the thump on a microphone, the shuffle of a piece of paper in this Chamber. Our voices and actions today echo through the streets of Panama City and other capitals of Central and South America.

Today we judge, and today we shall be judged. We have searched for truth. Both sides lay claim to the answer to the ultimate question: Are these treaties in our best national interests?

For my premise, I merely state this: The death of these treaties may leave an impression of strength, but it will be strength gilded with papier-mache. Their approval will mean strength fortified with vision and justice.

The architecture of my reasoning is simple: We are more than a hundred times this size of the Republic of Panama. We are unsurpassed in our military might.

Moreover, there is a tendency to overlook the fact that the United States will retain control of the canal for the next 22 years, plus the defense rights thereafter as provided in the neutrality treaty. Hence, these two treaties will fully protect U.S. interests for both the near and the distant future. And, we will have accomplished this without trampling on the rights of the Panamanians.

These treaties can be a benchmark of better relations with Central and South America, or their rejection can be the beachhead of confrontation. A prudent nation should choose the former. The unexplored frontiers of economic and political cooperation that will be opened to all of Latin America by the approval of these treaties are as wide as our own vision.

We have entered a new phase in the drama of world affairs. In the coming generations, the leadership of the West and the whole world will be shared with many of the developing nations. Brazil, Venezuela, Mexico, and Argentina, as well as other countries in this hemisphere, have enormous potential as future leaders in shaping world events. Do we dare betray a lack of sensitivity to the tide of history by failing to recognize the importance of these treaties in our future relations with these emerging giants? Do we want to deny to our friends and allies from the Rio Grande to Cape Horn the acknowledgment of their dignity and national pride?

We stand at a crossroads. There is a fundamental question that must be answered.

When the red sunset fades over this moment in time, will we have prevailed as a nation to understand others as our history shows we have so rightly insisted on being understood?

We must not be seen throughout the world confusing compassion with weakness, and greatness with dominance. We must be seen today as a nation as great as its principles and not be seen as a nation afraid of its principles.

To vote "no" on this treaty is to deny to others the freedom of destiny we have so often, so long, and so well cherished, fought, bled, and died for.

To vote "no" on this treaty is to slam the door on our already neglected relationships with our neighbors to the south.

To vote "no" on this treaty is to give a blank check to our world adversaries who would exploit a weakness that we had perceived as a strength.

The plain fact is this: By voting "yes" on this treaty, we are not gambling away our strength; we are making a sound investment in our future.

By voting "yes," we are not losing a canal; we are building trust and confidence within the Western Hemisphere.

By voting "yes," we are not retreating from greatness; we are sending a message to the world that genuine greatness and strength do not reside in force of arms and sheer might alone.

If American history were to run its course tomorrow, no man could diminish the glory and the record that we have established as a nation. But we have even greater roles to play in the world in coming generations. But those roles will not necessarily be played wearing the masks of yesterday. We can rise to unvisited pinnacles if we have the wisdom to vote today for conscience and justice in relation to Panama as did the Rosses and Van Winkles in relation to Andrew Johnson in 1868.

Mr. President, I compliment all Senators on the high caliber of this great debate. I express my great respect to those in the opposition for the strenuous battle they have fought.

Mr. President, I offer the highest compliments to Senators CHURCH and SARBANES who have so magnificantly managed the debate for the proponents of the treaties, and I offer my sincere thanks to all Senators who have supported the treaties and will vote "yes" on the final rollcall.

Finally, Mr. President, I offer my highest respect and gratitude and admiration to those courageous Senators who supported the treaties and who will soon stand for reelection. It has required genuine courage. What better words can be said of any man than these: He did his duty. These men have done their duty to their country. These men, as all Senators—regardless of the division of opinion among us—have done their duty.

Mr. President, I close with appropriate lines from James Russell Lowell's poem—"The Present Crisis":

> New occasions teach new duties; time makes ancient good uncouth;
> They must upward still, and onward, who would keep abreast of truth;
> Lo, before us gleam her camp-fires, we ourselves must pilgrims be,
> Launch our Mayflower, and steer boldly through the desperate winter sea,
> Nor attempt the future's portal with the past's blood-rusted key.

The VICE PRESIDENT. Under the previous order, the hour of 6 p.m. having arrived, the Senate will now proceed to vote, and the question is on agreeing to the resolution of ratification on Executive N. 95th Congress, 1st Session, Calendar No. 2, the Panama Canal treaty. The yeas and nays have not been ordered.

Mr. CHURCH. Mr. President, I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 68, nays 32, as follows:

[Rollcall Vote No. 119 Ex.]

YEAS—68

Abourezk	Hart	Metzenbaum
Anderson	Haskell	Morgan
Baker	Hatfield,	Moynihan
Bayh	Mark O.	Muskie
Bellmon	Hatfield,	Nelson
Bentsen	Paul G.	Nunn
Biden	Hathaway	Packwood
Brooke	Hayakawa	Pearson
Bumpers	Heinz	Pell
Byrd, Robert C.	Hodges	Percy
Cannon	Hollings	Proxmire
Case	Huddleston	Ribicoff
Chafee	Humphrey	Riegle
Chiles	Inouye	Sarbanes
Church	Jackson	Sasser
Clark	Javits	Sparkman
Cranston	Kennedy	Stafford
Culver	Leahy	Stevenson
Danforth	Long	Stone
DeConcini	Magnuson	Talmadge
Durkin	Mathias	Weicker
Eagleton	Matsunaga	Williams
Glenn	McGovern	
Gravel	McIntyre	

NAYS—32

Allen	Goldwater	Roth
Bartlett	Griffin	Schmitt
Burdick	Hansen	Schweiker
Byrd,	Hatch	Scott
Harry F., Jr.	Helms	Stennis
Curtis	Johnston	Stevens
Dole	Laxalt	Thurmond
Domenici	Lugar	Tower
Eastland	McClure	Wallop
Ford	Melcher	Young
Garn	Randolph	Zorinsky

The VICE PRESIDENT. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification, as amended, is agreed to.

The resolution of ratification, as amended, as agreed to is as follows:

Resolved (two-third of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Panama Canal Treaty, together with the Annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-Fifth Congress, first session), subject to the following—

(a) RESERVATIONS:

(1) Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of this Treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

(2) Notwithstanding any other provisions of this Treaty, no funds may be drawn from the United States Treasury for payments under Article XIII, paragraph 4, without statutory authorization.

(3) Any accumulated unpaid balance under paragraph 4(c) of Article XIII at the termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any such unpaid balance which shall have accrued before such date.

(4) Exchange of the instruments of ratification shall not be effective earlier than March 31, 1979, and the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

(5) The instruments of ratification to be exchanged by the United States and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligations under paragraph 2 of Article XII.

(6) After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless it is otherwise provided by legislation enacted by the Congress, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government and not reimbursed before the date of entry into force of the Treaty. Such reimbursement of such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under section 62 of title 2 of the Canal Zone Code.

(b) UNDERSTANDINGS:

(1) Nothing in paragraphs 3, 4, and 5 of Article IV may be construed to limit either the provisions of paragraph 1 of Article IV providing that each party shall act, in accordance with its constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of this Treaty.

(2) Before the first date of the three-year period beginning on the date of entry into force of this Treaty and before each three-year period following thereafter, the two parties shall agree upon the specific levels and quality of services, as are referred to in Article III, paragraph 5 of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of such canal operating areas and such housing areas referred to in Article III, paragraph 5 of the Treaty. If payments made under Article III, paragraph 5 of the Treaty for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both parties, of any costs of services disputed by the two parties pursuant to the reexamination of such costs provided for in this Understanding.

(3) Nothing in paragraph 4(c) of Article XIII shall be construed to limit the authority of the United States of America through the United States Government agency called the Panama Canal Commission to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2 (d) of Article III need not be set at levels designed to produce revenues to cover the payment to Panama described in paragraph 4(c) of Article XIII.

(4) Any agreement concluded pursuant to article IX, paragraph 11 with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties.

(5) Nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(6) The President shall include all reservations and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification exchanged with the Government of the Republic of Panama.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHURCH. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the resolution of ratification.

The VICE PRESIDENT. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

(Routine morning business and additional statements submitted are as follows:)

MESSAGES FROM THE HOUSE

At 2:44 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3489. An act to amend section 216(b) of the Merchant Marine Act, 1936, to entitle the Delegates in Congress from the District of Columbia, Guam, and the Virgin Islands to make nominations for appointments to the Merchant Marine Academy, and for other purposes;

H.R. 6997. An act to authorize the Secretary of the Interior to convey all right, title, and interest of the United States in and to a tract of land located in the Fairbanks Recording District, State of Alaska, to the Fairbanks North Star Borough, and for other purposes;

H.R. 8397. An act to provide that a certain tract of land in Pinal County, Ariz., held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation;

H.R. 10822. An act to improve the operations of the national sea grant program, to authorize appropriations to carry out such program for fiscal years 1979 and 1980, and for other purposes;

H.R. 10823. An act to amend the National Advisory Committee on Oceans and Atmosphere Act of 1977 to authorize appropriations to carry out the provisions of such act for fiscal year 1979, and for other purposes.

The message also announced that the House has passed 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, with an amendment, in which it requests the concurrence of the Senate.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 3489. An act to amend section 216(b) of the Merchant Marine Act, 1936, to entitle the Delegates in Congress from the District of Columbia, Guam, and the Virgin Islands to make nominations for appointments to the Merchant Marine Academy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 6997. An act to authorize the Secretary of the Interior to convey all right, title, and interest of the United States in and to a tract of land located in the Fairbanks Recording District, State of Alaska, to the Fairbanks North Star Borough, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 8397. An act to provide that a certain tract of land in Pinal County, Arizona, held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation; to the Select Committee on Indian Affairs.

H.R. 10823. An act to amend the National Advisory Committee on Oceans and Atmosphere Act of 1977 to authorize appropriations to carry out the provisions of such Act for fiscal year 1979; to the Committee on Commerce, Science, and Transportation.

REFERRAL OF A BILL—S. 2900

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, as in legislative session, that if and when S. 2900 is reported from the Committee on Environment and Public Works, it then be referred to the Committee on Commerce, Science, and Transportation for not to exceed 45 days.

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

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–3362. A communication from the Assistant Secretary for Food and Consumer Services, Department of Agriculture, transmitting a draft of proposed legislation to amend, revise and consolidate the provisions of the child nutrition programs authorized by the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3363. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the global assessment report for fiscal year 1978; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3364. A communication from the Secretary of Agriculture, reporting, pursuant to law, on the amounts, types, and uses of pesticides, unsupplement to the narrative discussion on herbicide and pesticides Section III, Item F of the FY 1977 report of the Forest Service previously transmitted to the Senate; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3365. A communication from the Assistant Secretary of Defense, transmitting, pursuant to law, the first quarter year 1978 report of receipts and disbursements pertaining to the disposal of surplus military supplies, equipment, and material; and for expenses involving the production of lumber and timber products; to the Committee on Appropriations.

EC–3366. A communication from the Administrator, Rural Electrification Administration, Department of Agriculture, reporting, pursuant to law, approval of an REA insured loan in the amount of $11,200,000 to Southwest Louisiana Electric Membership Corporation, of Lafayette, Louisiana; to the Committee on Appropriations.

EC–3367. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, a construction project to be undertaken by the Army National Guard; to the Committee on Armed Services.

EC–3368. A communication from the Principal Deptuy Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), reporting, pursuant to law, on the Reenlistment Bonus Test Program for the period 1 January through 31 January 1978; to the Committee on Armed Services.

EC–3369. A communication from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, three construction projects to be undertaken by the Army National Guard; to the Committee on Armed Services.

EC–3370. A communication from the Assistant Secertary of Defense, transmitting, pursuant to law, contract award information amending data contained in the report covering the period March 15, 1978 to June 15, 1978; to the Committee on Armed Services.

EC–3371. A communication from the Acting Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Navy's proposed Letter of Offer to Iran for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC–3372. A communication from the Assistant Secretary of the Army (Manpower and Reserve Affairs), transmitting a draft of proposed legislation to amend section 2107(a) of title 10, United States Code, to extend the age limitation on eligibility of students for the Reserve Officers' Training Corps financial assistance program to recognize active duty previously performed; to the Committee on Armed Services.

EC–3373. A communication from the Secretary of Housing and Urban Development, transmitting a draft of proposed legislation to encourage broader utilization of the condominium form of homeownership, to provide minimum national standards for disclosure and consumer protection for condominimum purchasers and owners and tenants in condominium conversions, to encourage States to establish similar standards, to correct abusive use of long-range leasing of recreation and other condominium-related facilities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EC–3374. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Eighth Annual Report of Operations under the Airport and Airway Development Act of 1970; to the Committee on Commerce, Science, and Transportation.

EC–3375. A communication from the Deputy Fiscal Assistant Secretary, Fiscal Service, Department of the Treasury, transmitting, pursuant to law, the seventh annual report on the financial condition and results of the operations of the Airport and Airway Trust Fund; to the Committee on Commerce, Science, and Transportataion.

EC–3376. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report on changes in the refiner distribution and market shares of the statutory categories of refined petroleum products; to the Committee on Energy and Natural Resources.

EC–3377. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a report of Building Project Survey for Boston, Massachusetts; to the Committee on Environment and Public Works.

EC–3378. A communication from the Deputy Fiscal Assistant Secretary, Fiscal Service, Department of the Treasury, transmitting, pursuant to law, the twenty-second annual report on the financial condition and results of the operations of the Highway Trust Fund; to the Committee on Environment and Public Works.

EC–3379. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report entitled "The Operation and Effect of the Domestic International Sales Corporation Legislation"; to the Committee on Finance.

EC–3380. A communication from the Acting General Counsel of the Treasury, reporting, pursuant to law, on actions under the Countervailing Duty Law (19 U.S.C. 1303) with respect to imports of non-rubber footwear from Uruguay; and relating to a preliminary and final determination relating to a formally initiated countervailing duty investigation under the provisions set forth in the Trade Act following the receipt of a petition from the International Leather Goods, Plastics and Novelty Workers' Union; to the Committee on Finance.

EC–3381. A communication from the General Counsel of the Treasury, reporting, pursuant to law, on actions under the Countervailing Duty Law (19 U.S.C. 1303) with respect to imports of leather handbags from Uruguay; and relating to a preliminary determination relating to a formally initiated countervailing duty investigation under the provisions set forth in the Trade Act following the receipt of a petition from the International Leather Goods, Plastics and Novelty Workers' Union; to the Committee on Finance.

EC–3382. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days after the execution thereof; to the Committee on Foreign Relations.

EC–3383. A communication from the Chairman, Development Coordination Committee, transmitting its annual report for 1977; to the Committee on Foreign Relations.

EC–3384. A communication from the Chairman, Development Coordination Committee, relating to revisions of its 1977 annual report; to the Committee on Foreign Relations.

EC–3385. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, a report of its activities under the Government in the Sunshine Act during calendar year 1977; to the Committee on Governmental Affairs.

EC–3386. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Landsat Policy Issues Still Unresolved," April 17, 1978; to the Committee on Governmental Affairs.

EC–3387. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on March 7, 1978, which would amend the laws of the District of Columbia affecting children born out of wedlock in order to clarify that a child

born out of wedlock claiming to a deceased parents' estate simply needs to establish a parent/child relationship (Act 2-172); to the Committee on Governmental Affairs.

EC-3388. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act adopted by the Council on March 7, 1978, which would endorse ratification of the Equal Rights Amendment (ERA) so that no person shall be denied equality of rights under the law on account of sex (Act 2-173); to the Committee on Governmental Affairs.

EC-3389. A communication from the Governor, Farm Credit Administration, reporting, pursuant to law, on its compliance with the Government in the Sunshine Act; to the Committee on Governmental Affairs.

EC-3390. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report of the Department's intention to establish a new system of personal records; to the Committee on Governmental Affairs.

EC-3391. A communication from the Director, Agency for Volunteer Service, ACTION, transmitting a supplementary proposal for legislation to amend the Domestic Volunteer Service Act of 1973; to the Committee on Human Resources.

EC-3392. A communication from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to establish a program for developing networks of community-based services to prevent initial and repeat pregnancies among adolescents, to provide care to pregnant adolescents, and to help adolescents become productive independent contributors to family and community life; to the Committee on Human Resources.

EC-3393. A communication from the Executive Secretary to the Department of Health, Education, and Welfare, transmitting, pursuant to law, final regulation for Part 116b—State Operated Programs for Handicapped Children; to the Committee on Human Resources.

EC-3394. A communication from the Director, Water Resources Council, transmitting, pursuant to law, its annual report pursuant to the Freedom of Information Act for 1977; to the Committee on the Judiciary.

EC-3395. A communication from the Chairman, Marine Mammal Commission, transmitting, pursuant to law, its report concerning activities under the Freedom of Information Act for calendar year 1977; to the Committee on the Judiciary.

EC-3396. A communication from the General Counsel, Council on Wage and Price Stability, transmitting, pursuant to law, its report concerning activities under the Freedom of Information Act throughout 1977; to the Committee on the Judiciary.

EC-3397. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders in cases of aliens who have been found admissible to the United States under the Immigration and Nationality Act; to the Committee on the Judiciary.

EC-3398. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports covering the period March 16 through March 31, 1978, concerning visa petitions which the Service has approved according the beneficiaries of such petitions third- and sixth-preference classification under the Immigration and Nationality Act; to the Committee on the Judiciary.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions, which were referred as indicated:

POM-592. A joint resolution adopted by the Legislature of the State of Connecticut; to the Committee on Foreign Relations:

"HOUSE JOINT RESOLUTION No. 34

"Whereas, there have been many contributions made by men and women of Irish ancestry to the State of Connecticut, to the building of our Nation, and to the Cause of Freedom everywhere since the earliest times; and

"Whereas, the fact that Ireland is artificially partitioned against the wishes of the overwhelming majority of the Irish people; and

"Whereas, the Irish people in the six-county area of Ireland known as 'Northern Ireland' are denied basic civil and human rights, and are unable to obtain either adequate protection or equal justice under law; and

"Whereas, the explosive situation in 'Northern Ireland' presents an imminent and realistic threat to the peace and is therefore the legitimate concern of all men; and

"Whereas, it is in the best interests of the United States that there be a just and equitable solution to this problem in order that peace, order, justice and well-being be restored to that part of the world; and

"Whereas, for humanitarian reasons, as well as out of respect for the principles of freedom, liberty, natural law, justice and history, we hereby take notice of the dangerous and deplorable state of affairs in Ireland.

"Now, therefore, be it resolved, that this assembly respectfully urges the Congress of the United States to manifest our country's traditional position as guardian of freedom and republican-democracy, the dignity of all mankind, freedom of conscience, and mankind's universal natural rights, by taking such affirmative action as will tend to persuade all concerned parties, and the world commonwealth of nations, to seek a speedy, just and equitable solution to the dangerous situation in the 'North' of Ireland, and to formally express the moral opinion that: 'The Irish people ought to be permitted to exercise the Right of National Self-Determination, thus returning the disputed six counties of Northeast Ireland to the Irish Republic, unless a clear majority of all the people of Ireland, in a free and open plebiscite, determine to the contrary.'

"Be it further resolved, that the clerks of the house and the senate cause copies of this resolution to be sent to the Honorable Jimmy Carter, President of the United States; to the President of the Senate of the United States; to the Speaker of the House of Representatives of the United States; and to each member of the Congress of the United States from the State of Connecticut."

POM-593. A resolution adopted by the Board of Trustees of Michigan State University, relating to the Equal Rights Amendment; to the Committee on the Judiciary.

POM-594. A joint resolution adopted by the Legislature of Micronesia; to the Committee on Environment and Public Works:

"SENATE JOINT RESOLUTION No. 7-56

"Whereas, our current Five Year Capital Improvement Program budget does not include money for construction and improvement of all major roads throughout the Trust Territory of the Pacific Islands; and

"Whereas, Guam, our neighbor, has been receiving financial assistance under United States Federal programs for construction and improvement of roads; and

"Whereas, the Trust Territory of the Pacific Islands has almost no financial capability to fund major road construction and improvement projects; and

"Whereas, construction and improvement of major roads in the Trust Territory of the Pacific Islands is a sound and lasting investment; and

"Whereas, such investment can have a significant impact on economic and social development in the Trust Territory of the Pacific Islands; and

"Whereas, mere maintenance of our dilapidated roads should prove to be more expensive, unproductive, and wasteful in the long run, now, therefore,

"Be it resolved by the Senate of the Seventh Congress of Micronesia, Second Regular Session, 1978, the House of Representatives concurring, that the Congress and the President of the United States are hereby requested to amend the appropriate United States laws so as to make the Trust Territory of the Pacific Islands eligible for federal financial assistance for major road construction and improvement; and

"Be it further resolved that certified copies of this Senate Joint Resolution be transmitted to the Congress and the President of the United States, the Secretary of the Deparment of the Interior, the Director of the Office of Territorial Affairs and the High Commissioner of the Trust Territory of the Pacific Islands."

PETITIONS PRESENTED

Mr. PELL presented the following petitions, which were referred as indicated:

POM-595. A resolution adopted by the Legislature of the State of Rhode Island; to the Committee on Environment and Public Works:

"RESOLUTION

"Whereas, Under 23 U.S.C. 103(e)(2) five hundred additional miles were approved by the Congress under the so-called Howard-Cramer Amendment, allocating mileage to certain states under certain conditions; and

"Whereas, The Federal Highway Administration has allocated, under this Howard-Cramer provision, 27.40 miles to Rhode Island, 7.0 miles to California, 7.73 miles to Connecticut, 43.80 miles to Florida, 47.80 miles to Georgia, 145.90 miles to Louisiana, 44.50 miles to Maryland, 20.25 miles to Massachusetts, 27.30 miles to New Jersey, and 64.90 miles to New York, thereby making a total of 436.58 miles of the five hundred allocation; and

"Whereas, The federal interstate funds that have been made available to Howard-Cramer mileage states cited are fixed by the cost on the date of withdrawal of an interstate segment, and are not increased by the federal government to compensate for the effects of inflation nor construction cost differences experienced as a result of transfer from one project to another; and

"Whereas, As a result of said fixed costs on date of withdrawal, some Howard-Cramer mileage transfer projects in these states are funded at fifty percent or less on this portion of the interstate system; now, therefore be it

"Resolved, That the senate of the state of Rhode Island and Providence Plantations hereby memorializes the congress of the United States to enact legislation, at the earliest possible date, to apply the federal share funding provisions of Title 23 of the United States code to fund at ninety percent all of the interstate mileage designated by the Federal Highway Administration as Howard-Cramer under the provisions of 23 U.S.C. 103(e)(2); and be it further

"Resolved, That the secretary of state be and he hereby is authorized and directed to transmit a duly certified copy of this resolution to each member of the Rhode Island delegation in the congress of the United States."

POM-596. A resolution adopted by the Legislature of the State of Rhode Island; to the Committee on Foreign Relations:

"RESOLUTION

"Whereas, The Republic of China and its people have constituted one of the most trusted friends and allies of the Government and people of the United States since the Republic of China was founded in 1912; and

"Whereas, The existence and continued freedom and prosperity of the free Republic of China are rights to which the independent and brave people of that republic are entitled; and

"Whereas, The Republic of China stands as a substantial factor in the free world's constant effort to maintain world peace through moral suasion and appropriate readiness; now, therefore, be it

"Resolved, That the Senate of the State of Rhode Island and Providence Plantations hereby commends the United States Government for maintaining its continuous and historic policy of support for the freedom and security of the Republic of China and its courageous, industrious people; and be it further

"Resolved, That the Senate of the State of Rhode Island and Providence Plantations conveys to President Jimmy Carter and the Congress of the United States the commendation of Rhode Island to our national government for the support accorded the Republic of China; and be it further

"Resolved, That the secretary of state be and he is hereby respectfully requested to transmit duly certified copies of this resolution to the members of Congress from Rhode Island."

POM-597. A resolution adopted by the Legislature of the State of Rhode Island; to the Committee on the Judiciary:

"RESOLUTION

"Whereas, The identity in name and nature, the roots in home and family, and the important contributions of grandparents should be recognized in this country as part of a very vital role in the shaping of close-knit family units; now, therefore, be it

"Resolved, That the members of the congress of the United States be and they hereby are respectfully requested to designate as an annual observance the first Sunday after Labor Day as National Grandparents' Day; and be it further

"Resolved, That the Secretary of State be and he hereby is authorized and directed to transmit duly certified copies of this resolution to the Rhode Island delegation in Congress."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, with an amendment and an amendment to the title:

H.R. 6669. An act to establish a national climate program, and for other purposes (Rept. No. 95-740).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation:

Leslie Lazar Kanuk, of New Jersey, to be a Federal Maritime Commissioner.

(The above nomination from the Committee on Commerce, Science, and Transportation was reported with the recommendation that it be confirmed, subject to the nominee's 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. LUGAR (for himself, Mr. BROOKE, Mr. GRIFFIN, Mr. HEINZ, and Mr. GARN):

S. 2931. A bill to increase the authorization for the urban homesteading program under section 810 of the Housing and Community Development Act of 1974, to improve coordination between the urban homesteading program and the rehabilitation loan program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LAXALT:

S. 2932. A bill to amend Title XVIII of the Social Security Act to permit the recognition and use of relative value studies; to the Committee on Finance.

S. 2933. A bill to amend the Sherman Act to provide for the publication and use of relative value studies; to the Committee on the Judiciary.

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON) (by request):

S. 2934. A bill to amend the Fishery Conservation and Management Act of 1976 to include the Northern Mariana Islands; to the Committee on Commerce, Science, and Transportation.

By Mr. HATHAWAY:

S. 2935. A bill to amend the Older Americans Act of 1965 to provide for new or improved programs to assist older persons residing in rural areas, and for other purposes; to the Committee on Human Resources.

S. 2936. A bill to amend the Internal Revenue Code of 1954 to provide certain corporate income tax reductions and to increase the amount of the surtax exemption; to the Committee on Finance.

By Mr. BAYH (for himself, Mr. DECONCINI, Mr. KENNEDY, Mr. ABOUREZK, Mr. PAUL G. HATFIELD, and Mr. MATHIAS):

S. 2937. A bill to amend the Speedy Trial Act of 1974 to provide further authorization for appropriations for pretrial services agencies; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR (for himself, Mr. BROOKE, Mr. GRIFFIN, Mr. HEINZ, and Mr. GARN):

S. 2931. A bill to increase the authorization for the urban homesteading program under section 810 of the Housing and Community Development Act of 1974, to improve coordination between the urban homesteading program and the rehabilitation loan program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

(The remarks of Mr. LUGAR when he introduced the bill appear elsewhere in today's proceedings.)

By Mr. LAXALT:

S. 2932. A bill to amend title XVIII of the Social Security Act to permit the recognition and use of relative value studies; to the Committee on Finance.

S. 2933. A bill to amend the Sherman Act to provide for the publication and use of relative value studies; to the Committee on the Judiciary.

USE OF VALUE STUDIES

● Mr. LAXALT. Mr. President, I am today introducing a set of bills which, by separate approaches, would specifically sanction the development and use of so-called relative value studies. I am doing so in my capacity as a member of the Health Subcommittee of Senate Finance and the Antitrust and Monopoly Subcommittee of Senate Judiciary—the two panels to which the measures will be referred.

The first proposal would amend the Social Security Act to permit relative value studies published by medical organizations to be recognized for purposes of medicare reimbursement. The second would provide a more general authorization for the use of such listings by clarifying that they are not the type of activity contemplated for prohibition under the Sherman Act.

As Senators familiar with health care reimbursement mechanisms are aware, the whole objective of the RVS is to identify the relationship that one procedure has to another in terms of difficulty and requirements of time and professional expertise. They have been utilized for a number of years within all areas of the medical community as an effective means of moderating costs by militating against unusual disparities in charges made by providers. They do this by offering a meaningful measurement of skill and a common terminology upon which medical services to patients can be evaluated.

The application of RVS's by peer review organizations has been demonstrated quite convincingly, I believe, to allow more accurate assessments of utilization and costs. Moreover, physicians using the RVS have been able to appropriately weigh their own services in relation to general guidelines—and carriers have found that they improve their projection of cost estimates for proposed benefits.

The development of relative value studies was undertaken by practicing physicians in California more than two decades ago. Following publication of their findings from lengthy analysis of statistics and records, many medical organizations, other physicians, insurance companies and government agencies saw the usefulness and practicality of such a concept and began increasingly to establish and implement their own RVS's for claims processing purposes.

In recent years, however, a legal shadow has been cast over the publication and voluntary use of RVS's by physicians and medical associations. That is, the Justice Department and particularly the Federal Trade Commission have taken it upon themselves to attack such studies as anticompetitive and in violation of antitrust laws. This is in spite of the fact that an HEW-funded study released just last month concluded from data involving my own State of Nevada

and 23 others that RVS use does not demonstrate any pattern of price-fixing.

In any event, given the FTC direction, it seems to me extremely ironic that insurance companies and Government agencies would continue to use relative value studies in their own determinations of payment levels while those most instrumental in their initial development, that is, the physicians, are suddenly being coerced into withdrawing from the practice. Nevertheless, that is what is happening, and apparently only congressional action such as I am proposing can inject any element of fairness and reason into the anti-RVS "crusade."

I want to stress the point, Mr. President, that the FTC has vowed to wipe out voluntary RVS's within the medical profession and is succeeding in doing so not because of merit or legal persuasion, but because of their disproportionate ability to win by attrition. It does not take much insight into the unbridled powers of our regulatory agencies to know that consent decrees can eventually be elicited from most anyone because, right or wrong, groups must capitulate and sign simply because they do not have the means to withstand the overwhelming resources of the Federal Government.

I think it is important to note that my distinguished colleague and chairman of our Finance Health Subcommittee, Senator TALMADGE, has also recognized that the case against the RVS is without total justification and has himself included in S. 1470—the Medicare-Medicaid Administrative and Reimbursement Reform Act—language that would permit their legitimate use. However, in an understandable effort to at least partially accommodate the FTC and avoid an all-out confrontation, his provision has been so tightly drawn as to, I believe, fall somewhat short of the desired goal of reasonable, uniformly-available guidelines.

For one thing, the existing proposal would ultimately place the establishment of an RVS completely in the hands of the HEW Secretary. Further, it would not sufficiently take into account the prior efforts and input of the medical profession in this area over the past 20 years. Obviously, we need to balance out these two concerns if we are to reach a mutually acceptable solution.

While it is my hope that the alternatives I am presenting today can contribute to the discussion and perhaps improve upon the measures already under consideration, I applaud Senator TALMADGE's leadership and foresight in identifying the question as not whether we should have RVS's, but, rather, whether they are valid. I certainly agree that by clearing the air and assuring the reinstitution of properly constructed relative value studies, we can further encourage the good faith self-restraint which we would all welcome from the health delivery system.

Mr. President, I ask unanimous consent that both these bills be printed in the RECORD.

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

S. 2932

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Title XVIII of the Social Security Act is amended by inserting at the end thereof the following new section:

"SEC. 1881. (a) Notwithstanding any other provision of law, the Secretary may, for the purpose of determining reasonable charges for physicians' services under this title, recognize and use relative value studies developed by national or state private nonprofit medical organizations.

"(b) The development or publication of any relative value study for purposes of this section by any national or state private nonprofit medical organizations, or their agents, shall not be deemed a violation of any Federal law.

"(c) The use of any relative value study by any individual, corporation, partnership or other entity on a voluntary, individual basis shall not be deemed a violation of any Federal law."

(d) This amendment shall take effect upon the date of its enactment.

S. 2933

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 1 of the Sherman Act, 26 Stat. 209, 15 U.S.C. 1, is amended by:

(1) deleting the period at the end of the second sentence;

(2) by inserting at the end of the second sentence the following:

": *Provided,* That no provision of Federal law shall render illegal (whether performed individually or collectively) (1) the transmission, collection, compilation, analysis or evaluation of statistics, records, documents or other data, for the purpose of determining and developing a coded listing of physicians' services with unit values that indicate the relativity among such services of (a) median charge (b) time spent per patient and/or (c) degrees of professional skill involved (hereinafter known as a 'relative value study'); or (2) the development, dissemination or publication of such relative value studies, by any private, non-profit national, state or local medical association, medical specialty society, or other medical organizations, or by any agent thereof: *Provided further,* That the use of such relative value studies by any person, corporation, partnership or other entity as a criterion to aid in the determination of usual, customary or reasonable charges for professional health care services shall not be deemed a violation of any Federal law."

SEC. 2. This amendment shall take effect upon the date of enactment.●

By Mr. CANNON (for himself, Mr. MAGNUSON, and Mr. PEARSON) (by request):

S. 2934. A bill to amend the Fishery Conservation and Management Act of 1976 to include the Northern Mariana Islands; 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 amend the Fishery Conservation and Management Act of 1976 to include the Northern Mariana Islands.

I ask unanimous consent that the bill and the letter of transmittal be printed in the RECORD.

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

S. 2934

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801–1882) is amended as follows:

(1) In the definition of the term "State" in subsection 3(21) (16 U.S.C. 1802), insert the words "the Northern Mariana Islands," immediately after the word "Guam,".

(2) In the description of the Western Pacific Council in paragraph 302(a)(8) (16 U.S.C. 1852), delete the word "and" before the word "Guam" and insert after the word "Guam" the words ", and the Northern Mariana Islands". Also in the same paragraph delete the number "11" before the words "voting members" and insert in lieu thereof the number "13"; delete the number "7" before the words "appointed by the Secretary" and insert in lieu thereof the number "8".

THE SECRETARY OF COMMERCE
Washington, D.C., April 13, 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 the Fishery Conservation and Management Act of 1976 to include the Nothern Mariana Islands," 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.

Sincerely,

JUANITA M. KREPS.

Enclosures.

STATEMENT OF PURPOSE AND NEED

Amend the Fishery Conservation and Management Act of 1976 to include the Northern Mariana Islands.

Public Law 94–241 (90 Stat. 263) approved the Convenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The Constitution of the Northern Marianas will go ino effect on January 9, 1978, the first step toward commonwealth status.

Such action has the effect of establishing a Fishery Conservation Zone off the Northern Marianas but does not have the effect of including the Northern Marianas within the jurisdiction of any Fishery Management Council. Therefore, it is necessary to make appropriate amendments to the Fishery Conservation and Management Act of 1976 (FCMA) (16 U.S.C. 1801–1882).

Accordingly, this legislation amends the FCMA to include the Northern Marianas (1) in the definition of the term "State" and (2) within the jurisdiction of the Western Pacific Fishery Management Council. In addition, this legislation alters both the total number of members of the Western Pacific Coucil and the number of members appointed by the Secretary to make the size and composition of this Council consistent with other Councils composed of four States.●

By Mr. HATHAWAY:

S. 2935. A bill to amend the Older Americans Act of 1965 to provide for new

or improved programs to assist older persons residing in rural areas, and for other purposes; to the Committee on Human Resources.

RURAL ELDERS ASSISTANCE ACT OF 1978

● Mr. HATHAWAY. Mr. President, today it is my great pleasure to introduce the Rural Elders Assistance Act of 1978. This bill will amend the Older Americans Act of 1965 to focus greater attention on the special needs of persons residing in rural areas.

That greater attention must be focused on the rural elderly cannot be denied. Four out of every 10 older persons reside in nonmetropolitan areas. Yet our current programs in effect fail to accommodate the needs of this significant segment of the population.

Older persons living in rural areas are more likely to live in poverty than their urban counterparts, to have substandard housing, poor health, and limited mobility. Lack of transportation often prevents these individuals from getting from their homes to health facilities, senior centers, meal sites, and even potential places of employment.

The Rural Elders Assistance Act attempts to correct the existing deficiencies. This bill would bring health, nutrition, social and economic programs and services to rural Americans by providing for improved outreach activities and transportation systems. For example, it requires area agencies on aging to provide information and referral sources for rural areas as well as metropolitan areas, and enables area agencies to use mobile units to conduct this activity.

Mobile units are also authorized for multipurpose senior centers. The use of such units should result in increased availability and accessibility to the services and programs offered by centers. This provision should be of particular benefit to individuals in isolated areas or small communities which have no stationary multipurpose senior center.

Under present law, grants are authorized to assist in meeting the costs of acquiring, altering, or renovating existing facilities. However, assistance is not available for construction of new facilities. This provision has worked to the detriment of many small towns which lack facilities suitable for conversion. Consequently, I am proposing to amend the law to allow for construction of centers where there are no existing facilities appropriate for acquisition, alteration, or renovation.

The Rural Elders Assistance Act also authorizes model projects which meet the special needs of rural elders, including outreach and public information programs, special transportation and escort services, health screening and outpatient services, and homemaker and home health services.

In addition, it provides for model programs to coordinate all existing programs for which elders may be eligible, and specifically authorizes regionalized approaches and the establishment of a system with a central location for information, needs assessment, program eligibility determination, and referral to appropriate services. Such a mechanism would simplify the process of securing information and assistance by providing older persons with one focal point for help for all types of programs. To insure that this concept of a central location meets the needs of the rural elderly, the legislation specifically provides that the mechanism may be a mobile unit.

Further, projects to develop models for independent living to assist older persons to remain within their communities and out of institutions are authorized. It is anticipated that such projects will explore the mix of shelter and supportive services appropriate for a given elderly population.

Other provisions amend the nutrition program to expand the home-delivered meals effort to include more individuals who cannot reach a congregate meal site, and authorize a study of the special circumstances and needs of older persons residing in rural areas.

Finally, the bill I am introducing today revises the senior community service employment program so that more individuals will be able to participate. To accomplish this goal, the bill bars discrimination against individuals who do not own a car or other form of private transportation. Second, it amends the definition of "eligible individuals" by increasing the amount of income which an individual may receive and still qualify for the program. Under current regulations, the program has been limited to individuals who meet the poverty guidelines of the Office of Management and Budget. This has been found to be too restrictive, as noted in a newspaper article "Guidelines Hamper Jobs-for-Elderly Effort" which appeared in the Bangor Daily News on December 21, 1977. Mr. President, I ask unanimous consent that this 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:

GUIDELINES HAMPER JOBS-FOR-ELDERLY EFFORT

(By Nancy Remsen)

Most people agree that it would be nice to offer older persons the chance to work and earn some extra money.

And many older people are interested in finding some part-time employment.

But a federal program which aims to match willing persons over age 55 with part-time jobs in social service agencies has run into some difficulty because of the low-income requirement and the necessity of owning a car for many of the jobs available.

The state Office of CETA Planning and Coordination recently received a $170,000 federal grant to be used in hiring 50 older persons in programs throughout the state.

Frederick C. Lawler, director of the program called the Senior Community Service Employment Program, said there is much enthusiasm concerning the program, but the agencies that are hiring the older workers are finding they must turn away some willing applicants because their income is too high.

And the University of Maine Cooperative Extension Program, which has been involved in the same federal program for seven years also has found it isn't easy to find single persons with incomes less than $3,000 or persons with another family member with incomes below $4,080 who have cars so that they can be outreach workers or nutrition aides.

Ellis Waller of the Cooperative Extension Service, said older persons are reluctant to admit they are poor though they want to work to earn extra money.

Maine received $608,500 for 168 slots for elderly workers for the Cooperative Extension Service to dole out.

A program recently set up by the Roman Catholic diocese's Human Relations Services, Inc. to help elderly persons cope with winter is one of the major recipients of slots in the senior community service employment programs of both the Extension Service and the State CETA office.

Damian Gagnon, who is coordinating the field work of the diocesan program, said he has just started advertising for what he calls energy aides or people who will visit homes of elderly persons and provide them with warm clothing or help them make their home warmer this winter. He has 25 slots that will be paid with funds from the Cooperative Extension program and 13 from the state CETA office.

"I'll be surprised if we can fill a dozen of the positions," he said. "We need people with a car. They have to be able to get around. But to meet those guidelines and have a car is almost impossible.

The Eastern Task Force on Aging has recently been given eight slots for handymen by the state CETA office, but Irving Hunter of that agency said, "Things are stymied."

The agency saw a great need, based on calls, letters and word from outreach workers, to offer some minor maintenance assistance to older persons and hoped to hire older persons to do the work, two in each of the four counties in which the task force operates, Hunter said.

But as with other of the jobs developed for this employment program, a car is necessary to do the job, Hunter said.

"I was so enthusiastic about this program because of the need," he said. Now, he said, he is "bitterly disappointed and frustrated" because the agency hasn't been able to find eligible older persons.

"But we're going to keep at it," he said.

Keeping at it seems to be the answer, because the Mid-Coast Human Relations Council had 18 slots to fill and has found older persons for everyone, according to Joe Jaret.

"We have aggressively sought people," he said. The agency wrote letters to town managers, ran public service announcements on the radio and advertised in newspapers, he said.

Jaret said his agency wasn't flooded with applicants, "but we had a pretty fair response."

Mr. HATHAWAY. In addition to remedying the transportation problem, the bill I am proposing would allow individuals earning an income of up to 125 percent of the poverty guidelines to participate in the program.

Mr. President, I am introducing the Rural Elders Assistance Act in response to the concerns articulated by elders in the field. These concerns are valid, and it is with pleasure that I offer this bill.

There are other related issues of concern to me, and I intend to address these concerns when the Committee on Human Resources considers reauthorization of the Older Americans Act of 1965. In particular, I plan to offer an amendment to address the need for long term community-based care. In addition, I intend to put forth a provision to make the nursing home ombudsman program per-

manent instead of maintaining it as a model project as in existing law. Further, I would hope to expand this program to extend assistance to older Americans who do not reside in nursing homes.

Mr. President, the value of the ombudsman program should not be underestimated. In the State of Maine, for example, the Maine Committee on Aging has been able to develop a statewide program to investigate nursing home residents' complaints and to work with communities, the state legislature, and appropriate agencies to develop substantive nursing home reform. Last year, with a grant of only $18,000, the committee investigated approximately 300 complaints on behalf of residents, proposed several pieces of legislation which were enacted, and worked with the State Department of Human Resources in amending departmental rules and regulations governing nursing homes. In order to insure continuation of this important effort, an amendment to the Older Americans Act is warranted. It will be my pleasure to offer such a provision before the Human Resources Committee.

Mr. President, I would like to make one final point. I have chosen to use the term "Elders" in the title of the bill, because that is the term which our elders prefer. This preference is explained in an article entitled "Year-Old Panthers Hit Stride," which appeared on March 25, 1978, in the Portland Evening Press. I ask unanimous consent that excerpts from that article be printed in the RECORD at this point.

There being no obection, the excerpts were ordered to be printed in the RECORD, as follows:

YEAR-OLD PANTHERS HIT STRIDE

(By Donna Halvorsen)

Elba Chibucos went downstairs at the Ambassador Apartments where she lives and asked the desk clerk to "come up and see our panther."

"A live panther?" the clerk wanted to know.

But the panther was only a cake cut in the shape of a panther and decorated with gray frosting.

Later Thursday Mrs. Chibucos, 74, would carry it to Salvation Army headquarters on Cumberland Avenue and a small group of people would sing, "Happy birthday to us, happy birthday dear Panthers, happy birthday to us."

The little noontime party was in celebration of the first birthday of Portland's Gray Panthers, one of hundreds of similarly-named groups across the country.

As with any new movement, a new look at themselves has prompted the elderly to question the way others have traditionally looked at—and labeled—them.

The little noontime party was in celebration of the first birthday of Portland's Gray Panthers, one of hundreds of similarly-named groups across the country.

As with any new movement, a new look at themselves has prompted the elderly to question the way others have traditionally looked at—and labeled—them.

So senior citizens, says Margaret McConvey, has become elders.

"Why senior citizens? Why not just citizens?" she asked. "Why older Americans? Why not just Americans?

"Elders is what we accept because we consider ourselves the elders of the tribe, the tribe meaning the human race, the human family," said the former Chicagoan, who gave her age as "67 backwards."

Mr. HATHAWAY. I note with pleasure that Portland's Gray Panthers are celebrating their first birthday. I would like to take this opportunity to wish them a very happy birthday and commend them for their accomplishments to date.

Mr. President, I ask unanimous consent that the text of the Rural Elders Assistance Act of 1978 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. 2935

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 "Rural Elders Assistance Act of 1978".

SEC. 2. (a) Sec. 304(c)(3) is amended by (1) by inserting "including those residing in isolated or sparsely populated rural communities" after "plan"; (2) by inserting "including a mobile unit" after "location"; and (3) by inserting "and comprehensive" after "current".

(b) Section 505(a)(7) is amended by inserting "including those residing in isolated or sparsely populated rural communities" after "State".

SEC. 3. Sec. 308(a) is amended by adding at the end thereof the following new paragraphs:

"(8) meet the special needs of older persons in rural areas, including outreach and public information programs, medical, social and economic needs assessment, determination of program eligibility, and referral to appropriate services, special transportation and escort services, health screening and outpatient services, homemaker and home health services, nutritional services, reading and letter writing services, and other services designed to assist such individuals in utilizing fully the programs which are available;

"(9) develop models for independent living for older persons to assist such persons to remain within their communities and out of institutions. Projects under this paragraph may explore what specific services and facilities or mixture of services and facilities, including, but not limited to shelter, nutrition, homemaker and home health services, are appropriate for a community's older persons; and

"(10) coordinate all existing facilities, programs, services for which older persons are eligible, including those available to the general population, to ensure the accessibility and availability of comprehensive services, to minimize fragmentation of services and avoid duplication of effort, and to maximize the ease with which services and program benefits are obtained. Projects under this paragraph may include, but are not limited to, regionalized approaches to service delivery and the establishment of linkages among existing health, social, economic, nutritional, educational, transportation, and other services with a central location, which may be a mobile unit, for information, needs assessment, program eligibility determination, and referral to appropriate services."

SEC. 4. Sec. 411 is amended by redesignating subsections (4) through (6) as sections (5) through (7) and inserting after subsection (3) the following new subsection:

"(4) studying the special circumstances and needs of older persons residing in rural communities, and developing or demonstrating new approaches to meet these needs."

SEC. 5. (a) Sec. 501(a) is amended by inserting "(1)" after "cost of"; and by inserting "and (2) where no existing facilities are suitable for acquisition, alteration or renovation, the cost of constructing new facilities."

(b) SEC. 501(c) is amended by inserting ", including a mobile unit" after "facility."

SEC. 6. (a) Sec. 705(a)(4) is amended by inserting "rural," after "Indian,".

(b) SEC. 706(a)(3) is amended by inserting "or to whom such site is not otherwise accessible" before the semicolon at the end thereof.

SEC. 7. (a) Sec. 902 (b)(1)(H) is amended by inserting "outreach activities and" after "including".

(b) SEC. 902(b)(1)(I) is amended by inserting "transportation and" after "including".

(c) SEC. 902(b)(1)(L) is amended by inserting ", and will provide assurance that lack of privately owned transportation will not exclude eligible individuals from employment in any project funded under this title" before the semicolon at the end thereof.

(d) SEC. 907(2) is amended by striking "a low income" and substituting in lieu thereof "an income not exceeding 125 percent of the poverty criteria established by the Office of Management and Budget.".

By Mr. HATHAWAY:

S. 2936. A bill to amend the Internal Revenue Code of 1954 to provide certain corporate income tax reductions and to increase the amount of the surtax exemption; to the Committee on Finance.

CORPORATE TAX REDUCTION ACT OF 1978

● Mr. HATHAWAY. Mr. President, today I am pleased to introduce the Corporate Tax Reduction Act of 1978.

This bill is the result of Small Business hearings which I chaired in Portland, Maine, on February 10, 1978. These field hearings were arranged to receive testimony on the administration's small business tax proposals and alternative proposals. I received very valuable and helpful testimony from several important groups including the Smaller Business Association of New England (SBANE), the Connecticut Small Business Federation and the Smaller Business Service Bureau.

These groups presented evidence that the President's proposed corporate tax package was more beneficial to larger companies than small business.

The Select Committee on Small Business has also prepared an extensive analysis of the 1978 Tax Proposals Relating to Small Business. A portion of that report on corporate tax rates is as follows:

Corporations are taxed on their net income after deducting salary compensation for officers, wages for employees, interest and other expenses. It should be noted that dividends are paid out of after-tax income, and are taxed as income to the individual recipients on the form 1040, giving rise to complaints against "double taxation" of dividend income. The relevant financial information for the company is entered on a form 1120.

In 1938, a distinction was made between the first $25,000 of taxable income, which incurred a lower tax, and income above that level which was subject to a higher rate.

In 1950, the structure was changed to

the present "normal tax" (payable by all companies with taxable income), and a "surtax" on earnings more than $25,000 * * *

In 1964, the rates at which the normal and surtaxes was levied were reversed; but $25,000 in taxable income was maintained as the dividing line. In other words, the "normal tax" rate was changed from 26 to 22 percent and the "surtax" rate changed from 22 to 26 percent. Corporations earning more than $25,000 continued to be subject to a 48-percent statutory rate, while those with earnings of less than $25,000 experienced a tax reduction of 4 percentage points. However, the structure remained the same.

The table recapitulating the history of corporate rate structures follows:

TABLE 46.—CORPORATION INCOME TAX RATES, 1909–62

Calendar year	Reduced rates on small corporations	General rate (percent)
1909–13	$5,000 exemption	1
1913–15	None after Mar. 1, 1913	1
1916		2
1917		6
1918	$2,000 exemption	12
1919–21	do	10
1922–24	do	12½
1925	do	13
1926–27	do	13½
1928	$3,000 exemption	12
1929	do	11
1930–31	do	12
1932–35	None	13¾
1936–37	Graduated normal tax ranging from—	
	First $2,000	8
	Over $40,000	15
	Graduated surtax on undistributed profits ranging from	7–27
1938–39	First $25,000	12½–16
	Over $25,000	[1] 19
1940	First $25,000	14.85–18.7
	$25,000 to $31,964.30	38.3
1940	$31,964.30 to $38,565.89	36.9
	Over $38,565.89	24
1941	First $25,000	21–25
	$25,000 to $38,461.54	44
	Over $38,461.54	31
1942–45	First $25,000	25–29
	$25,000 to $50,000	53
	Over $50,000	40
1946–49	First $25,000	21–25
	$25,000 to $50,000	53
	Over $50,000	38
1950	Normal tax 23 / Surtax (over $25,000 surtax exemption) 19	42
1951	Normal tax 28½ / Surtax (over $25,000 surtax exemption) 22	50¼
1952–60	Normal tax 30 / Surtax (over $25,000 surtax exemption) 22	52
1961 [2]	Normal tax 27.48 / Surtax (over $25,000 surtax exemption) 22	49.48
1962 [2]	Normal tax 25 / Surtax (over $25,000 surtax exemption) 22	47

[1] Less adjustments: 14.025 percent of dividends received and 2½ percent of dividends paid.
[2] Provides reduction in rates effective July 1, 1961, to 25 percent first $25,000 and 47 percent over $25,000. Rates computed to show effect of prorating income earned before and after July 1.

Source: The Federal Tax System: Facts and Problems, 1961. Materials assembled by the Committee Staff for the Joint Economic Committee, Congress of the United States, Washington, D.C.

If the dividing line between smaller and larger companies established in 1938 were adjusted for inflation, it would have risen as follows:

Inflation 1938–77: and indicated adjustment to dividing line between small and large business

Years	Increase in GNP deflator (percent)	Indicated division between small and large companies
1938–75	347.8	$111,950
1975–77	11.1	124,376

The Tax Reduction Act of 1975 made the first major changes in the structure of the corporate tax in 25 years. In addition to reducing the tax rates on corporate earnings from 0 to $25,000 from 22 to 20 percent (equivalent to a 9 percent rate reduction) and the tax rate on earnings between $25,000 and $50,000 from 48 to 22 percent (a 40-percent rate reduction), it reintroduced three steps in the rate framework such as had been in effect from 1940 to 1950. The 1975 structure, and consequent tax savings under that act, are illustrated below:

MAXIMUM TAX SAVINGS FROM THE SMALL BUSINESS PROVISIONS OF THE TAX REDUCTION ACT OF 1975

	1975 tax	Reduction in rates (percent)	1977 tax	Dollar reduction	Percentage reduction
Before tax earnings:					
0 to $25,000	$5,500	22–20	$5,000	$500	9
$25,000 to $50,000	12,000	48–22	5,500	6,500	40
Total reduction at $50,000	17,500	48	10,500	7,000	60
Over $50,000		0		[1]	[1]

[1] There were, however, no rate reductions at that time for the brackets above $50,000. Such companies would experience tax savings because of the rate reductions on taxable income below $50,000. The percentage benefit would fall proportionally with increased taxable income over $50,000.

An economic impact study of a proposed tax change in which the corporate tax rate would be 20 percent on the first $50,000 of income, 22 percent on income over $50,000 and a surtax of 26 percent on net income over $150,000. The initial Treasury revenue impact is estimated at $2.0 billion.

I ask that this study be included at the conclusion of my remarks.

In analyzing the data from this model, and discussions with members of the small business community, I am introducing a bill which will set the corporate rate at 20 percent on the first $150,000 of income and 48 percent thereafter. It is estimated that the revenue impact of this change will be $2.5 to $3.0 billion.

I believe this is a needed change in the corporate tax structure to assist small businesses. I hope that we can move this legislation as a part of the tax cut/tax reform package which the Senate Finance Committee will be considering this summer.

In order that my colleagues may be better informed on this bill, I ask unanimous consent that the study and the text of the bill be printed in the RECORD.

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

S. 2936

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 "Corporate Tax Reduction Act of 1978".

SEC. 2. (a) Subsection (b) of section 11 of the Internal Revenue Code of 1954 (relating to normal tax on corporations) is amended to read as follows:

"(b) NORMAL TAX.—The normal tax for a taxable year is equal to—

"(1) 20 percent of so much of the taxable income as does not exceed $150,000.".

(b) Subsection (d) of section 11 of such Code (relating to surtax exemption) is amended by striking out all that precedes "except that" and inserting in lieu thereof the following:

"(d) SURTAX EXEMPTION.—For purposes of this subtitle, the surtax exemption for any taxable year is $150,000;".

(c)(1) Paragraph (7) of section 12 of such Code (relating to cross references relating to tax on corporations) is amended by striking out "$50,000" and inserting in lieu thereof "$150,000".

(2) Subsection (f) of section 21 of such Code (relating to effect of changes in rates during a taxable year) is amended to read as follows:

"(f) CHANGE IN SURTAX EXEMPTION.—In applying subsection (a) to a taxable year of a taxpayer which is not a calendar year, the change made by section 2 of the Corporate Tax Reduction Act of 1977 in the surtax exemption shall be treated as a change in a rate of tax.".

(3) Paragraph (1) of section 821(a) of such Code (relating to tax on mutual insurance companies to which part II applies) is amended to read as follows:

"(1) NORMAL TAX.—A normal tax for a taxable year equal to—

"(A) 20 percent of so much of the mutual insurance company taxable income as does not exceed $150,000,
or 44 percent of the amount by which such taxable income exceeds $6,000, whichever is lesser; plus".

(4) Subparagraph (A) of section 821(c)(1) of such Code (relating to alternative tax for certain small companies) is amended to read as follows:

"(A) NORMAL TAX.—A normal tax for a taxable year equal to—

"(i) 20 percent of so much of the taxable investment income as does not exceed $150,000,
or 44 percent of the amount by which such taxable income exceeds $3,000, whichever is lesser; plus".

SEC. 3. The amendments made by this Act

shall apply to taxable years ending after December 31, 1977.

ECONOMIC IMPACT STUDY OF PROPOSED TAX CHANGE (H.R. 10382)

INTRODUCTION

For comparative purposes, we used two different methods in analyzing the economic impact of H.R. 10382. These were: (1) A static economic ratio analysis. (2) A dynamic econometric model. They both indicated that H.R. 10382 will have an expansionary effect on the economy.

The economic ratio analysis

The objectives of this analysis were (a) to determine the industries and the size of the companies that would experience the most rapid expansion, and (b) to estimate the cost of the tax change in terms of federal tax revenues.

We based our analysis on all U.S. companies that declared a positive net income in 1973–74. This information was available in the 1977 Almanac of Business and Industrial Financial Ratios, which is a summary of IRS data.

The main assumption behind the ratio analysis is that on the average, the financial structure (i.e. debt to equity ratio) of all companies will remain unchanged after H.R. 10382 is effective. Thus, the tax savings means that firms will undergo an expansion in assets and scale.

H.R. 10382 will provide tax savings for all companies with net taxable income over $25,000. This means increased working capital and higher retained earnings. The change in retained earnings increases debt capacity. We assumed that all companies were able to increase their long term debt by an amount equal to the tax savings. This leverage further enhances their working capital position. Using the ratio of sales to working capital, we estimated the increase in total revenues for all profitable companies in 6 major industries and for the total U.S. By applying the ratio of employment to sales, we then calculated the number of new jobs that H.R. 10382 would provide.

As the static analysis uses aggregated data, the average company with total assets under $1 million shows net income below $25,000. As such, the average corporation in this group will not save from this legislation. Although in this group companies which perform above the average will benefit from the bill, the available statistics do not allow us to break this out accurately. Manufacturing as a group is an exception, for the average company with total assets of $0.5 to $1 million declared over $25,000 in net income, and 16,000 new jobs will be created in this sector.

A total of 207,000 new jobs will be generated in the aggregate scale expansion brought about by the bill. 60 percent of this new employment will occur in companies with between $1 and $5 million in total assets and average yearly sales of $5 million. 15 percent of the jobs will be in firms with $5 to $10 million in total assets and average sales of $11 million. 12 percent of the jobs will be in firms with total assets of $10 to $25 million and average sales of $16 million.

Manufacturing and wholesale trade will experience the largest expansion. They will absorb 31 percent and 34 percent of the new jobs.

The gross, total tax reduction is $2.1 billion in the initial period. With a Keynesian approach based on a marginal propensity to consume of .90, the feedback of personal income taxes is $1.9 billion (assuming an average personal income tax rate of 10 percent). Adding the reduction in unemployment benefits of at least $.4 billion to the $1.9 billion, there should be a slight gain in federal tax revenues due to economic expansion after a short time lag.

The dynamic econometric model

The objectives of this analysis were to (a) determine the net effect of H.R. 10382 on federal tax revenues, and (b) to estimate the increases in employment, GNP, capital outlays, productivity and consumption.

The model was provided by Dr. Norman B. Ture, who prepared a similar analysis of the Roth bill (H.R. 8333). It is neoclassical in nature. Since the Roth simulation, two inputs have been changed. The inflation is now 6 percent as opposed to 5 percent, and a more conservative utilization equation is used.

The results indicate an employment increase of 80,000 per year growing slightly to 100,000 over the next 9 years. (See Exhibit II.) Annual GNP will grow by some $10 to $19 billion over the same period because of H.R. 10382. The bill can therefore be thought of as a slight, expansionary stimulus to a small sector of the economy. The annual increase in capital outlays will be some $6–8 billion in each of the next 9 years. This leads to productivity improvements and increased capacity to pay wages. A rise in annual consumption of $3–4 billion can also be expected over the next 9 years due to H.R. 10382.

The Ture model shows that H.R. 10382 will have no impact on federal tax revenues in the first 3 years. A slight net tax inflow will take place from 1982 to 1987. The net revenue gain per new job is $12,500 in 1982 and $20,000 in 1987.

CONCLUSION

Both analyses indicate that the net federal tax gain or loss is negligible, and that additional jobs will be created due to H.R. 10382. Since the main impact will be on small to medium sized companies, the jobs will be geographically distributed in smaller communities as well as in the larger urban areas. The internal financing that H.R. 10382 provides is valuable to these smaller corporations because they are virtually blocked out from the public markets at present. Any discrepancies in the results between our 2 methods of analysis must be attributed to differing methodologies and assumptions as well as to other imperfections. We have also checked the results expected from the Chase Econometrics model, and were assured that the employment expansion aspects were comparable. But solely because of the way the Chase and Warton models input tax reductions (i.e. as losses in federal revenue) they would not show the positive feedback of personal income tax increases. For planning purposes, it is also especially important that the business community perceives H.R. 10382 to be permanent, or capital sources will not provide the leverage the models assume.

EXHIBIT 1

	Present tax under current laws	Tax under proposed Heckler bill	Savings
Net corporate taxable income:			
$25,000	$5,000	$5,000	0
$35,000	7,200	7,000	$200
$50,000	10,500	10,000	500
$75,000	22,500	15,500	7,000
$100,000	34,500	21,000	13,500
$125,000	46,500	26,500	20,000
$150,000	58,500	32,000	26,500
$175,000	70,500	44,000	26,500
$200,000	82,500	56,000	26,500
$225,000	94,500	68,000	26,500
$250,000	106,500	80,000	26,500

EXHIBIT II

CHANGE IN CORPORATE RATE STRUCTURE: NORMAL TAX OF 20 PERCENT ON 1ST $50,000 OF NEW INCOME AND 22 PERCENT ON INCOME OVER $50,000; SURTAX OF 26 PERCENT ON NEW INCOME OVER $150,000

[Dollar amounts in constant 1977 dollars]

Major economic magnitudes	1978	1980	1982	1987
Employment (thousands of full-time equivalent employees)	80	80	80	100
Annual capacity to pay additional wages (due to change in productivity)	$60	$70	$80	$110
Gross national product (billions):				
Total	10	11	13	19
Business sector	8	9	10	14
Capital outlays (billions):				
Gross	6	8	11	8
Net	6	8	10	6
Consumption (billions)	4	3	2	11
Federal tax revenues (billions):				
Initial impact	(2)	(2)	(2)	(3)
Net of feedback	0	0	1	2
Net revenue (loss) gain per additional full-time equivalent employee (dollars per employee)	0	0	12,500	20,000

EXHIBIT III—CONSTRUCTION

[Dollar amounts in thousands]

Asset size (thousands):	Number of companies	Average total revenue per company	Average tax saving per company	Average long-term debt increase per company	Average increase in working capital per company	Average increase in total revenue per company	Average increase in industry employment
Asset size (thousands):							
Under $100	54,607	212	0	0	0	0	0
$100 to $250	24,027	636	0	0	0	0	0
$250 to $500	12,675	1,184	0	0	.1	1	71
$500 to $1,000	8,045	2,145	.2	.2	.5	6	245
$1,000 to $5,000	6,433	5,049	11.1	11.1	22.3	223	7,734
$5,000 to $10,000	616	14,379	26.5	26.5	53.0	366	1,216
$10,000 to $25,000	247	28,605	17.2	17.2	34.5	224	299
$25,000 to $50,000	84	57,249	17.3	17.3	34.5	245	111
$50,000 to $100,000	24	91,882	11.4	11.4	22.8	68	9
$100,000 to $250,000	16	236,334	26.5	26.5	53.0	212	18
Over $250,000	10	624,859	26.5	26.5	53.0	360	19

EXHIBIT IV—MANUFACTURING

[Dollar amounts in thousands]

	Number of companies	Average total revenue per company	Average tax saving per company	Average long-term debt increase per company	Average increase in working capital per company	Average increase in total revenue per company	Average increase in industry employment
Asset size (thousands):							
Under $100	36,086	297	0	0	0	0	0
$100 to $250	29,417	547	0	0	0	0	0
$250 to $500	22,431	1,107	.4	.4	.7	6	730
$500 to $1,000	16,419	2,190	10.8	10.8	21.7	182	16,159
$1,000 to $5,000	17,621	5,786	26.5	26.5	53.0	387	36,815
$5,000 to $10,000	2,580	16,896	26.5	26.5	53.0	313	4,357
$10,000 to $25,000	1,528	34,663	26.5	26.5	53.0	292	2,405
$25,000 to $50,000	643	69,640	26.5	26.5	53.0	281	975
$50,000 to $100,000	408	158,043	26.5	26.5	53.0	297	654
$100,000 to $250,000	325	306,727	26.5	26.5	53.0	270	474
Over $250,000	368	2,529,988	26.5	26.5	53.0	387	769

EXHIBIT V—TRANSPORTATION

Asset size (thousands):							
Under $100	18,952	176	0	0	0	0	0
$100 to 250	8,459	580	0	0	0	0	0
$250 to 500	4,031	940	0	0	0	0	0
$500 to 1,000	2,395	1,772	.4	.4	.7	21	276
$1,000 to $5,000	1,902	4,854	24.1	24.1	48.2	1,648	16,928
$5,000 to $10,000	273	14,097	26.5	26.5	53.0	2,104	3,102
$10,000 to $25,000	146	28,596	26.5	26.5	53.0	1,309	1,032
$25,000 to $50,000	77	56,517	26.5	25.5	53.0	1,256	522
$50,000 to $100,000	41	120,146	26.5	26.5	53.0	827	183
$100,000 to $250,000	33	218,644	26.5	26.5	53.0	700	125
Over $250,000	41	1,087,943	26.5	26.5	53.0	795	176

EXHIBIT VI—WHOLESALE TRADE

Asset size (thousands):							
Under $100	53,645	364	0	0	0	0	0
$100 to $250	37,274	836	0	0	0	0	0
$250 to $500	28,095	1,620	.3	.3	.6	6	868
$500 to $1,000	20,716	2,954	5.9	5.9	11.9	117	13,144
$1,000 to $5,000	16,289	7,940	26.5	26.5	53.0	551	48,484
$5,000 to $10,000	1,595	26,352	26.5	26.5	53.0	525	4,519
$10,000 to $25,000	773	58,886	26.5	26.5	53.0	562	2,345
$25,000 to $50,000	253	130,635	26.5	26.5	53.0	519	710
$50,000 to $100,000	116	233,848	26.5	26.5	53.0	514	322
$100,000 to $250,000	61	770,648	26.5	26.5	53.0	938	309
Over $250,000	25	2,491,441	26.5	26.5	53.0	631	85

EXHIBIT VII—RETAIL TRADE

Asset size (thousands):							
Under $100	120,469	252	0	0	0	0	0
$100 to $250	63,761	605	0	0	0	0	0
$250 to $500	31,854	1,291	0	0	0	0	0
$500 to $1,000	16,608	2,625	0	0	0	0	0
$1,000 to $5,000	10,062	7,243	.2	.2	.4	6	314
$5,000 to $10,000	597	23,261	11.7	11.7	23.4	264	852
$10,000 to $25,000	283	52,150	26.5	26.5	53.0	594	907
$25,000 to $50,000	119	142,264	26.5	26.5	53.0	620	398
$50,000 to $100,000	69	251,821	26.5	26.5	53.0	498	186
$100,000 to $250,000	49	516,632	26.5	26.5	53.0	620	164
Over $250,000	28	3,868,496	26.5	26.5	53.0	504	76

EXHIBIT VIII—SERVICES

Asset size (thousands):							
Under $100	163,038	173	0	0	0	0	0
$100 to $250	31,887	404	0	0	0	0	0
$250 to $500	13,931	671	0	0	0	0	0
$500 to $1,000	7,182	1,333	0	0	0	0	11
$1,000 to $5,000	4,578	3,070	5.9	5.9	11.7	288	7,129
$5,000 to $10,000	449	8,547	.2	.2	0.4	6	15
$10,000 to $25,000	250	22,425	26.5	26.5	53.0	657	887
$25,000 to $50,000	85	53,019	26.5	26.5	53.0	514	236
$50,000 to $100,000	54	123,683	19.7	19.7	39.3	574	167
$100,000 to $250,000	23	169,229	26.5	26.5	53.0	3,816	474
Over $250,000	11	579,136	26.5	26.5	53.0	1,511	90

EXHIBIT IX—ALL U.S. INDUSTRIES

Asset size (thousands):							
Under $100	593,415	190	0	0	0	0	0
$100 to $250	265,064	483	0	0	0	0	0
$250 to $500	151,070	985	0	0	0	0	0
$500 to $1,000	91,150	1,979	.2	.2	.3	3	1,634
$1,000 to $5,000	73,741	5,129	16.8	16.8	33.7	313	124,728
$5,000 to $10,000	11,523	10,865	26.5	26.5	53.0	493	30,670
$10,000 to $25,000	9,470	15,581	26.5	26.5	53.0	493	25,206
$25,000 to $50,000	4,257	29,427	26.5	26.5	53.0	493	11,331
$50,000 to $100,000	2,320	60,723	26.5	26.5	53.0	493	6,175
$100,000 to $250,000	1,529	141,682	26.5	26.5	53.0	493	4,070
Over $250,000	1,333	225,734	26.5	26.5	53.0	493	3,548

EXHIBIT X—ALL U.S. INDUSTRIES

[Dollar amounts in thousands]

	Increase in employment	Gross tax reduction	Increase in personal income tax payments	Reduction in unemployment benefit payments	Net cost of tax change	Total increase in national income
Asset size (thousands):						
Total	207, 362	2, 064, 023	378, 010	378, 476	1, 307, 537	18, 576, 208
Under $100	0	0	0	0	0	0
$100 to $250	0	0	0	0	0	0
$250 to $500	0	0	0	0	0	0
$500 to $1, 000	1, 634	15, 764	2, 979	2, 983	9, 801	141, 875
$1, 000 to $5, 000	124, 728	1, 241, 811	227, 372	227, 653	786, 787	1, 117, 6301
$5, 000 to $10, 000	30, 670	305, 360	55, 910	55, 979	193, 470	2, 748, 235
$10, 000 to $25, 000	25, 206	250, 955	45, 949	46, 006	159, 000	2, 258, 595
$25, 000 to $50, 000	11, 331	112, 811	20, 655	20, 681	71, 474	1, 015, 294
$50, 000 to $100, 000	6, 175	61, 480	11, 257	11, 271	38, 952	553, 320
$100, 000 to $250, 000	4, 070	40, 519	7, 419	7, 428	25, 672	364, 666
Over 250, 000	3, 548	35, 325	6, 468	6, 476	22, 381	317, 920

EXHIBIT XI—ASSUMPTIONS AND SOURCES USED IN THE ECONOMIC RATIO ANALYSES

The financial data are from the period 1973–1974.

Sales figures are adjusted to 1977 levels using the wholesale price index which shows a 21.9 percent increase from 1974 to May 1977.

The employment to sales ratio is calculated by dividing the total employment in wholesale and retail trade and manufacturing by the total sales in the same three industries. The ratio is also adjusted for inflation and is .0000054.

The average personal income tax rate is calculated by dividing the Federal budget receipts—Individual income taxes by Total compensation of employees, and is 15 percent. This rate is conservative since inflation may have pushed more persons into the higher tax brackets since 1974.

The percentage of unemployed receiving unemployment benefits is calculated by dividing the total number of unemployed individuals by the average number of persons receiving unemployment benefits, and is 45 percent.

The average weekly unemployment benefit payment was $64 in 1974, and this number is converted to a yearly basis and adjusted for inflation. The figure used was $4056 for 1977.

The average yearly salary was $10890 in 1975. Adjusted for inflation, this figure was $12153 in 1977.

The marginal propensity to consume was calculated by dividing the personal consumption expenditures by total disposable personal income. This method assumes that the average and the marginal propensities are the same. The MPC used was .90.

The model assumes that the tax reduction is financed by borrowing or increased money supply.

The model assumes that companies are able to borrow long term an amount equal to their annual tax savings resulting from the implementation of the Heckler bill.

The model assumes that the long term borrowings do not restrict other sectors in the economy from expanding.

Data are retrieved from the 1975 Economic Report Of The President and the Statistical Abstract of the US, 1977 edition and the Almanac of Business and Industrial Financial Ratios, 1977 edition.●

By Mr. BAYH (for himself, Mr. DECONCINI, Mr. KENNEDY, Mr. ABOUREZK, Mr. PAUL G. HATFIELD, and Mr. MATHIAS):

S. 2937. A bill to amend the Speedy Trial Act of 1974 to provide further authorization for appropriations for pretrial services agencies; to the Committee on the Judiciary.

PRETRIAL SERVICES AGENCIES

● Mr. BAYH. Mr. President, today along with Senators DECONCINI, KENNEDY, ABOUREZK, PAUL HATFIELD, and MATHIAS, I am pleased to introduce a bill to amend the Speedy Trial Act of 1974, Public Law 93–619, to provide continued, short-term authorization for appropriations for pretrial services agencies.

Title II of the Speedy Trial Act of 1974 authorized the Director of the Administrative Office of the U.S. Courts to establish, on a 4-year demonstration basis, 10 pretrial services agencies in representative judicial districts. These districts, central California, northern Georgia, northern Illinois, Maryland, eastern Michigan, western Missouri, eastern New York, southern New York, eastern Pennsylvania, and northern Texas were selected in accordance with the criteria set forth in the statute.

The second title of the Speedy Trial Act is designed to improve the efficiency and deterrent of the criminal justice system. More specifically it is designed to reduce the likelihood that defendants released prior to trial will commit a subsequent crime before trial commences. When Congress passed the Speedy Trial Act it was of the view that more careful selection of pretrial release options for defendants and closer supervision of released defendants would reduce pretrial crime. Congress further attempted to alleviate the fugitive problem by providing 10 Federal districts on a demonstration basis with sufficient resources to both conduct bail interviews and supervise conditions of release. This approach was applauded by nearly everyone who testified or commented on it during hearings held by the Senate Constitutional Rights Subcommittee prior to enactment of the Speedy Trial Act.

Pretrial services agencies perform two basic functions: First, the compilation and verification of background information on persons charged with the violation of Federal criminal law for the use of the district judge or a U.S. magistrate in setting bail and, second, the supervision of persons released from pretrial custody including the provision of counseling and other pretrial services. The stated objectives of the act are to reduce pretrial detention and pretrial recidivism.

The funds provided by the Congress in the amount of $10 million for the operation of pretrial services agencies were made available in fiscal year 1975 to remain available until expended. The legislative history of the act indicated that as much as $1 million each year could be spent for the operation of each of the 10 pretrial services agencies and that Congress intended to monitor the operation of these agencies to determine whether additional authorizations for appropriations would be required. Through careful management the initial appropriation of $10 million will provide for the operation of the program through December of 1978. However, the final report of the Administrative Office of the U.S. Courts on the operation of the pretrial services agencies and recommendations concerning the future of the program is not due until September 1979. Sufficient funding is needed to insure the continuation of this program until the Congress has had ample time to consider the final report and determine the future of the program.

The 10 pretrial services agencies have been in operation for 27 months. In fulfilment of their responsibilities these agencies have interviewed more than 20,000 accused persons and provided information to judicial officers to assist them in their release decisions, have supervised more than 11,000 persons released to their supervision, and have provided services to persons released pretrial including counseling and assistance in securing employment, medical, legal, or social services. In certain situations specialized agencies, such as drug treatment programs, provided the necessary pretrial services.

The Speedy Trial Act requires extensive data collection designed to satisfy the requirements for annual reports and a final, comprehensive report concerning the administration and operation of the pretrial services agencies by the director of the Administrative Office of the U.S. Courts, including the views and recommendations of the administrative office at the end of the 4-year demonstration program. Preliminary results of the administrative office noted that over 12,000 of the 20,000 persons interviewed

have reached final disposition and the data from these cases is now available for analysis.

It is projected that more than 30,000 Federal offenders will have gone through the pretrial services program by the conclusion of the demonstration phase of the program in September 1979. It is anticipated that this data will provide, along with other information, a substantial basis for the evaluation of the program and its impact on the criminal justice system.

Mr. President, if the Congress is to benefit from the mandates of Title II of the Speedy Trial Act of 1974, which established these 10 pretrial services agencies, it is then imperative that we provide the necessary resources to carry out the directives of the 93d Congress. The legislative history of the act indicated that Congress intended to monitor the operations of the pretrial services agencies concerning the future of the programs and its possible expansion to other district courts.

Congressman RODINO has introduced H.R. 10934, a similar amendment to the Speedy Trial Act for the continued authorization of appropriations for pretrial services agencies. This legislation is presently pending before Congressman CONYERS House Subcommittee on Crime. I look forward to working with my House colleagues in order to process this legislation as expeditiously as possible so that the pretrial services agencies can continue their work in an atmosphere of confidence—confidence that the Congress is interested and willing to support the continuation of the demonstration pretrial services agencies.

Mr. President, I call on my colleagues to support this legislation until Congress has had ample time to consider the final report of the pretrial services agencies and determine the future of the program. 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. 2937

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203 of the Speedy Trial Act of 1974 is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; and for the fiscal year ending September 30, 1979, to remain available until expended, the sum of $5,000,000.".●

ADDITIONAL COSPONSORS

S. 3

At the request of Mr. KENNEDY, the Senator from Minnesota (Mrs. HUMPHREY) was added as a cosponsor of S. 3, the Health Security Act.

S. 419

At the request of Mr. HASKELL, the Senator from Oklahoma (Mr. BELLMON) was added as a cosponsor of S. 419, the Federal Oil Shale Commercialization Test Act.

S. 1780

At the request of Mr. DOMENICI, the Senator from Illinois (Mr. PERCY), and the Senator from Montana (Mr. MELCHER) were added as cosponsors of S. 1780, the elementary and secondary education optional consolidation and reorganization bill.

S. 1820

At the request of Mr. HELMS, his name was removed as a cosponsor of S. 1820, a bill to authorize the Secretary of the Interior to assist the States to establish programs for the maintenance of natural diversity, and for other purposes.

S. 2602

At the request of Mr. EAGLETON, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 2602, a bill to prohibit the concurrent exercise of functions, powers, and duties which are exercise by an officer appointed by the President by and with the advice and consent of the Senate by an officer who has not received such advice and consent.

S. 2645

At the request of Mr. WILLIAMS, the Senator from Minnesota (Mr. ANDERSON) was added as a cosponsor of S. 2645, a bill to establish an Art Bank.

S. 2744

At the request of Mr. SCHWEIKER, the Senator from Colorado (Mr. HART) was added as a cosponsor of S. 2744, the Rural Health Services Act of 1978.

S. 2780

At the request of Mr. HATHAWAY, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 2780, a bill to amend the Public Health Service Act to provide for grants and contracts for projects to provide health and dental care to medically underserved rural populations, and for other purposes.

S. 2804

At the request of Mr. DOMENICI, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 2804, a bill to expand the licensing and related regulatory authority of the Nuclear Regulatory Commission for certain specified activities, and for other purposes.

S. 2807

At the request of Mr. DOMENICI, the the Senator from Illinois (Mr. PERCY) and the Senator from Montana (Mr. MELCHER) were added as cosponsors of S. 2807, the Bilingual Education Act Amendments of 1978.

S. 2862

At the request of Mr. HASKELL, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 2862, the Regulatory Control Act.

S. 2843

At the request of Mr. HELMS, the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of S. 2843, a bill to provide for the issuance of gold medallions, and for other purposes.

S. 2850

At the request of Mr. EAGLETON, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 2850, a bill to amend the Older Americans Act to provide for improved programs for the elderly, and for other purposes.

S. 2895

At the request of Mr. BENTSEN, the Senator from Montana (Mr. PAUL G. HATFIELD), the Senator from Minnesota (Mr. ANDERSON), the Senator from Idaho (Mr. CHURCH), the Senator from Nevada (Mr. LAXALT), the Senator from Oklahoma (Mr. BARTLETT), the Senator from North Dakota (Mr. YOUNG), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Kentucky (Mr. FORD), and the Senator from Idaho (Mr. MCCLURE) were added as cosponsors of S. 2895, a bill to amend the Meat Import Act of 1964.

S. 2912

At the request of Mr. CLARK, the Senators from Nebraska (Mr. CURTIS and Mr. ZORINSKY) and the Senator from Minnesota (Mrs. HUMPHREY) were added as cosponsors of S. 2912, a bill to strengthen the economy of the United States through improved loan rates and target prices for producers of wheat, feed grains, and upland cotton.

S. 2920

At the request of Mr. THURMOND, he was added as a cosponsor of S. 2920, a bill to amend the Trade Act of 1974.

SENATE JOINT RESOLUTION 29

At the request of Mr. BURDICK, the Senator from Texas (Mr. TOWER) was added as a cosponsor of Senate Joint Resolution 29, to authorize the President to annually proclaim National Family Week in that week in November which includes Thanksgiving Day.

SENATE CONCURRENT RESOLUTION 73

At the request of Mr. DOLE, the Senator from South Carolina (Mr. THURMOND), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from New Mexico (Mr. SCHMITT) were added as cosponsors of Senate Concurrent Resolution 73, regarding the imposition of import fees on crude oil.

AMENDMENT NO. 1716

At the request of Mr. CRANSTON, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of Amendment No. 1716 intended to be proposed to S. 2570, a bill to amend the Comprehensive Employment and Training Act of 1973 to provide employment and training services, to extend the authorizations, and for other purposes.

SENATE RESOLUTION 434—SUBMISSION OF A RESOLUTION AUTHORIZING PRINTING

Mr. CHURCH (for himself and Mr. DOMENICI) submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 434

Resolved, That there be printed for the use of the Special Committee on Aging thirteen hundred additional copies of part one

of its report to the Senate entitled "Developments in Aging: 1977."

AMENDMENTS SUBMITTED FOR PRINTING

AIR TRANSPORTATION REGULATORY REFORM ACT OF 1978—S. 2493

AMENDMENT NO. 1788

(Ordered to be printed and to lie on the table.)

Mr. MELCHER (for himself and Mr. McGOVERN) submitted an amendment intended to be proposed by them, jointly, to the bill (S. 2493) to amend the Federal Aviation Act of 1958, as amended, to encourage, develop, and attain an air transportation system which relies on competitive market forces to determine the quality, variety, and price of air services, and for other purposes.

AMENDMENT NO. 1789

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN submitted an amendment intended to be proposed by him to the bill (S. 2493), supra.

● Mr. McGOVERN. Mr. President, I submit this amendment to S. 2493, the Air Transportation Regulatory Reform Act, in the nature of a substitute to my amendment No. 1781, an amendment concerning the automatic market entry section of this legislation. Mr. President, I ask unanimous consent that this substitute amendment to S. 2493 be printed in the RECORD.

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

AMENDMENT No. 1789

On page 18, beginning on line 21, strike everything through line 20 on page 21, and insert in lieu thereof the following:

"(2) During each of the calendar years 1979, 1981 and 1983, each air carrier or person specified in paragraph (1) may select one segment, not to exceed 3,000 statute miles in length, over which it shall be authorized by the Board to provide scheduled nonstop air transportation of persons, property, and mail; *Provided however*, that the Board shall not grant such authority to any carrier or person which has received new route authority in excess of 1,000 cumulative statute miles under subsections (a)(1) or (i) of this section during the 12-month period immediately preceding the date for filing selections under this subsection. No segment may be selected (A) if the average load factor, during the six-month period prior to such selection, in service provided to such segment by any air carrier was less than fifty-five per centum; or (B) which has been designated by another air carrier under paragraph (3) as being closed for that year to automatic entry under this subsection. Initial selections shall be filed with the Board on the first business day of July in each year for which automatic entry is authorized. Final selections shall be certified as selected by the Board by September 1, of the year in which the selection was filed, unless the Board finds that the air carrier or person making the selection is not fit, willing, and able to provide the air transportation selected, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board made or issued under this Act. Based on such certification, that air carrier or person shall be authorized to engage, for the next 20 months, in scheduled nonstop air transportation of persons, property, and mail over the segment selected.

"(3) Each air carrier specified in paragraph (1) may, for each year in which automatic entry is authorized, designate a number of segments between which it provides regularly scheduled nonstop air transportation, which shall not be open to automatic entry under this subsection as follows:

"(A) For the year 1979, two such segments.

"(B) For the year 1981, two such segments.

"(C) For the year 1983, one such segment may be designated under this paragraph. Designations for each year shall be filed with the Board on the first business day of January of the year for which the designations are made."

CONFORMING AMENDMENTS

1. On page 17, line 18, strike out the words "each year".

2. On page 21, line 21, renumber paragraph "(5)" to "(3)", and renumber all succeeding paragraphs accordingly.

3. On page 21, line 22, after the word "year" add the following, "for which automatic entry is authorized,".

4. On page 22, line 14, strike out the words "either of" and the number "2".

5. On page 22, line 15, strike out the word "calendar", change "years" to "year", and after the word "year" insert the following, "for which automatic entry was authorized,".

6. On page 23, line 25, after the word "segments" insert a comma and the words "if any,".

7. On page 24, line 7, after the word "segments" insert a comma and the words "if any".

8. On page 24, lines 12 and 13, change "1983" to "1984".

9. On page 24, line 17, change the number "4" to "5".

10. On page 24, line 20, change "(9)" to "(7)".

11. On page 27, line 11, add the following new paragraph: "(11) The automatic entry program established by this subsection shall terminate on June 30, 1985."

NAVIGATION DEVELOPMENT ACT—H.R. 8309

AMENDMENTS NOS. 1790 AND 1791

(Ordered to be printed and to lie on the table.)

Mr. MARK O. HATFIELD submitted two amendments intended to be proposed by him to the bill (H.R. 8309) authorizing certain public works on rivers for navigation, and for other purposes.

AMENDMENT NO. 1792

(Ordered to be printed and to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill (H.R. 8309), supra.

LOS ESTEROS LAKE

● Mr. MARK O. HATFIELD. Mr. President, I am introducing today an amendment that I plan to offer to H.R. 8309. This amendment seeks to assure that artifacts from archeological sites dating to 3000 B.C. will be preserved before Los Esteros Lake in New Mexico is filled by floodwaters.

During the past 6 years, the National Park Service, Southern Methodist University, and the Center for Anthropological Studies in Albuquerque have carefully studied and cataloged the reservoir area. They have identified 60 sites eligible to be listed in the National Register. These range from 5,000-year-old campsites, where Indian families left grinding and scraping stones, more recent Indian sites with pottery and other artifacts, and the dwellings of European settlers and ranchers beginning in the 18th century.

The rescue and cataloging of these artifacts may provide important information in our study of the history of the Southwest.

To date the Corps of Engineers has obligated $261,000 to make these evaluations, and to begin to recover some of the artifacts. That sum, which is 1 percent of the cost of the Los Esteros project, is the limit permitted under Public Law 93-291.

My amendment authorizes an additional $200,000 to complete this important archeological work. The figure, I might add, is based on field investigations, and a plan developed by the Historic Preservation Office of New Mexico, the Advisory Council on Historic Preservation, and the Corps' District Engineer in Albuquerque.

Mr. President, this is a sound and reasonable amendment. But we must act quickly. By this fall, the elevation of the dam will reach a level where a severe storm could flood sites not yet excavated and for which no money is presently available. I hope it will prove acceptable to the Senate.

I ask unanimous consent that the amendment be printed at this point in the RECORD.

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

AMENDMENT No. 1792

On page 17, after, line 5, insert the following and number accordingly:

"SEC. —. The project of Los Esteros Lake, Pecos River, New Mexico, authorized by Sec. 203 of the Flood Control Act of 1954 (68 Stat. 1260), is hereby modified to authorize the expenditure of not to exceed $200,000 for the recovery of cultural resource data, in addition to any amounts authorized for this purpose pursuant to the Reservoir Salvage Act of 1960, as amended (88 Stat. 174)."●

NATIONAL PARK SYSTEM—S. 2876

AMENDMENT NO. 1793

(Ordered to be printed and referred to the Committee on Energy and Natural Resources.)

Mr. CRANSTON submitted an amendment intended to be proposed by him to the bill (S. 2876) to provide for increases in appropriations ceilings for development ceilings, land acquisition for boundary changes in certain units of the National Park System, and for other purposes.

FULL EMPLOYMENT AND BALANCED GROWTH ACT—S. 50

AMENDMENT NO. 1794

(Ordered to be printed and referred to the Committee on Banking, Housing,

and Urban Affairs and the Committee on Human Resources, jointly.)

Mr. PROXMIRE submitted an amendment intended to be proposed by him to Amendment No. 1703 intended to be proposed to S. 50, the Full Employment and Balanced Growth Act.

Mr. PROXMIRE. Mr. President, today I am submitting an amendment to the Full Employment and Balanced Growth Act—S. 50—that makes it clear that the Congress believes it is desirable, necessary, and feasible to achieve full employment and price stability together.

The major focus of S. 50 is on employment and the policies to achieve full employment. The bill has interim numerical goals of reducing unemployment among Americans aged 20 and over in the civilian labor force to not more than 3 percent, and to reduce unemployment among the entire civilian labor force aged 16 and over to not more than 4 percent by the end of the fifth year after enactment—which means in all probability 1983 full employment must be sustainable once it is achieved. Therefore, the creation of jobs must be done in an economy with an expanding level of production, increasing productivity, and a stable and much lower level of inflation than we have experienced recently.

Most economists now believe that unemployment and inflation can and should be dealt with together rather than separately. Indeed, the notion of a strict "Phillips curve" tradeoff has been rejected. We can and we must choose policies directed at both reasonable full employment and reasonable price stability. If no strict trade-off exists, neither goal would jeopardize the other.

Mr. President, my amendment to S. 50 establishes as an interim goal, to go along with the interim goals for unemployment, the reduction of the rate of inflation to 3 percent or less. As with the other interim goals this goal is set for the fifth year after enactment of S. 50. This appears to me to be a desirable and an attainable goal for inflation 5 years from now.

Some of my colleagues will argue that a 3 percent inflation goal is too high. I agree that 3 percent inflation is too high, but I do not think we would have a reasonable chance of doing much better than that within 5 years. If goals are to be workable they must have a chance of being achieved. If we can do better than 3 percent I will be the first to applaud the policies set by the Congress. This amendment certainly does not prevent us from doing better than the established numerical goals.

Other of my colleagues will no doubt argue that 3 percent inflation is unattainable within 5 years. They may, in fact, say that we cannot get the inflation rate that low ever again. I reject that. It is very easy to close our eyes to inflation. It is too easy for the Congress to pass legislation and to create new programs that are inflationary. But it is very difficult for the Congress to reduce expenditures for programs once they have been approved.

It must be fully understood that inflation cannot be curbed without the appropriate policies. The Full Employment and Balanced Growth Act could exacerbate inflation if it is passed without an explicit inflation target that the Congress must take cognizance of when it decides on appropriate economic policies. Ways must be found to stop the boom-bust cycle, and that is a fundamental reason why the inflation goal is needed. We must admit that to a large extent our inflation has its roots in excessive Government spending and large and growing Federal deficits.

The discipline imposed by targets has worked quite well for many private corporations. If that discipline is to work in Government the economic goals must be there for the Congress and the administration to see. The Federal Government must face up to its obligations, and goals can be helpful if they are prudently and objectively selected.

The supporters of the Full Employment and Balanced Growth Act claim that the establishment of an inflation goal to go along with the unemployment goals will reduce the Government's commitment to achieve full employment. Mr. President, this need not be the case. My amendment makes it clear that in establishing an interim inflation goal the Congress reaffirms its desire to achieve full employment by explicitly stating that, "Policies to achieve the inflation goal shall be designed so as not to impede the achievement of the unemployment goals."

Some may also argue that our current inflation was caused by events entirely outside the Government's control, by the OPEC oil price increases, and from adverse weather conditions, and that such events could happen again which would make the inflation goal unachievable. We cannot plan for exogenous shocks; that is a fact. But it is also true that the inflationary effects of the shocks that took place several years ago have largely worked their ways through the economy, except for the residual inflationary spiral that was left behind. The inflationary spiral has created an "underlying" inflation rate of 6 to 7 percent. As long as prices chase wages and wages chase prices, we are bound to have inflation. We must recognize that as long as every interest group attempts to catchup what has been previously lost, progress will be very difficult to make. That is another reason why the inflation goal is needed along with the unemployment goals—to alert everyone to the fact that inflation must be reduced along with unemployment, and that it will take a concerted effort by everyone to do that.

Mr. President, we must recognize that in the past tight monetary policy by the Federal Reserve has been the main continuously used policy tool aimed at reducing inflation. However, along with periodic tight money has come slow growth and loss of jobs, because monetary policy is a very blunt weapon to use against inflation. There is little that monetary policy can do to stop an inflationary spiral except to stop the economy. I do not want to see that happen, and I trust that the Congress and the members of the Federal Reserve Board do not want it either. By establishing and working toward a specific goal of reducing inflation, the Congress will be working with the Federal Reserve, not against it, and hopefully this will lessen the need for the Federal Reserve to lean with all its power and might against the inflationary winds. Hopefully monetary policy can take an easier stance so that investment and capital formation can be encouraged, rather than discouraged, which will lead to more jobs, higher productivity, and in the end less inflation.

Recently, the new Chairman of the Federal Reserve Board, G. William Miller, indicated in testimony before the House Banking Committee his support for an explicit numerical inflation goal. Mr. Miller's exchange with Congressman AuCoin went as follows:

Mr. MILLER. I would prefer, Mr. Congressman, to see a more explicit reference to the inflation aspect in the Humphrey-Hawkins bill. If you recall, the prior legislation that still is very important is the Employment Act of 1946. In that Act, we established a national policy of full employment without a specific level being cited, but full employment left to circumstances as they developed.

But that also, often forgotten (Act), has language that explicitly provides that full employment will be achieved by creating conditions for investment and growth in the private sector of the economy and with price stability. I think those principles ought to be reaffirmed, and if we are going to be specific in numbers for employment, I think it would be well to look at some explicit view of what inflationary forces mean.

Mr. AuCOIN. So to that extent you see a defect in the Humphrey-Hawkins legislation progressing through the Congress?

Mr. Miller. I see a preference in terms of the process under which Humphrey-Hawkins would operate. I see that it could work without a specific number on inflation. I would prefer to have it.

Finally, Mr. President, the establishment of an explicit numerical inflation goal is consistent with the anti-inflation program announced last week by President Carter. By recognizing the need to approach the goals of full employment and lower inflation together in the Full Employment and Balanced Growth Act, the Congress will be expressing it support for the approach to inflation taken by the President—by clearly recognizing the problems and causes of inflation and the need for voluntary efforts to reduce the inflationary spiral.

Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD.

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

AMENDMENT No. 1794

On page 10 insert after line 14 a new subsection (5) as follows:

"(5) for all of the purposes of the Full Employment and Balanced Growth Act of 1978, the phrases "rate of inflation" and "reasonable price stability" shall refer to the

rate of change or level of the consumer price index as set forth by the Bureau of Labor Statistics, U.S. Department of Labor.".

On page 11, line 16, after the words "per centum", insert the following:

"and to reduce the rate of inflation to 3 per centum or less".

On page 11, line 23, after ".", insert the following:

"Upon achievement of the 3 per centum inflation goal, each succeeding Economic Report shall have the goal of further reducing the rate of inflation toward zero. Policies to achieve the inflation goal shall be designed so as not to impede the achievement of the unemployment goals."

NOTICES OF HEARINGS

COMMITTEE ON GOVERNMENTAL AFFAIRS

● Mr. RIBICOFF. Mr. President, the Committee on Governmental Affairs will continue hearings on the Civil Service Reform Act of 1978, S. 2640, on Wednesday, April 19, and Thursday, April 20. The hearings each day will be held in room 3302 of the Dirksen Senate Office Building. On Wednesday, April 19, the hearing will begin at 10:15 a.m. On Thursday, April 20, the hearing will begin at 9:45 a.m. The following is the list of witnesses from whom the committee will hear on these 2 days:

April 19, 1978:

Mr. William A. Hammill, International Personnel Management Association;

Panel: National Association of Supervisors—Mr. Rod Murray, National President; Mr. Bun B. Bray, Jr., Executive Director; and Mr. James L. Hatcher, Assistant Executive Director.

April 20, 1978:

Senator Patrick Leahy;

Florence Isbell, American Civil Liberties Union;

Panel: Ernest Fitzgerald, Robert Sullivan and Anthony Morris.●

SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY

● Mr. DECONCINI. Mr. President, I wish to announce that open public hearings will be held by the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary on S. 2094, S. 2389, and H.R. 9622, bills affecting the jurisdiction of the Federal courts in diversity of citizenship cases and the amount in controversy requirement in Federal question cases.

The hearings will be held on April 25, 1978, in room 5110, Dirksen Senate Office Building, commencing at 9 a.m.

Those who wish to testify or submit a statement for inclusion in the record should communicate as soon as possible with the Subcommittee on Improvements in Judicial Machinery, 6306 Dirksen Senate Office Building, Telephone (202) 224–3618, Washington, D.C.●

ADDITIONAL STATEMENTS

THE NEUTRON BOMB AND WORLD OPINION

● Mr. MATHIAS. Mr. President, it often is said that the passage of time is a great remedy, that time cures all things, and surely this is true. But, sometimes the passage of time obscures facts, and our perception of facts, in a way which dulls our ability to make judgments about critical issues affecting our world.

For example, in World War II and the years that immediately followed, there was a very active knowledge about the effects of an atomic bomb. We all carried in our mind's eye the mushroom cloud scenes of Nagasaki and Hiroshima, each devastated by an atomic bomb. The world was well aware of what was meant when we talked about the use of atomic and nuclear weapons.

Time has to some extent healed the scars that were created by these dreadful scenes, and people today are not as actively interested in the question of nuclear weapons as they were, or as they ought to be. And this is regrettable, because the kind of devastation which can be wrought by nuclear weapons is truly awesome, and it ought to be constantly kept in mind by the statesmen of the world, as well as by the people who send the statesmen out to work to prevent a nuclear holocaust.

It is with this perspective that we should approach the question of production and deployment of the neutron bomb. This bomb is a nuclear device in which the heat effect and the blast effect is reduced, but the radiation effect—the third element of nuclear bombs—is very strong and very highly active. That's why scientists call it the ER, or enhanced radiation bomb.

So, a neutron bomb does not destroy vast amounts of property, but does effect the health and life of human beings within its burst area.

I have reservations about the neutron bomb, as I think most people do. I don't know of anyone who can be enthusiastic about the existence or the use of the neutron bomb. But, I think the manner in which the President has expressed his reservation, the indecisive way he approached the determination whether or not to deploy the bomb, has had an unfortunate side effect that might in nuclear terms be called fallout.

The President's indecisiveness has helped focus world attention on a weapon that we in the United States do not have in production, that we do not have ready for deployment. The world has been listening to our internal debate while the Soviet Union has been getting ready to deploy a tactical nuclear missile, the SS–20, without the hindrance of public criticism, without the burden of global disapproval.

We ought to give the Russians equal time in the public criticism which surrounds the weapons issue. We shoud have seen a little more public attention being paid to what the Soviets are doing to threaten the European balance, and less to what the effect of our deployment might be several years from now. After all, the neutron bomb is a specific response to the thousands of tanks the Russians have fielded and which have barely been mentioned by anyone.

For us to give up the neutron option completely can only be viewed as a sign of weakness and indecisiveness when we do not make a demand for an equal forbearance on the part of the Soviet Union. Because the neutron bomb is a tactical and not a strategic weapon, it is not subject to the SALT negotiating process.

I hope that the Secretary of State will be asking the Soviets hard questions about their willingness to rein in their European buildup. Restraint on our development of the neutron bomb should come in the context of reciprocal Soviet restraint.●

U.S. POSTAL SERVICE

● Mr. FORD. Mr. President, I submit for the RECORD an editorial which was broadcast on radio station WOMI–WBKR, the Owensboro Broadcasting Co., Owensboro, Ky., on April 12, 1978.

The text of the editorial follows:

EDITORIAL

We saw the other day where an electronics firm won the contract to supply the U.S. Postal Service with a number of gadgets that are supposed to sort letters, excuse the expression, post-haste. We suppose they are very efficient devices, and quite costly. To make them practical from a cost standpoint the postal service has to have a lot of letters available for them to sort. We understand that to accomplish the chore of assembling a sufficient quantity of mail needing sorting, the postal big-wigs have ordered that letters be trucked from little and large postoffices to a really large one where the machines will be located. There they will be sorted and then trucked back to the starting point for distribution to letter carriers, and then to patrons. The net result will be to make local mail take longer than mail from distant points to get delivered. This fact is underscored by the restrictions placed on the newly created express mail, and the limited areas where it is available.

We hear by the grapevine that Owensboro is one of the large cities whose letters will be trucked to a larger city for sorting and return. The larger city is Evansville.

We fail to understand how the new system will be as efficient time-wise as present methods, unless it might be to speed the handling of bulk mailings like church news letters just through sorting them with the regular staff.

We predict that in order to take advantage of speeded-up letter sorting, we will have to pay in slowed down total delivery time, and a smaller clerk force in the postoffices of the nation.●

SENATOR WEICKER SPEAKS ON LAW AND ORDER

● Mr. HEINZ. Mr. President, last Saturday evening the distinguished Senator from Connecticut (Mr. WEICKER) delivered a thoughtful and courageous address at the annual dinner of the Amen Corner in Pittsburgh.

Senator WEICKER's topic was law and order but his remarks went beyond what we normally think of when that term is used. Instead of discussing crimes such as theft, murder, or robbery, the Senator from Connecticut spoke movingly

about fundamental destructions of justice by government and elected officials, by labor and business leaders, and by "average" middle Americans—the very groups one does not think of when crime is the subject of discussion. Prominent among the Senator's subjects were the FBI break-ins and the Korean bribery scandal, the latter of particular interest to Senator WEICKER because of his recent service on the Senate Ethics Committee.

Mr. President, this is a thoughtful speech which reflects a great deal of knowledge and interest on the Senator's part. It is a courageous speech because it meets head on issues many of us might wish to push into the background. I commend Mr. WEICKER's remarks to my colleagues and ask that they be printed in the RECORD.

The remarks follow:

AN ADDRESS BY SENATOR LOWELL WEICKER

I would like to spend my time with you this evening discussing law and order. I am aware that in a technical sense this is not your life's work—but in the sense of your American citizenship it is part of your life.

This is not going to be a discussion of cliches of the type that define law and order in terms of capital punishment, plea bargaining, social injustice or federal funding for law enforcement.

Rather, I am asking that we examine to what extent each of us intends to obey the law and to commit to seeing that the law is enforced. For those of you who are "all the way" on both counts a cheer and sincere congratulations.

Unfortunately, the record of respect and support for a government of laws in this nation is of such a declining nature as to paint a different picture—a picture that is out of focus, off base and for the birds.

Even now I'm sure there are those listening to this speech who are mentally nodding in agreement as they envisage the destruction of justice as some young city black holding a knife to an old lady's throat (she of course is white) or some Hispanic raping a young teenager (she of course is a middle-American).

But surprise! This evening when I talk about the destruction of justice I'm going to talk about us. By us I mean Senators, Presidents (of countries and corporations), judges, secretaries of State, labor leaders, doctors, lawyers, businessmen, small business owners, well-to-do-America, middle America, law enforcement officials, salesmen, housewives, the educated, the religious, whites—in other words, everybody except those who we traditionally conjure up in our minds' eye as having committed a crime.

And I'm going to do this because though I deplore the taking of even one life in a dark and lonely alley somewhere, I despair even more when a nation loses its life in broad daylight in full view.

You ask what's this business of America losing its life. It's the business of moving from a government of laws to becoming a government of men. It's the business of people deciding which laws they're going to enforce and which laws they are going to obey. It's the business of deeming oneself as sufficient to substitute for the constitutional process.

True, the recent pronouncements of the Attorney General relative to alleged violations of law by members of the FBI is what fired up this speech but that travesty is only the latest in an unbroken march toward selective law breaking and selective enforcement that is the scandal of our generation. And this scandal is in addition to, not part of Watergate.

Let me start with the FBI scenario because in one way or another I've been intimately involved with this Agency and its personnel for quite some time now.

A year ago, both during Appropriations hearings and in private, I reiterated my views to the new Attorney General Bell that allegations of wrongdoing against members of the FBI should travel the full course of justice. At that time the case of Agent John Kearney was the focal point of legal and public interest. I also made it clear that the investigative trail should be followed no matter how high it led. Little did I surmise that allegations of illegal activities would travel from a Kearney who I did not know to L. Patrick Gray who I did know, liked and who had already suffered greatly from past misfortunes.

So naturally the question was asked by many as to what I thought of my original admonition to Griffin Bell, my original criticism of the rhetoric of the founders of the Kearney defense fund now that it was a friend who was involved.

Well, the admonition and criticism stick and, moreover, I disagree with substitution of administrative action for Constitutional Justice when it comes to Messrs. Kearney, LaPrade and such other agents who may have engaged in acts deserving of the full scrutiny and verdict of the legal process.

The fact these gentlemen are members of the Federal Bureau of Investigation should guarantee the best of their behavior not the worst. Moreover, the "following orders" excuse was rejected and the rejection made international law by your country at Nuremberg. The "we were after terrorists" justification has some difficulties in the definition because of an official Washington, FBI included, that only a few years back equated enemies with valid dissent. For example, U.S. military intelligence in West Germany was breaking and entering the abodes of American citizens which citizens were supporters of Senator George McGovern. These people were hardly terrorists or enemies.

No, I don't believe in Hoover justice, Mitchell justice or Bell justice. I do believe in the American system of justice and its capacity, unsurpassed in human history, to determine innocence and guilt.

Yes, some of Mr. Kearney's fundraisers, to the contrary notwithstanding, you can have effective law enforcement which is Constitutional. The inefficiencies of law enforcement which frustrate many of us from time to time exist primarily because two hundred years ago you—you as an individual, you as a human being, were deemed to be more important than the conveniences of society. Justice Black phrased it elegantly:

"Certainly, why shouldn't they? What were they written for? Why did they write the Bill of Rights? They practically all relate to the way cases shall be tried. And practically all of them make it more difficult to convict people of crime. What about guaranteeing a man a right to a lawyer? Of course, that makes it more difficult to convict him. What about saying he shall not be compelled to be a witness against himself? That makes it more difficult to convict him. What about the 'no search, unreasonable search or seizure shall be made?' That makes it more difficult. . . . Why did they want a jury? They wanted it so they wouldn't be subjected to one judge who might hang them or convict them for a political crime, or something of that kind. And so they had juries. And they said the same thing about an indictment. That's what they put it in for. They were, every one, intended to make it more difficult, before the doors of a prison closed on a man because of his trial."

Lastly as to this aspect of the law and order picture. From time to time, expressions of concern have issued forth as to lowered morale in the FBI should justice take its full course. I can appreciate that problem but, Ladies, and Gentlemen, I suggest the more crtitical problem confronting this nation is the rapidly deteriorating belief among all elements of our society in the equality of American justice. It's gotten to the point where we've gone from a presumption of innocence and an acceptance of the best in each other to the suspicion that everybody and every institution is ripping us off. Events such as I'm talking about do nothing to dispel that cynicism. Getting such negativism set straight had better be number one on the national spiritual agenda even ahead of soothing some hurt feelings in the FBI.

Now to turn to the law and order contribution or lack thereof by the political side of government.

As most of you know, both the Senate and House Ethics Committees have been investigating allegations of South Korean influence peddling among members of Congress. Until recently, I have been a part of that effort.

What Tongsun Park and his government did provokes, I'm sure, anger among the people of this country. Or, at least, I hope it does. But understand that what was done was taught South Korea by representatives of this country.

Remember several years ago when revelations of CIA money being used to influence the Italian elections were made known? How many of you dismissed that incident with a "well that's in Italy, not here." Now you know it was also here. And it was here because we were willing to accept a double standard specifically—keep the bribery abroad and it's okay. So our CIA taught the KCIA that principle and we are now reaping the rewards of lessons well taught and well learned. My question to each of us "at what point in time in our national morality did the correctness of bribe depend on whether it was a domestic or an international act?" I ask that question not only of government but of American business.

Back to the Park investigation. I felt from the cutset that the testimony and cooperation of Tongsun Park and his government would be of dubious value. That in the interest of a complete investigation it would be necessary to find other sources of information. I found those potential sources. Not among Washington lobbyists, not among embassy personnel, not by traveling to Seoul. But in the memoranda of my own government. Here it is everyone raising a hue and cry over Park and the Koreans and wonder of wonders the written record makes it clear that thanks to information supplied by various U.S. intelligence agencies, the FBI, the Justice Department, the State Department, the National Security Council, Director Hoover, Dr. Kissinger, Mr. Mitchell were all sent the information in 1971 that has this country in an uproar in 1978.

By what application of the law was the law sat on in 1971? Was it because Senators and Congressmen were involved? Was it for reasons of friendship or politics? Was it for future potential use?

For sure we know it wasn't for reasons of reinforcing the concept of "equal justice under law."

And so another example is set at the top which encourages everyone to write their own rule book. This violence doesn't manifest itself in rivers of blood or broken bodies but in a legacy that the old U.S. of A isn't going to be quite as good a place for our children as the one we inherited. A little more anarchy, a little less Constitutional democracy.

It was Lord Moulton that said, "The measure of a civilization is the degree of its obedience to the unenforceable."

Hell, we don't even make it to the ABC's and 1 plus 1 of our laws.

Business does its payoff thing overseas and explains it away as local custom.

Unions openly flout the Taft Hartley law and government tolerates the law breaking to the point where the courts throw government out of court.

Bert Lance philosophizes his problems away with the point that he has made money on what he is suspected of doing and consequently that vindicates him—all this while he peddles his White House connections in the Mid East.

Are we really waiting for the uneducated, the ill fed, the homeless, the poor, the despondent, the weak to set the law and order example in our country?

If so, this might be the occasion for only the second time in our young history to play "The world turned upside down."

Or is each one of us by personal example going to reestablish the United States as a government of laws? For awhile that will probably be a lonely business. However, it will do the job for law and order with the only cost being a measure of your love for all that is our nation.●

REPRESSION OF HELSINKI WATCHERS IN U.S.S.R. CONTINUES

● Mr. PELL. Mr President, systematic repression of the Helsinki watchers in the U.S.S.R. continues unabated. Last Thursday, according to press reports from Moscow, Pyotr Vins, one of the newest members of the Ukrainian Helsinki Watch Group, was sentenced in Kiev to 1 year in labor camp on the charge of "parasitism," an accusation commonly leveled against human rights activists who lost their jobs and were unable to find work because of their activism. Vins joins his colleagues in the Ukrainian Public Group To Promote Observance of the Helsinki Accords as the latest victim of official reprisal: Of the 14 members of the group, 5 (Mykola Rudenko, Olsksiy Tykhy, Mykola Matusevych, Myroslav Marynovych, and now Pyotr Vins) have been tried and sentenced, 1 (Levko Lukyanenko) is awaiting trial, and 1 (Pyotr Grigorenko) has been permanently exiled from his country.

Pyotr Vins, the son of the imprisoned Baptist Pastor Georgi Vins, was in the process of applying to emigrate to Canada to join relatives there when he was arrested in mid-February. Although only 23 years old, young Vins had already paid a stiff price for his activities: he was denied the opportunity of a higher education and was twice detained for 15-day periods in December 1977. Now, Soviet authorities have extracted toll—a year in labor camp. I join my colleagues in the Congress in saluting this courageous young man. I hope my colleagues will join me in urging the immediate release of Pyotr Vins and the other imprisoned Helsinki watchers in the U.S.S.R.●

OKLAHOMA PSRO PROJECT—OURS

● Mr. BARTLETT. Mr. President, approximately 2 years ago the Department of Health, Education, and Welfare published regulations requiring peer review of all admissions under medicare and medicaid programs. These regulations are commonly called the PSRO program.

The impact of these regulations on a predominately rural State is extremely significant, and in response to these regulations, the hospitals and physicians in Oklahoma submitted an application to the Department of Health, Education, and Welfare for the purpose of developing a workable program of admissions review that could handle both rural and urban hospitals.

Basically, the project was to determine whether or not it is possible to use a retrospective statistical audit of hospital performance to determine whether or not its internal utilization review is working properly.

The project was called the Oklahoma Utilization Review System (OURS), and it has now completed its first 12 months of operation. The Oklahoma Foundation for Peer Review, which operates the OURS project, has submitted their findings to the Secretary of Health, Education, and Welfare, and provided me with a brief history and statement on the current status of this operation.

The project has been cited as an example of innovation from the private sector, and I believe that the initial results prove that progress can be made toward stabilizing the Federal cost of health care.

Mr. President, I ask that a copy of the brief history and explanation of the OURS project be printed in the RECORD.

The material follows:

OKLAHOMA UTILIZATION REVIEW SYSTEM

BRIEF HISTORY AND EXPLANATAON

When Medicare and Medicaid became law in the mid-1960's, there was a provision in the original Act designed to be a "cost control" mechanism. The law provided that before a hospital could receive reimbursement through either program it was necessary for the institution to have a "utilization review plan" in effect.

The purpose of such a plan was to assure that whenever a Medicare or Medicaid patient entered a hospital they (a) needed a hospital level of services, (b) were rendered services that were medically necessary for the diagnosis given, and (c) did not remain in the hospital longer than was medically necessary.

The phrase "utilization review" referred to the fact that such a plan was designed to review the utilization of hospital bed space and ancillary services.

As the cost of the two federally funded programs began to increase from year to year, Congress began to search for a long term cost containment approach. At the same time HEW began to look for short term mechanisms that might control costs.

On November 29, 1974, HEW issued new Utilization Review Regulations, tightening up the regulations that had been issued when Medicare and Medicaid became law. Shortly after the new regulations were issued a Task Force was established in the state of Oklahoma to assist hospitals to comply with the new regulations. The Task Force consisted of representatives from the Oklahoma State Medical Association, Oklahoma Osteopathic Association, Oklahoma Hospital Association, the Hospital Licensing Section of Oklahoma State Health Department, and representatives from the Medicare and Medicaid agencies.

The Task Force quickly realized that the new U.R. Regulations tightened up the requirements to a point where they could actually endanger the financial existence of nearly 50 small hospitals in Oklahoma. The primary trouble was with the number of physicians required for a hospital to have a "utilization review plan" that met federal requirements. A plan was devised that would establish a statewide network of small utilization review committees . . . committees made up of physicians who would be willing to assist hospitals that did not have enough professional staff members to meet the U.R. Requirements on their own. However, federal regulations apparently did not provide for such hospital cooperation. In addition, in order to carry out such a plan it would be necessary to have a small amount of funding . . . funding for travel, rental of meeting space, telephone expense, etc.

In May of 1975 a delegation of Oklahoma physicians traveled to Washington and presented the idea of a statewide network of utilization review committees to some high-level HEW officials. The meeting with the officials was setup through cooperation of the Oklahoma Congressional Delegation and was held in Senator Henry Bellmon's office.

The idea of a statewide network of utilization review committees was met with some enthusiasm by HEW officials. The officials told the Oklahoma Delegation to prepare a formal plan and budget for submission to HEW. They offered to send the necessary experts to Oklahoma to help in the drafting of a formal grant request.

Over the next 18 months the Task Force worked with HEW experts to devise a formal plan. During that period of time, however, the plan grew from a simple statewide network of utilization review committees into a system that would assist every hospital in the state and would assure a uniform enforcement of utilization review requirements in all hospitals.

During the developmental period the utilization review plan gained a name . . . the Oklahoma Utilization Review System, and became known by the acronym "OURS". The plan is quite simple, a computer screening system has been developed to evaluate every hospital in Oklahoma on the basis of such things as average length of stay, use of ancillary services, charges per day, pre-operative length of stay, and the number of Medicare or Medicaid denials or partial denials. All of the information necessary to make the various evaluations comes from the Medicare and Medicaid claim forms filed by the hospital.

All of a given hospital's Medicare and Medicaid claims over a period of time are combined by a computer process to generate a series of statistics on the hospital. This results in a computer printout indicating the hospital's performance as compared to standards established by Oklahoma physicians. This computer printout is called the "report card".

The state is divided into six balanced regions with a Regional Review Team in charge of each. The regions are balanced by number of hospitals, number of physicians, and a number of possible beneficiaries. Each Review Team consist of nine physicians . . . an appropriate ratio of Medical Doctors to Doctors of Osteopathy in the region. The func-

tion of the Team is to examine each hospital's computer printout and then subjectively evaluate that hospital to eliminate or screen out individual deviations brought about by unique hospital circumstances. (As an example, a hospital with a large burn center might have an unusually long average length of stay. It's brought about by the fact that most burn victims are extremely long term hospital cases.)

The OURS plan is a double screening program . . . a statistical computerized screening that is followed up by a subjective human evaluation.

After the Regional Review Team evaluates the hospital's statistics, it is placed in a "review category" or "review status". Depending on the status, the Regional Review Team may make recommendations to help individual hospitals improve future performance. Using a "reward" approach, as a hospital's performance improves the required paperwork and formal review necessary is lessened.

The OURS plan was formally adopted in late 1975 by the Oklahoma Osteopathic Association, Oklahoma State Medical Association, Oklahoma Hospital Association, and the Oklahoma Foundation for Peer Review governing bodies. At that time it was forwarded to HEW with a request for full funding.

After a prolonged series of false starts, the project was finally approved and fully funded in late 1976 to begin operation for 12 months beginning on February 1, 1977. Total budget for the 12 month demonstration project was $198,000.

The OURS plan completed its 12 months of operation on January 30, 1978. The first 12 months of operation have now been analyzed and the following data made available.

The reference in the following tables to "baseline data period", refers to the period July 1–December 30, 1976. This was the last six calendar months before the operation of the OURS plan began.

OKLAHOMA UTILIZATION REVIEW SYSTEM, POTENTIAL HOSPITAL UTILIZERS

Beneficiaries	Number possible	Data source
July to December 1976 —Baseline data period:		
Title XVIII, pt-A (medicare).	320, 218	SSA, Baltimore monthly average from actual count.
Title XIX (medicaid).	163, 155	DISRS, monthly average from actual count.
SSA disabled	34, 417	SSA, Baltimore.
Renal disease	563	DHEW, Dallas Office, number as of Dec. 31, 1976.
Total	528, 353	
February 1977 to January 1978—12-mo operations:		
Title XVIII, pt. A (medicare).	351, 503	SSA, Baltimore, estimate based on projected growth from 1976 data.
Title XIX (medicaid).	154, 433	DISRS, monthly average from actual count.
SSA disabled	40, 422	SSA, Baltimore estimate based on projected growth.
Renal disease	591	DHEW, Dallas Office, estimate based on 1976 data plus growth.
Total	546, 949	

OURS, UTILIZATION COMPARISONS—BASELINE PERIOD TO 12-MO OPERATIONS

	Baseline	Operational	Variance (percent)
Possible beneficiaries	$528, 353	$546, 949	Up 3.5.
Claims filed (title XVIII, XIX, SSA disabled and renal disease).	[1] 179, 470	174, 201	Down 2.9.
Hospital days utilized	[1] 1, 558, 428	1, 564, 858	Up 0.4.
Total charges submitted	[1] 193, 143, 202	228, 869, 625	Up 19.02.
Claims per thousand possible beneficiaries.	[2] 339. 9	319	Down 6.15 or 20.9 per thousand.
Days per thousand possible beneficiaries.	[2] 2, 951. 5	2, 866	Down 2.9 or 85.5 per thousand.
Number of claims totally denied	[3] 2, 260	1, 497	Down 33.8.
Percent of claims totally denied	1. 25	0. 86	Down 0.31.
Number of claims partially denied	[3] 508	195	Down 61.6.
Average length of stay (days)	8. 68	8. 98	Up 0. 3.
Average pre-operative length of stay (days)	3. 17	3. 03	Down 0. 14.

[1] Some baseline data have been projected for full 12 mo for comparison purposes. This was accomplished by doubling the actual data collected during the last 6 calendar months of 1976. Historically any skewing effect should favor the baseline period.

[2] Baseline data projected to full 12 mo for comparison.

[3] Denials for entire calendar year 1976 (Blue Cross/medicare).

GAMES WITH FIGURES (DAYS)

Multiply days decrease per 1,000 (85.5) by number of possible benefit utilizers (547 M) and by average charge per day ($146)—Equals—savings by non-utilization, $6,828,-201.

GAMES WITH FIGURES (CLAIMS)

Multiply claims decrease per 1,000 (20.9) by number of possible benefit utilizers (547 M) and by average charge per claim ($1,-321)—Equals—savings by non-utilization, $15,102,068.●

FOREIGN MEAT IMPORTS

● Mr. MELCHER. Mr. President, the chairman of the Federal Reserve Board and the Director of the Council of Wage and Price Stability have both publicly suggested that we open up foreign meat imports to hold down beef prices, although beef prices in March were still below their level 4 years ago.

The cattle industry has just gone through the wringer. They have now finally liquidated herds to a point where supplies balance demand at a price level which will pay their costs of production, but they are still down economically—they have not recovered their very substantial losses of the last 3 or 4 years and they have not caught up on those notes at the bank which were to raise money enough to pay the losses of the last 4 years.

Trying to roll back meat prices at this time like sinking the liferaft that cattlemen have clung to to avoid drowning. Industrial profits have been improving. Workers have been getting their cost-of-living wage increases. No segment of our economy has suffered more than agriculture, especially our grain and livestock producers. The cattlemen are only beginning to see some solid ground ahead and it is premature to even think about rolling prices back on them.

The National Cattlemen's Association has recently printed in their Better Beef Business bulletin an excellent and objective analysis, in readable question-and-answer form, of the beef price situation

I ask to have it printed in the RECORD and I commend the analysis to all of my colleagues for study, and also especially to those in downtown agencies—including the White House and Federal Reserve System—who are inclined to start kicking before they know what they are doing.

The material follows:

WHAT'S BEHIND THE HIGHER BEEF PRICES?

Q. Why are beef prices going up?

A. The answer is simple—the law of supply and demand. Beef supplies are now decreasing from the record high levels of 1976 and 1977. Per capita supplies in the second quarter of 1978 will be about 7 percent less than a year earlier. Meanwhile, personal incomes as well as population have continued to increase, and total demand for meat has grown.

Q. What about other meats?

A. That's one reason why beef prices have been increasing. Pork production is not increasing, as previously forecast. As a result, per capita supplies of red meat in the coming months will be smaller than expected.

Q. But hasn't the beef price increase recently been exceptionally sharp?

A. Yes, it has. That's one thing that can happen in a commodity business. You sometimes get rather rapid price changes. One thing to remember is that prices often go down as rapidly as they go up. For example, the average price of Choice beef dropped from $1.49 to $1.35 per pound between January and March in 1976, while it went up this year from $1.48 in January to $1.58 in March. One reason for the recent increase was adverse weather and little or no weight gain on cattle—delaying the time when they go to market.

Q. It seems to me that retail beef prices are a lot higher now than ever before.

A. It probably seems that way because they were quite low for most of the past four years. Beef prices may go higher later, but the March retail average of $1.58 was still below the record high of $1.61 per pound in mid-1975.

Just look at the average February cattle and retail beef prices over the past several years (table 1). The average price of Choice beef was $1.50 in February, 1974. It dropped to only $1.29 in February, 1975. The February average did not get back up to the 1974 level until this year—when the average was $1.53.

The price of Choice steers at Omaha back in February, 1974, was $46.38 per hundredweight. Four years later, in February, 1978, the average, at $45.44, still was less. Not until March did the average go higher.

TABLE 1.—AVERAGE FEBRUARY PRICES OF BEEF AND FED CATTLE, 1973–78

	February—		
	NCA 5-cut average (pound)	USDA choice beef (pound)	Choice steers, Omaha (hundredweight)
1973		$1.30	$43.54
1974	$1.63	1.50	46.38
1975	1.29	1.29	34.74
1976	1.38	1.43	38.80
1977	1.40	1.35	37.98
1978	1.59	1.53	45.44
March 1978 [1]	1.63	1.58	49.50

[1] Partially estimated.

Source: USDA.

Q. Okay, I can see that beef prices go down as well as up, but I come back to my basic question. Aren't beef prices getting higher compared with other things?

A. No, they still have gone up less in recent years than most things we buy. For example, the average price of beef in March, 1978, was only 16 percent higher than the average for 1973—the last year when most cattlemen made a profit during most of the year. The over-all Consumer Price Index, on the other hand, increased 41 percent in the same period, and 1978 average disposable income per person is expected to be 54 percent higher than in 1973 (table 2).

Q. It still seems that there are more "ups" than "downs" in beef prices.

A. Over the longer term, that generally is true. That's because beef prices, like everything else, are affected by inflation. The farm value in a dollar's worth of beef generally is about 60 percent; the other 40 percent goes for processing, transportation and merchandising. For the most part, it's the farmer's share of each beef dollar that fluctuates. The annual average farm-to-retail price spread, on the other hand, generally keeps going up, right along with inflation.

For example, the average price of Choice steers in Omaha in March this year was only 11 percent higher than the average for 1973. However, the farm-to-retail beef price spread went from an average of 42 cents per pound in 1973 to an estimated 63 cents in March—an increase of 50 percent (table 2).

TABLE 2.—CATTLE AND BEEF PRICES AND COMPARISIONS

Year	Choice steers Omaha [1] (hundredweight)	Retail prices choice beef [1] (pound)	Farm-to-retail beef price spread [2] (c/lv.)	Index of prices paid by farmers for production items [3] (1967 equals 100)	Consumer Price Index all items [4] (1967 equals 100)	Average per person disposable income (per year)
1973	$44.54	$1.36	$41.9	146	133	$4,286
1974	41.89	1.39	53.0	166	148	4,638
1975	44.61	1.46	54.4	182	161	5,061
1976	39.11	1.39	64.4	198	171	5,511
1977	40.38	1.38	60.8	208	182	6,035
1978 [5]	49.50	1.58	63.0	217	187	6,580
Percent change, 1973–78	+11	+16	+50	+49	+41	+54

[1] Annual averages, except March 1978.
[2] 1st quarter averages, except estimated for March 1978.
[3] Annual averags except 1st quarter, 1978.
[4] Annual averages, except January 1978.
[5] Partially estimated.

Sources: USDA, Cattle-Fax, Western Livestock Marketing Information Project.

Q. Why did this margin go up so much? Does it mean the "middleman" is getting a lot more?

A. It really depends on how you define "middleman." What goes into the "middleman's" margin is primarily a lot of costs. Actually, there's nothing mysterious about the rising price spreads. All you have to do is look at the Consumer Price Index and the figures on personal income, and you have your answer. The problem is inflation.

About half of the cost of getting food from farm to market is labor costs. As wages increase—and assuming no improvement in output per man-hour—labor costs, and price spreads, keep going up. Also, there have been sharp increases in costs of energy, packaging, equipment, etc. Profits of packers and retailers together don't account for 2 cents out of each food dollar. Not earnings as a percent of total sales are about 1 percent in the packing industry and less than 1 percent in food retailing.

Q. Why are beef supplies decreasing now? Have producers been holding back cattle in an effort to get higher prices?

A. No, they haven't been. Actually, cattlemen can't afford to feed cattle very much past the time they are ready for market. Costs get too high. The main reason for the beef supply decrease now is that cattle production runs in cycles, just like other commodity businesses. But in the cattle business the cycles are longer. A cycle runs 10 to 12 years from one low point in cattle numbers to the next. (See the accompanying chart.)

During one part of the cycle, cattle numbers and the basic cow herd are increased as hundreds of thousands of individual farmers and ranchers react to favorable prices by expanding their herds or getting into the cattle business. (See table 3.) Eventually, cattle numbers become too large. There is more beef than consumers can or will buy at a profit to cattlemen. This is the situation cattlemen have faced during most of the past few years.

The financial losses which resulted from the large supplies brought on the "liquidation" phase of the cycle—when many cattlemen were forced, or elected, to get out of the cattle business or cut back on their operations. Exceptionally rapid cost increases and drought in some regions accentuated the recent liquidation.

This liquidation of breeding stock temporarily compounds the beef over-supply and cattle low-price problems. Then, after cattle numbers are reduced and per capita beef supplies decline, prices begin to rise again. That's what's happening now. The industry is now emerging from the liquidation phase of the latest cattle cycle—a four-year period when most cattlemen lost money most of the time.

TABLE 3.—NUMBER OF CATTLE AND CALVES ON FARMS AND RANCHES, JAN. 1, 1978, WITH COMPARISONS

[In thousands of heads]

Year	All cattle and calves	Percent change from previous year	All cows	Percent change from previous year
1968	109,152	0	47,710	0
1969	109,885	+1	48,085	+1
1970	112,303	+2	48,982	+2
1971	114,578	+2	29,786	+2
1972	117,862	+3	50,585	+2
1973	121,534	+3	52,541	+4
1974	127,670	+5	54,293	+3
1975	131,826	+3	56,682	+4
1976	127,980	−3	54,974	−3
1977	122,810	−4	52,424	−5
1978	116,265	−5	49,677	−5

Source: USDA.

Q. Why does the cycle last so long?

A. Because the cattle industry is, in effect, controlled by the biology of the cow. From the time a producer decides to increase the size of his basic cow herd, it often takes four years before the extra beef resulting from that decision reaches the super market.

Suppose a producer decides a female calf born today will be added to his basic cow herd. It takes 16 to 24 months before that heifer calf can grow up, mature and be bred. It takes another nine months of gestation before a calf is born. Then it's generally at least 18 more months before that calf is grown and finished for market.

Q. Will beef prices just keep going up for the next few years?

A. Not necessarily. The longer term trend may be upward until herds are rebuilt enough, but there also will be shorter term "downs" as well as "ups" as a result of fluctuations in meat supplies.

Actually, cattle prices have to increase further before the total industry can be profitable again. As shown in table 2, prices paid by farmers for production items have gone up 49 percent since 1973, while cattle prices were up only 11 percent as of March. While other things were going up in price during the past few years, cattle prices were going down or not increasing.

Q. Just how much are beef supplies decreasing now?

A. It looks as though production in 1978 will be at least 6 percent less than in 1977, and 9 percent less than in 1976. Per capita beef supplies on a carcass weight basis are likely to drop to 118 lbs. in 1978, compared with 126 lbs. last year (table 4). Eventually, per capita supplies may drop back to around 110 lbs. again.

Q. It seems hamburger prices have been going up faster than other cuts of beef. Why?

A. Much of the ground beef comes from older cows being culled from herds and from non-fed steers and heifers. As shown in table 4, production of beef from cows and non-fed steers and heifers increased substantially during the liquidation phase of the cycle. This production helped meet the growing demand for ground beef from the fast food industry. As a result of the large hamburger supplies, prices were very low for an extended period. Now, with liquidation winding down, there is less cow beef. However, more of each fed beef carcass is now going into hamburger. Prices may be higher for a while, but supplies should be ample.

TABLE 4—COMMERCIAL CATTLE SLAUGHTER, SLAUGHTER MIX AND BEEF PRODUCTION, 1971-78

[In thousands of head]

	Commercial slaughter							Per capita consumption[1]	
	Fed	Non-fed	Cows	Bulls	Total	Per-cent nonfed	Beef product (million pounds)	Beef (pounds)	Red meat (pounds)
1971	26,060	2,517	6,375	633	35,585	27	21,697	113.0	197.8
1972	27,670	1,472	5,992	645	25,779	23	22,218	116.1	192.9
1973	25,890	873	6,248	676	33,687	23	21,088	109.6	178.0
1974	23,880	4,598	7,514	820	36,812	35	22,844	116.8	190.5
1975	21,200	7,057	11,557	1,097	40,911	48	23,673	120.1	182.4
1976	25,085	5,948	10,617	997	42,644	41	25,662	129.2	194.7
1977	25,892	5,145	9,865	907	41,851	38	24,984	125.7	193.2
1978[2]	27,000	2,650	8,450	750	38,850	31	23,400	118.0	187.0

[1] Carcass weight basis.
[2] Cattle-Fax projections.

Source: USDA and cattle-fax estimates.

Q. Can't government control supplies and prices in order to even out the peaks and valleys of the cattle cycle?

A. It's been tried. It simply doesn't work. Government interference now would cause greater losses for producers. This would force further reductions in beef production, and eventually still higher prices. Consider the effects of the 1973 beef boycott and government price freeze. Most consumer advocates concluded that the boycott and freeze were counter-productive. Partly as a result of the 1973 disruption of the market, supplies of fed beef in mid-1975 were sharply reduced, and retail prices temporarily reached record highs.

Most cattlemen believe in the free market system, and they think that this system—without government controls and subsidies from taxpayers—is in the best long term interest of the public as well as cattlemen.

Unfortunately for cattlemen, the best cure for low prices is low prices. Why? Because low prices bring needed supply adjustments. Similarly, the best cure for high prices is high prices—because higher prices eventually bring supply increases, which then moderate prices to consumers. Cattlemen don't like big supply and price fluctuations either, but they think the alternative—costly government red tape and controls—is worse.

Q. Cattlemen say they should be left alone now that beef prices are rising. But weren't they previously crying for guaranteed prices and government help to bail them out?

A. No, they were not. And that's a tribute to cattlemen, considering their huge financial losses. Sure, many complained. They were caught between escalating costs and declining prices. Most of them lost money most of the time for the last four years. But they didn't ask for government subsidies or controls. If they didn't get out of the cattle business, they tightened their belts, borrowed more money, and looked forward to the time when their returns hopefully would improve again.

Now they need an opportunity to recover their losses, repay their debts and earn a profit on their investments. They expect government to stay out of their business now, just as government stayed out when they were suffering big losses. It would be unfair for government to change the rules of the game now and try to artificially increase meat supplies or impose price restrictions.●

MRS. MARY TUCKER

● Mr. HELMS. Mr. President, it is not surprising that many Senators and dozens of Senate staff members have expressed to me their deep personal sadness that death has claimed a lovely associate of mine, Mrs. Mary Tucker.

Mary died unexpectedly this past Saturday evening at her home. She had not been well for the past 2 weeks, but none of us was prepared for the shocking news that she is gone.

Mr. President, when I was elected to the Senate in November 1972, Mrs. Tucker was one of the first staff members whom I selected as an associate. I remember my delight when I learned that she would be available, because she knew "The Hill," and she was popular and respected by the thousands of people with whom she had dealt while serving on the staffs of a number of Senators, the most recent being the distinguished Senator from Maine (Mrs. Smith).

So Mary "hit the ground running" when she became my associate. She was instrumental, and so immensely helpful, in helping me set up my office. She understood the importance of case work, and she was always genuinely sympathetic with any citizen who had a problem.

I could not begin to count the times that citizens of my State have told me about how "Miss Mary," as she came to be known, had gone out of her way—far, far beyond the call of duty—to be helpful.

That was the way Mary Tucker operated, Mr. President. She loved people, and they certainly loved her. And that is why there has been such sadness this week, as the news of Mary's death became known.

All of us who worked with her are diminished by her death. I shall miss her, both as an associate and as a friend. Mrs. Helms and I, and all of the members of our staff, extend our deepest sympathy to Mr. Tucker and their children.●

MISS LAURA CARLSON WINS ESSAY CONTEST

● Mr. PELL. Mr. President, each year the Warwick (Rhode Island) Emblem Club No. 416 holds an essay contest for Warwick secondary school students as part of its Americanism program. This year, the winner of the contest was a seventh grade student from Winman Junior High School, Miss Laura Carlson. Miss Carlson was awarded a U.S. Savings Bond for her winning essay, entitled "What The American Flag Means To Me."

I would like to commend Miss Carlson for her winning essay, and would like to share it with my colleagues in the Senate.

Mr. President, I ask that the text of the essay be printed in the RECORD.

The essay follows:

WHAT THE AMERICAN FLAG MEANS TO ME

The American flag to me is a symbol of what our forefathers fought for. When I was little I always thought that the stripes on our flag were a ladder that all Americans should try to climb to reach the stars. The stars represented America's goals and highest ambitions and encouraged Americans to strive and do their best to reach them.

I still believe this and hope our flag will inspire Americans to do their utmost to improve our country, provide liberty and justice for all, and to lead America to those stars.

Although the American flag stands for what we have accomplished it also stands for great things to come. Americans should look back on the past with pride, but also look to the future, its horizons bright with hope and promise.●

FEDERAL REGULATIONS AND SMALL BUSINESS

● Mr. DOMENICI. Mr. President, last month John Williams of the Small Business Legislative Council testified on the impact Federal regulations have on the small businessmen of America.

His statement contains vivid examples of the trials and tribulations encountered by small business owners when dealing with the Federal Government.

I submit for the RECORD the following statement.

The statement follows:

STATEMENT OF THE SMALL BUSINESS LEGISLATIVE COUNCIL BEFORE THE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY OF THE SENATE JUDICIARY COMMITTEE HOLDING HEARINGS ON S. 2354, THE EQUAL ACCESS TO THE COURTS ACT, MARCH 13, 1978

Mr. Chairman and Members of the Subcommittee: My name is John Williams. I am Government Affairs Director for the National Tool, Die and Precision Machining Association. I am appearing today on behalf of the Small Business Legislative Council (SBLC), an organization of national trade and professional associations whose members are predominantly smaller businesses. An affiliate of the National Small Business Association (NSB), the SBLC acts as a unifying voice for over 2 million small business firms, commenting on issues or areas in which our member associations are in substantial agreement. Thirty-five national associations currently support the Small Business Legislative Council position that—

"Legislative initiatives to award attorney's fees to individuals and small business owners who prevail against the government are a positive first step toward restraining the somewhat arbitrary nature of the federal agencies in applying excessive regulation. The small business owner rarely can afford the costs and ramifications of a long and drawn out court fight and appellate procedure, especially if that battle is against the power of the Federal Government. The Small Business Legislative Council supports the purposes of S. 2354 to both help individuals and small business, and to stem the flow of excessive regulation."

The importance of the small business community to the national economy is well-known and widely-documented. It accounts for 97% of the total number of U.S. enterprises, 59% of all private employment, 48% of the total business output, 43% of the total GNP, and is responsible for over one-half of all inventions and product innovations. We therefore whole-heartedly commend Senators Domenici and Nelson, and the Members and staff of the Subcommittee on Improvements in Judicial Machinery for their efforts in bringing this important concept to greater public attention.

Legislative proposals for providing attorneys' fees to small business owners and individual citizens who win against the government represent truly long-overdue initiatives. They can be viewed as perhaps the most valuable first step toward restraining the arbitrary nature of those federal regulatory agencies that file judicial complaints against small agencies that file judicial complaints against small businesses and individuals simply because they realize that a small business owner rarely can afford the ramifications of a legal fight.

Mr. Chairman, it is certainly not news to the citizens of this country that the Federal Government has proliferated its reach into many areas by promulgating rules and regulations at an alarming rate over the last several years. We do not deny the need for statutory protection of the health, safety and general well-being of all Americans. Indeed, government guidelines in many product and service areas have proved to be desirable. However, the small businesses and individual proprietors in this country can unequivocally voice their vehement opposition to excessive regulations that, in essence, provide the ammunition for the guns of government agencies that frequently make a target of small business.

There is no question that, in many cases, the regulatory agencies have sought rulings against small firms that just do not have adequate resources to fight back. This process not only establishes precedents for rulings against larger enterprises, but, as has been suggested, builds the "batting averages" of the agencies to justify not only their very existence but larger appropriations from Congress as well.

On several occasions more candid employees of regulatory agencies have publicly stated their agency's intent to single out or prosecute small companies rather than take on the giant firms that have large legal staffs and that could adequately defend themselves against prosecution by the government. When a House Small Business Subcommittee held hearings in 1976 on Antitrust and the Robinson-Patman Act, Dr. F. M. Scherer, former Director of the Bureau of Economics of the FTC, said:

"I had not fully realized until I came to Washington how unfairly the burden of federal regulation and antitrust enforcement falls upon small business as compared to large companies. The corporate giants can and do maintain stables of highly-skilled attorneys to advise them how to stay clear of the law and defend themselves if they nevertheless run afoul. Small firms are less able to afford such counsel, and the law firms they retain typically lack the specialized knowledge needed to cope with a body of statutory, case and regulatory law as complex as Robinson-Patman. As a result, they are more likely to get into trouble and to settle by consent if a complaint is brought. . . . I had also understood little about the value system of government antitrust attorneys. What I learned since joining the Commission staff is that many attorneys measure their own success in terms of the number of complaints brought and settlements won. In the absence of broader policy guidance, therefore, the typical attorney shies away from a complex, long, uncertain legal contest with well-represented giant corporations and tries to build up a portfolio emphasizing small, easy-to-win cases. The net result of these broad propensities is that it is the little guys, not the giants that dominate our manufacturing and trade industries, who typically get sued."

Dr. Scherer's statement points directly to our concern with the "equal access to the courts" concept being addressed here today. Small manufacturers and distributors are not a General Motors or IBM with corporate legal teams and the financial resources to back those legal disputes that can tie up the courts for years. Suppose a regulatory agency unjustly imposes a moderate fine of $500 or $1,000 upon a small business owner. In most cases, that person is more likely to reason that he or she does not have the money or the time to contest the penalty in court against the power of the United States Government. In situations such as these, the business person accedes to the fine—and loses. He loses because he has acceded to the penalty, and he loses because he did not challenge it.

A decision by an official of a regulatory agency, right or wrong, has caused more than just a handful of companies to become bankrupt or go out of business. Moreover, even if the regulatory agency ruling has been proved wrong, a bankrupt company cannot afford the costs of suing the government or righting the case through the appellate procedures. The government has many lawyers who can make a career of one case. An already-exhausted business has no alternative but to throw in the towel and quit.

The case of a Wisconsin toy manufacturer is a case in point. In 1972, the FDA cited a certain toy, manufactured by Marlin Toy Products, Inc., as unsafe. The company conducted a general product recall at a cost of $95,000 and corrected the alleged defect. In the next year, the newly formed Consumer Product Safety Commission published a "banned-products" list which included, by mistake, the modified Marlin product. The list, distributed nationwide to thousands of toy shops, caused virtually all of Marlin's regular customers to cancel their orders. The result was a $1.2 million loss to Marlin, which had to lay off all but 10 of its 85 workers.

If a regulatory agency orders a product recall, unbelievably complex problems arise for a small business. The manufacturer must not only locate each product he has distributed, but he must buy back the item as well. This is obviously no small task, considering the fact that his products may be located in a wholesaler's warehouse or on a retailer's shelves anywhere in the country. In most cases, it is a problem involving the recall of products that may have been in the distribution channels for years. There are few small firms that have the capital to recall all their products and remain in business.

Witness, if you will, the case of the 108-year old New Jersey soup maker (Bon Vivant) who declared bankruptcy shortly after the Food and Drug Administration caused a nationwide recall of every unused item he had ever sold, despite the fact that only one product line was suspect. That action involved the recall of 90 product lines totaling 1.5 million cans! Many believe that the company was unnecessarily harassed by the government simply because it lacked the adequate financial resources for effective legal defense. A supermarket executive commented that "if (the company) had been one of the major canneries, the FDA would never have ordered a total recall of every can of every product line. They are not about to put one of the big boys out of business."

A similar incident involving Campbell Soup Co. shortly thereafter confirmed that executive's suspicions. In that instance, Campbell Soup Co. recalled 230,000 cans of contaminated chicken vegetable soup. Officials of the FDA and the Department of Agriculture confirmed the fact that Campbell's, fearing "unfavorable publicity," had been quietly recalling the soups for several weeks before the company notified Federal officials that it has discovered the presence of botulin in some of the soups. Yet, in this case, the punitive action taken by those Federal agencies responsible amounted to nothing more than a "slap on the wrist." In fact a USDA official in Kansas City commented that "there (would) be no action by this office other than monitoring (the recall of the soups)."

A chronology of the Bon Vivant Soup case, entitled "Seven Days in July," is attached at the end of this statement. (Attachment B) It represents a vivid illustration of the need for providing at least some recompense to those harassed by regulatory overkill. Mr. Andrew Paretti, former owner and President of Bon Vivant, even now concedes that if legislation such as that proposed by Senators Domenici and Nelson had been on the books in 1971, Bon Vivant would still be in business today. The Bon Vivant case, from start to finish, took over three years to be adjudicated; no small business could bear the costs involved and still survive.

Since the National Small Business Association first announced the introduction of S. 2354 in its January-February, 1978 "Voice of Small Business", it has received numerous letters from small businesses documenting their particular experiences with various government agencies. One company's experience with the Nuclear Regulatory Commission (NRC), for example, resulted in suspension of the firm's operating license for a period of three weeks. To this small company, the total loss of income during the period of license suspension, along with the continuation of payroll and other fixed costs, placed an enormous financial burden upon its owners. The dispute with the NRC now centers, among other things, around the legality of the license suspension, and recovery of $43,000 in losses incurred by the company during the three-week shut down. The president of this company has written:

"During the various meetings and deliberations with the NRC, we have not availed ourselves of outside counsel due to the further financial burden that it would have brought on. We therefore feel that the Equal Access to the Courts Act (S. 2354), introduced by Senators Domenici and Nelson . . . is highly desirable since it would give the small business some hope of recovering legal costs and allow the business to make judgements with regard to fighting the government on a decision based on legal merit rather than as an expedient business decision."

Still another company writes that a decision by the local National Labor Relations Board could have serious implications for company personnel management. The president, vowing that he will "fight it to the bitter end", says:

"Knowing that we could be reimbursed for our legal costs would certainly enable us to face this problem squarely rather than throw in the towel because we can't afford to fight the government bureaucracy."

These represent but a few of the experiences that have come to the attention of the Small Business Legislative Council. Cases like these point up the fact that, once created, a regulatory agency's foothold is often strengthened through the capitulation of small businesses and individuals who are unable to withstand the regulatory pressure, or to fight their cases in court.

In our view, providing attorney's fees for those who win against the government may begin to redress not only the imbalance that currently exists between the regulated and the regulators, but may also begin to stem the growth of the entrenched and, in many cases, ineffective bureaucracies that have indeed become a major cause of public disaffection with the Federal government.

President Carter himself has addressed this very problem in response to a small business community inquiry. President Carter said:

"Because of their lack of ability and resources to defend themselves, small businesses are the favorite targets for the 82 regulatory agencies in Washington, which last year put out some 45,000 pages of regulations. This underscored the burden forced on small businesses by Washington, and makes it more difficult for the small business man and woman to compete with big business, which can afford the best in full time CPAs, attorneys and lobbyists. . . . I pledge to allow the small business man and woman to get back to running their businesses by completely reforming our Federal regulatory agencies, their reporting requirements, and tax laws, to get the government off his back."

In closing, Mr. Chairman, we emphasize that the SLBC firmly believes that the proliferation of agency rules and regulations within the last 15 years has resulted in what is basically an administrative and bureaucratic denial of justice to those individuals and small businesses that are unable to bear the financial burden of defending themselves in a court of law against the power of the Federal government. Our judicial system, based on equal justice under law, must be open to every citizen of this country, not just to those able to afford the burgeoning costs of legal defense. On that basis we firmly support the principle behind the Legal Services Corporation, created by Congress to ensure equal justice for all. But we also urge careful consideration of expanding the "equal access to the courts" concept as a viable means to suppress the regulatory overkill that is threatening, on an ever-increasing basis, the very survival of the small business community. Frustration with government intervention and regulation is becoming increasingly widespread—especially for those forced to bear the burden of the cost of compliance with those regulations, and then are unjustly accused of failure to comply. We re-affirm our enthusiastic support for S. 2354, the Equal Access to the Courts Act, and thank you Mr. Chairman, and the Members of this distinguished subcommittee for the opportunity to present our views to you today.●

TAX RETURN AND FINANCIAL STATEMENT OF FLOYD K. HASKELL

● Mr. HASKELL. Mr. President, in accordance with my usual practice, I attach hereto and request that they be printed in the RECORD my Federal income tax return for the calendar year 1977 and a statement of net worth as of March 13, 1978.

The material follows:

FINANCIAL STATEMENT OF FLOYD K. HASKELL

(Net worth as of March 13, 1978)

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household. Where values are other than current market value state the basis. In the case of real estate, mineral leases and similar interests specify nature and location.

ASSETS

Cash on hand and in banks, $3,927.57.

U.S. Government securities—add schedule [1], $38,940.00.

Listed securities—add schedule [2], $17,562.50.

Unlisted securities—add schedule [3], $45,094.64.

Real estate owned—add schedule [4], $255,900.00.

Real estate mortgages receivable [5], $13,812.68.

Autos and other personal property, $10,000.00.

Cash value—life insurance, $15,350.30.

Other assets—itemize:

Civil Service Retirement Account, $19,152.29.

Remainder Interest in Trust [6], $42,978.84.

Limited Partnership Interests [7], $13,200.00.

Miscellaneous [8], $1,000.00.

Total assets, $476,918.82.

LIABILITIES

Notes payable to banks—secured, none.

Notes payable to banks—unsecured, none.

Notes payable to relatives, none.

Notes payable to others, none.

Accounts and bills due, none.

Unpaid income tax, none.

Other upaid tax and interest, none.

Real estate mortgages payable—add schedule, none.

Chattel mortgages and other liens payable, none.

Other debts—itemize:

Loan on VA Insurance $5,000.00.

Total liabilities, $5,000.00.

CONTINGENT LIABILITIES

As endorser, comaker or guarantor, none.

On leases or contracts, none.

Legal Claims, none.

Provision for Federal Income Tax, none.

Other special debt, none.

[1] U.S. Bonds due 8/15/84 and 25 Treasury Notes due 11/15/81 at market value.

[2] 1,000 shares Continental Materials and 1,750 shares Terra Chemicals at market value.

[3] 56 shares Sheridan Savings and Loan at book value; 15 El Paso County, Colorado, Bonds; 10 Bent County, Colorado, Bonds; 20 HFA Bonds.

[4] 319.88 Acres unimproved real estate in Boulder County, Colorado, at appraised value December 31, 1973.

[5] Secured by First Deed of Trust; appraised value November 1975; face value $21,504.68.

[6] Remainder interest in trust established for mother:

Trust assets

100 sh. Amer. Electric Power	@ 23.00	----	$2,300.00
200 sh. Hercules, Inc.	@ 12.625	----	2,525.00
400 sh. Shell Oil	@ 32.125	----	12,850.00
300 sh. Utah Power	@ 18.875	----	5,662.50
100 sh. Mobil Oil	@ 61.125	----	6,112.50
300 sh. Gulf Oil	@ 24.625	----	7,387.50
100 sh. Exxon	@ 44.75	----	4,475.00
Total		----------	41,312.50
10,000 Philadelphia Electric Bond	@ 100.00	----	10,000.00
Value of Trust		----------	51,312.50
		@	.83759
Value of remainder interest		----------	42,978.84

[7] At investment cost. Partnerships own miscellaneous nonproductive mining interests in Arizona and Montana. One property may be of value. The General Partner has informed the Limited Partners that a discovery has been made and sufficient mineralization exists to pay the retained royalty. The corporations owning the operating interests in the property apparently disagree, since no announcement to shareholders of any discovery, as required by SEC rules, has been made.

[8] Valuation arbitrary. Undivided interest in federal oil and gas leases—income 1974 (-0-), 1975 ($438.00), 1976 ($438.67), and 1977 ($470.01).

GENERAL INFORMATION

Are any assets pledged? (Add schedule), no.

Are you defendant in any suits or legal actions? no.

Have you ever taken bankruptcy? no.

U.S. INDIVIDUAL INCOME TAX RETURN, 1977

Floyd K. Haskell, 170 Garfield St., Denver, Colorado 80206.

Your [redacted] xxx-xx-xxxx .

Occupation: U.S. Senator.

Presidential Election Campaign Fund: Do you want $1 to go to this fund? Yes.

Filing Status: Single.

Exemptions: Yourself.

Income:

8. Wages, salaries, tips, and other employee compensation: $55,350.

9. Interest income. (If over $400, attach Schedule B.) $4,455.

10a. Dividends (If over $400, attach Schedule B) $1,682. 10b less exclusion $100. Balance $1,582.

14. Capital gain or (loss) (attach Schedule D), $9,407.

18. Pensions, annuities, rent, royalties, partnerships, estates or trusts, etc. (attach Schedule E), $517.

21. Total income. Add lines 8, 9, and 10c through 20, $71,311.

Adjustments to Income:

23. Employee business expenses (attach Form 2106), $5,041.

28. Total adjustments. Add lines 22 through 27, $5,041.

29. Subtract line 28 from line 21, $66,270.

31. Adjusted gross income. Subtract line 30 from line 29. Enter here and or line 32. If you want IRS to figure your tax for you, See page 4 of the Instructions, $66,270.

Tax Computation:

32. Amount from line 31, $66,270.

33. If you itemize deductions, enter excess itemized deductions from Schedule A, line 41. If you do NOT itemize deductions, enter zero, $7,616.

34. Tax Table Income. Subtract line 33 from line 32, $58,654.

35. Tax. Check if from Schedule TC, $22,492.

37. Total. Add lines 35 and 36, $22,492.

Credits:

41. Investment credit (attach Form 3468), $270.

46. Total credits. Add lines 38 through 45, $270.

47. Balance. Subtract line 46 from line 37 and enter difference (but not less than zero), $22,222.

Other Taxes:

54. Total tax. Add lines 47 through 53, $22,222.

Payments:

55. Total Federal income tax withheld (attach Forms W-2, W-2G, and W-2P to front), $18,349.

56. 1977 estimated tax payments (include amount allowed as credit from 1976 return), $1,960.

Payments:

62. Total. Add lines 55 through 61a, $20,309.

Refund or Due:

66. If line 54 is larger than line 62, enter Balance Due. Attach check or money order for full amount payable to "Internal Revenue Service." Write social security number on check or money order, $1,913.

SCHEDULES A AND B—ITEMIZED DEDUCTIONS AND INTEREST AND DIVIDEND INCOME

Floyd K. Haskell: Your social security number, [redacted].

Schedule A itemized deductions

Medical and Dental Expenses (not compensated by insurance or otherwise) (see page 14 of Instructions.)

1. One half (but not more than $150) of insurance premiums for medical care. (Be sure to include in line 10 below), $150.

4. Subtract line 3 from line 2. Enter difference (if less than zero, enter zero), 0.

5. Enter balance of insurance premiums for medical care not entered on line 1, $410.

6. Enter other medical and dental expenses: (a) Doctors, dentists, nurses, etc., $915.

Insurance reimbursement, $50.

7. Total (add lines 4 through 6c), $1,275.

8. Enter 3% of line 31, Form 1040, $1,988.

9. Subtract line 8 from line 7 (if less than zero, enter zero), 0.

10. Total (add lines 1 and 9). Enter here and on line 33, $150.

Taxes (See page 14 of Instructions.)

11. State and local income, $2,020.

12. Real estate, $119.

13. State and local gasoline (see gas tax tables), $31.

14. General sales (see sales tax tables), $468.

15. Personal property, $127.

Sales tax—auto, $539.

17. Total (add lines 11 through 16). Enter here and on line 34, $3,304.

Contributions (See page 16 of Instructions for examples.)

21 (a) Cash contributions for which you have receipts, cancelled checks or other written evidence, $853.

24. Total contributions (add lines 21a through 23). Enter here an on line 36, $853.

Casualty or Theft Loss(es) (See page 16 of Instructions.)

Miscellaneous Deductions (See page 16 of Instructions.)

Tax preparation fees, $350.

Form 2106 attached, $5,159.

32. Total (add lines 30 and 31). Enter here and on line 38, $5,509.

Summary of Itemized Deductions (See page 17 of Instructions.)

33. Total medical and dental—line 10, $150.

34. Total taxes—line 17, $3,304.

36. Total contributions—line 24, $853.

38. Total miscellaneous—line 32, $5,509.

39. Total deductions (add lines 33 through 38), $9,816.

40. If you checked Form 1040, box, $2,200.

41. Excess itemized deductions (subtract line 40 from line 39). Enter here and on Form 1040, line 33. (If line 40 is more than line 39 see "Who MUST Itemize Deductions" on page 11 of the Instructions.), $7,616.

Schedule B—Interest and dividend income

Floyd K. Haskell: Your social security number, [redacted].

Part I—Interest Income:

Interest on U.S. obligations, $3,661.

Mountain Valley Associates, note, $779.

New England Mutual Life Ins., $15.

2. Total interest income. Enter here and on Form 1040, line 9, $4,455.

Part II—Dividend Income:

Hazen Research, Inc., $178.

Sheridan Savings & Loan Assn., $34.

Terra Chemicals, $1,400.

Union Carbide, $70.

4. Total of line 3, $1,682.

8. Dividends before exclusion (subtract line 7 from line 4). Enter here and on Form 1040, line 10a, $1,682.

CAPITAL GAINS AND LOSSES

Part II—Long-term Capital Gains and Losses—Assets Held More Than 9 Months:

Mountain Valley Assoc. note—installment sale, $77; $2,573.

3558 Sh Hazen Research, $11,569; $5,577; $23,127; $6,885, $16,242.

11. Net gain or (loss), combine lines 6 through 10, $18,815.

13. Net long-term gain or (loss), combine lines 11 and 12, $18,815.

Part III—Summary of Parts I and II (If You Have Capital Loss Carryovers From Years Beginning Before 1970, Do Not Complete This Part. See Form 4798 Instead.)

14. Combine lines 5 and 13, and enter the net gain or (loss) here, $18,815.

15. If line 14 shows a gain—(a) Enter 50% of line 13 or 50% of line 14, whichever is smaller (see Part IV for computation of alternative tax). Enter zero if there is a loss or no entry on line 13, $9,408.

(b) Subtract line 15a from line 14. Enter here and on Form 1040, line 14, $9,407.

Part IV—Computation of Alternative Tax (See Instruction S to See if the Alternative Tax Will Benefit You):

17. Enter amount from Schedule TC (Form 1040), Part I, line 3, $57,904.

18. Enter amount from line 15a (or Form 4798, Part I, line 8(a)), $9,408.

19. Subtract line 18 from line 17 (if line 18 exceeds line 17, do not complete the rest of this part. The Alternative Tax will not benefit you), $48,496.

24. Subtract line 23 from line 22, 0.

25. Tax on amount on line 19 (use Tax Rate Schedule in instructions), $17,968.

26. Enter 50% of line 18 but not more than $12,500 ($6,250 if married filing separately), $4,704.

27. Alternative Tax—add lines 24, 25, and 26. If smaller than the tax figured on the amount on Schedule TC (Form 1040), Part I, line 3, enter this alternative tax on Schedule TC (Form 1040), Part I, line 4. Also check the Schedule D box on Schedule TC (Form 1040), Part I, line 4, $22,672.

SUPPLEMENTAL INCOME SCHEDULE

Part II—Rent and Royalty Income. If you need more space, use Form 4831. Have you claimed expenses connected with your vacation home rented to others? No.

See statement 3: (b) Total amount of rents, $965 and (d) Depreciation (explain below) or depletion (attach computation), $212.

6. Totals, (b) Total amount of rents, $965 and (d) Depreciation (explain below) or depletion (attach computation), $212.

7. Net income or (loss) from rents and royalties (column (b) plus column (c) less columns (d) and (e)), $753.

10. Total rent and royalty income (add lines 7, 8, and 9), $753.

Part III—Income or Losses from Partnerships, Estates or Trusts, Small Business Corporations.

See statement 2, P—(e) Income or (loss), —$236.

11. Totals, (e) Income or (loss), —$236.

12. Income or (loss). Total of column (e) less total of column (f), —$236.

13. TOTAL (add lines 5, 10, and 12). Enter here and on Form 1040, line 18, $517.

COMPUTATION OF SOCIAL SECURITY SELF-EMPLOYMENT TAX

Part II—Computation of Net Earnings from NONFARM Self-Employment: Regular method:

5. Net profit or (loss) from: (b) Partnerships, joint ventures, etc. (other than farming), $217.

6. Total (add lines 5a through e), $217.

8. Adjusted net earnings or (loss) from nonfarm self-employment (line 6, as adjusted by line 7), —$217.

Nonfarm optional method: 9(a) Maximum amount reportable, under both optional methods combined (farm and nonfarm), $1,600.

Part III—Computation of Social Security Self-Employment Tax:

12(b). From nonfarm (from line 8, or line 11 if you elect to use the Nonfarm Optional Method), —$217.

13. Total net earnings or (loss) from self-employment reported on line 12. (If line 13 is less than $400, you are not subject to self-employment tax. Do not fill in rest of schedule), —$217.

14. The largest amount of combined wages and self-employment earnings subject to social security or railroad retirement taxes for 1977 is, $16,500.

TAX COMPUTATION SCHEDULE

Part I—Tax Computation for Taxpayers Who Cannot Use the Tax Tables:

1. Enter your Tax Table Income from Form 1040, line 34, $58,654.

2. Multiply $750 by the total number of exemptions claimed on Form 1040, line 7, $750.

3. Taxable Income. Subtract line 2 from line 1; $57,904.

4. Income Tax. Check if from Tax Rate Schedule X, $22,672.

General Tax Credit:

5. Enter $35 multiplied by the total number of exemptions claimed on Form 1040, line 7, $35.

6. Enter amount from line 3, above, $57,904.

7. Enter, $2,200 if you are single (or an unmarried head of household), $2,200.

8. Subtract line 7 from line 6, $55,704.

9. Enter 2 percent of line 8 (but do not enter more than $180), $180.

10. General tax credit. Enter the larger of line 5 or line 9, $180.

11. Tax. Subtract line 10 from line 4. Enter the difference (but not less than zero) here and on Form 1040, line 35, $22,492.

EMPLOYEE BUSINESS EXPENSES

Part I.—Employee Business Expenses Deductible in Computing Adjusted Gross Income on Form 1040, Line 31:

4. Other (specify) (Include expenses not listed on line 1 through 3 to extent of reimbursement) See statement 4, $29,432.

5. Total of lines 1 through 4, $29,432.

6. Less: Employer's payments for above expenses (other than amounts included on Form W–2), $24,391.

7. Excess expenses (line 5 less line 6). Enter here and include on Form 1040, line 23, $5,041.

Part II.—Employee Business Expenses which are Deductible if You Itemize Deductions on Schedule A (Form 1040):

1. Business expenses other than those included above (specify) See statement 5, $5,024; see statement 6, $135, $5,159.

COMPUTATION OF INVESTMENT CREDIT

Used property (See instructions for dollar limitation, (h) Life years, 7 or more; Cost or basis (See instruction G), $2,700; Applicable percentage 100; Qualified investment (Column 2 x column 3), $2,700.

2. Qualified investment—add lines 1(a) thru (h), $2,700.

3. 10% of line 2, $270.

7. Tentative investment credit—Add lines 3 through 6, $270.

Limitation

8. (a) Individuals—Enter amount from line 37, page 2, Form 1040, $22,492.

11. Line 8 less line 10, $22,492.

12. (a) Enter amount on line 11 or $25,000, whichever is lesser. (Married persons filing separately, controlled corporate groups, estates, and trusts, see instruction for line 12.), $22,492.

13. Total—Add lines 12 (a) and (b), $22,492.

14. Investment credit—Amount from line 7 or line 13, whichever is lesser. Enter here and on line 41, Form 1040; line 10(b), Schedule J, page 3, Form 1120; or the appropriate line on other returns, $270.

STATEMENT 1—WAGES, SALARIES, TIPS, ET CETERIA

Employers name and address, income tax withheld, wages, salaries, tips, et ceteria, and FICA:

U.S. Senate, Washington, D.C., $18,349 and $55,350.

Total tax withheld, wages, and FICA, $18,349**, $55,350**, and 0**.

STATEMENT 2—INCOME FROM PARTNERSHIPS

Name and address of partnership: (H) High Hopes, Ltd., 84–6114818.

Income: Other partnership income, —$19.

Name and address of partnership: (H) Canus, Ltd., 84–0583390.

Income: Self-employment income, —$217.

Recap of partnership income—

Total partnership income subject to SE tax, —$217*.

Total other partnership income, —$19*.

Total partnership income to schedule E, —$236**.

STATEMENT 3—INCOME FROM RENTS AND ROYALTIES

Property description: Oil and gas lease—Colorado.

Income: Gross rents, $965.

Total income, $965.*

Expenses: Depletion, $212.

Total deductible expenses, $212.*

Net income, $753.**

STATEMENT 4—OTHER EMPLOYEE BUSINESS EXPENSES DEDUCTIBLE FROM ADJUSTED GROSS INCOME—FORM 2106

Other expenses:

Washington, D.C. living expenses per Public Law 471, 82nd Congress, $3,000.

Fares, meals, lodging and other travel expenses, $10,609.

Other reimbursed expenses, $15,823.

Total other business expenses, $29,432.**

STATEMENT 5—EMPLOYEE ITEMIZED BUSINESS EXPENSES

Itemized miscellaneous deductions:

Constituent communication, $927.

Dues and entertainment, $2,323.

Miscellaneous, $1,774.

Total employee business expense, $5,024.**

STATEMENT 6—EMPLOYEE DEPRECIATION EXPENSE

Depreciation:

Description: Chinese table and screen; date acquired, 1977; cost or other basis, $2,700; current depreciation, $135.

Totals: cost or other basis, $2,700**; current depreciation, $135.**●

A DEPARTMENT OF EDUCATION?

● Mr. SCHMITT. Mr. President, this morning the Washington Post carried an editorial entitled: "A Department of Education?" While I have not yet fully weighed the difficulties against the merits of creating a cabinet level department to deal with education in this Nation, I have considered the arguments both for and against this proposal. As the editorial points out, there are many valid points in favor of separating education from the other functions of the Department of Health, Education, and Welfare (HEW) and the other departments which administer specific programs.

At the same time, Mr. President, I have become increasingly concerned with the future of education in this Nation. Our Republic will stand or fall on the quality of our education of future citizens. Again, as the editorial points out, we have continually spent more money and have been faced with greater problems over the years. Obviously, money is not the ultimate answer. We must do more than just treat the symptoms of our social problems. We must find solutions.

The Federal Government, through HEW, has continually become more and more involved in decisionmaking which should, more properly, be left to parents working with teachers and State and local officials. Rather than aiding and advising on local education, the Federal Government has imposed program guidelines which often are inappropriate, unnecessary, or too costly. There is a strong possibility that a separate Department of Education may not only continue these policies but increase the inefficiency of State educational systems.

I strongly support greatly improved elementary and secondary education and believe that the Federal Government can aid State and local education officials. However, most of the decisions on what to teach and how to teach it must be made on the local level where the parents and teachers better understand the local problems.

An official in Washington cannot possibly understand the problems which exist in Santa Fe and New York City. The situations are so very different. If the past is any indication, most Federal programs lack the necessary flexibility so that local officials can tailor them to meet the needs of their community. Instead, an unneeded bureaucracy is created around an unneeded program at ever-increasing cost and inefficiency.

Another area of concern, and a very serious concern, is the diminution of the role of parents in the education of their children. In my discussions with parents throughout the State of New Mexico, I have been impressed with the alarm parents have shown in their feeling of helplessness in having an input into the education of their children. This authority is not being usurped by local or State officials. It is being usurped by officials here in Washington who leave no options to local officials and teachers.

Mr. President, I think the editorial in The Washington Post deserves serious consideration. Many of the concerns and points raised in the editorial are similar to my own.

When the proposal for a separate Department of Education is brought before the Senate, we all shall be looking for guarantees that this new department will be more efficient and effective than the present arrangement and not just another bureaucracy. More importantly, we must be looking for guarantees that this department will not attempt to further usurp the role and authority of parents and local education officials. The Federal Government must aid local officials with research, advice, and, if necessary, finances and not impose their will on educators, parents, and officials.

Mr. President, it is not a bureaucracy and money that will guarantee quality and equal opportunity in our educational system. Rather, it will take dedication to quality and equal opportunity by relying on the judgment of those closest to the problem, the parents and the teachers.

The editorial follows:

A DEPARTMENT OF EDUCATION?

It did not come as an earth-shaking surprise that President Carter last Friday asked Congress to create a department of education. The creation of such a department, separate from HEW, was an explicit Carter campaign pledge. And there is an enormous reservoir of sentiment favoring the move in the Senate: Sen. Abraham Ribicoff, the Connecticut Democrat who is himself a former HEW secretary and who currently presides over the Senate Governmental Affairs Committee, had 52 co-sponsors on a bill proposing a new education department the last time we looked. So we are well aware that we are swimming upstream with our own perception of the plan: We think it is a bad idea.

Our opinion has nothing to do with the personal, political and bureaucratic tugging and hauling that seems to be going on among Secretary Joseph Califano and a variety of others over territorial imperatives and turf. And we do reconize the validity of some of the assertions that are being made in support of a new department, although we don't think those assertions, true or not, necessarily lead in logic to the need for creating a separate department of education. Yes, it is a fact that since HEW was established around a quarter of a century ago, the total education budget has zoomed into the stratosphere, from a few hundred million dollars to more than 10 billion. And, yes, it is true that the American education system is full of flaws and that some of them seem to be getting worse, not better. And it is the case that HEW itself is ungainly in size and shape and that the Office of Education has a kind of institutional thyroid deficiency and that there is a great deal of cross-purposes, self-canceling activity between all the various agencies and subagencies of government that have a hand in education.

But to acknowledge all that is not automatically to make the case for creating a new department. The collection of various bureaucracies and instrumentalities into one seemingly logical place is a fairly common element of governmental-reform schemes—that has had at best mixed results. The bureaucratic bits and pieces that became HUD, for example, hardly underwent a galvanic revitalization by virtue of sharing a roof and a set of executive managers. And to look at either the Labor Department, say, or the Commerce Department is to know that gathering units of government around a single large, controlling subject hardly guarantees their energy or efficiency.

We don't cite the Labor and Commerce departments casually: To the extent that they are basically one-constituency organizations of government, they provide another cautionary note. One of the principal risks of creating a separate education department is that it will become a creature of its clientele. That clientele would not necessarily be the schoolchildren and their parents affected by the federal government's education programs. Much more probably it would be the National Education Association, the organization of teachers and school administrators who already exert a great deal of in-

fluence on education policy in Washington. In a way, this would be giving them their own department.

Let's go back for a moment to the argument about the zooming-into-the-stratosphere budget. After all, the same argument could be made about the various armed services that were gathered into the Defense Department. Do they now deserve to be separated out into independent entities answerable only to the president and not to the secretary of defense? The comparison isn't wholly apt, but it isn't wholly frivolous, either, because it is precisely this fitting in of education with the other, related health and welfare programs that makes sense of having education in and under the HEW organization. The more they can be made to function in some degree of harmony with each other, the better.

So we don't see the self-evident wisdom of the proposal on substantive grounds, and we note that strictly in terms of let's-put-it-all-in-one-place efficiency, the president's proposed consolidation of federal education programs into one department leaves out—surely, as reported, because of contrary lobbying pressures—veterans education and job and manpower training programs, which together add up to an enormous amount of what the government spends on education now. Pressure groups organized around a particular interest saw to that. Does Mr. Carter really want to organize another such group, in government, under the heading of the Department of Education?●

TRIBUTE TO SENATOR SPARKMAN

● Mr. CHURCH. Mr. President, on Friday, April 14, Senator JOHN SPARKMAN was honored by his constituents at a dinner in Birmingham, Ala. The praise that was heaped on the chairman of the Foreign Relations Committee on that occasion was well deserved, and I would like to share with my colleagues the account of the affair taken from the Birmingham News. I submit the article for the RECORD.

The article follows:

PRAISE HEAPED ON RETIRING SEN. SPARKMAN

(By Al Fox)

They came from across Alabama and from the nation's capital to salute the man known across the nation as "Mr. Housing" who is retiring from Congress after 42 years.

The honoree was U.S. Sen. John Sparkman who has spent more than half his life in service to the people of Alabama, first as a U.S. representative for 10 years and for the past 32 years as a member of the U.S. Senate.

Sparkman is retiring at the end of this year, and it was with tears in his eyes and a choke in his voice that he told more than 1,000 supporters at the Birmingham-Jefferson Civic Center Friday night that "I hope to see all of you in the future. We are coming home."

The senior senator from Alabama said that he reached the decision to retire "with a little regret," and he was a "little sad" when he told his wife, Ivo, that he was leaving active politics.

"But she only said we're free to do what we want," he said. "Thanks to all of you from me and my family."

The two men who have served in the U.S. Senate were among the many speakers who took part in the "Salute to John Sparkman," one of the most festive occasions ever staged by the State Democratic Executive Committee.

Former U.S. Sen. Lister Hill of Montgomery who served in the Senate for 22 years with Sparkman before he retired in 1969, said that he had been alloted "only two minutes," to talk of "the achievements of John Sparkman," and then said that "to tell all of the things of greatness that he achieved, we would be here for two nights."

"We worked closely together when we were in the Senate, and before that in the U.S. House, and I know of his ability, courage and dedication to the people, not only of Alabama but of the nation," Hill said.

U.S. Sen. James B. Allen of Gadsden, who succeeded Hill and who becomes the states' senior senator upon Sparkman's retirement, said that "while we do not always agree, we have never had a cross word."

Allen said that "there is a scent of history in the air tonight. Not in the next 100 years will we pay tribute to a man of such service to his people. He has never lost the sense of humility."

Quoting Kipling, Allen said that "he has walked with kings and has not lost the common touch."

It was U.S. Rep. Bill Nichols of Sylacauga, who told the most heart-warming story of the night when he displayed a time-worn telegram that his parents had received from Sparkman 33 years ago when Nichols, then a young Army lieutenant who had lost a leg during the fighting in Germany in World War II, was confined to an Army hospital in England.

Sparkman visited the hospital in England as a member of the Foreign Relations Committee of the U.S. House and met Nichols. He then telegramed the parents of Nichols and advised them that he had made arrangements to have the young lieutenant returned to the U.S.

Sparkman was presented with a key to the city by Mayor David Vann, who said he "cut my political eye teeth campaigning for you," and he presented Mrs. Sparkman with a minature key in the form of a pin.

Other members of Congress who spoke were U.S. Reps. Tom Bevill of Jasper, Walter Flowers of Tuscaloosa and Ronnie Flippo of Florence. Flippo, the youngest member of the Alabama delegation, said "I'm his congressman and I hope I can do the same that he did."

Former U.S. Rep. Bob Jones of Scottsboro, who succeeded Sparkman in the House and served for 30 years before retiring, also was there.

Sparkman served for many years as chairman of the Senate Banking, Housing and Urban Development Committee and as Chairman of the Small Business Committee, where he earned the title of "Mr. Housing" and the friend of the small businessman.

Making short talks in tribute to Sparkman included Vondal Gravlee of the National Association of Homebuilders of Birmingham; Arthur Tonsmeire of Mobile, representing the savings and loan associations; John T. Nixon, representing the mortgage bankers' association; Mrs. Mary George Waite of Centre, representing the Alabama Bankers Association; Arthur Shores of Birmingham, representing the Alabama Bar Association; Dr. Joseph Volker, chancellor of the University of Alabama System, representing health and education, and Barney Weeks of Birmingham, president of the Alabama Labor Council, representing organized labor.

Maynard Layman of Decatur, assistant to the publisher of the Decatur Daily, was chairman for the "salute" with Mrs. Charlotte Dominick of Birmingham as co-chairman.

George Lewis Bailes, Jr., of Birmingham, chairman of the SDEC, introduced a film depicting the public service of Sparkman, including his campaign in 1952 when he was the Democratic nominee for vice president, which will be presented to the University Alabama School of Law for its library.●

JIM CALLOWAY

● Mr. CHILES. Mr. President, I would like to join my colleagues who have commented on the retirement of Jim Calloway, the chief counsel and staff director of the Senate Committee on Appropriations.

When the late Senator John McClellan become chairman of the Senate Committee on Appropriations, he brought Jim Calloway with him to the committee from the then Government Operations Committee, where Jim was serving ably as chief counsel and staff director. Jim served his chairman and the Appropriations Committee members for over 5 years in this important role.

When I first came to the Senate in 1971, I was appointed to the then Government Operations Committee. Within a few hours, Jim Calloway was in my office making himself available to me and my staff for council and advice.

When the late Senator McClellan became chairman of the Appropriations Committee I was fortunate to be assigned to that committee, and continue to work with Jim in his role of chief counsel and staff director.

During the last 8 years I have had the opportunity to work with Jim and watch his performance. I can say that I have not seen a more skillful or professional approach to Senate business by a key committee staff member than provided by Jim Calloway. As his chairman, Jim was always fair in his approach to his many responsibilities. Many members of the Senate can attest to his sound advice and knowledgeable council on a wide range of matters.

I want to wish Jim Calloway success in whatever future endeavors he might undertake.●

EXCESSIVE FEDERAL REGULATION

● Mr. BENTSEN. Mr. President, last week the Subcommittee on Economic Growth and Stabilization which I chair heard some testimony which should alarm every thinking American.

According to a pathbreaking study on regulatory costs undertaken by the Center for the Study of American Business and presented last week to our subcommittee, Federal regulations alone—excluding State and local regulations—cost consumers and business over $100 billion annually.

Mr. Raymond Haysbert, president of Parks Sausage, made a particularly effective presentation of the unique regulatory burden facing small businesses. Mr. Haysbert testified, for example, that it cost his firm an incredible $96,000 to comply with legal regulations in order to raise just $400,000 in new equity capital.

His contract trucking firm must account to the ICC for its time every 15 minutes, and is actually prohibited from

leaving the New Jersey Turnpike when traveling between New York and Baltimore on business.

Mr. Haysbert's problems are symptomatic of the most serious aspect of Government regulation: Small, independent business people in America can hardly keep track of the agencies empowered to issue regulations, much less what is in the regulations themselves.

As the National Federation of Independent Business noted last fall, the average small entrepreneur works 58 hours a week and has a little time to leaf through the 70,000 pages of the Federal Register published annually to keep abreast of new and changing regulations.

It is no wonder that some find themselves charged with regulatory violations. Their natural environment—the free market system—is being constantly constricted by the barbed wire of Federal interference and regulation. They are stalked by bureaucratic bounty hunters out for their hides.

Our subcommittee heard testimony which revealed that as many as 400,000 firms are fined each year for violating Federal rules and regulations too complex or technical for them to understand.

Most of these fines are for minor infractions. In fact, over 80 percent were fined for less than $2,500. This strongly suggests that most of these violations are due in part or entirely to confusion or ignorance of Federal regulations, and not to premediated, willful intent to break laws. Some premeditated violations do occur, however, simply because small business cannot afford the cost of complying with nitpicking Federal paperwork requirements. In one case, a firm chose to pay a $500 fine in order to avoid paying $750 to an attorney or accountant to complete some complicated Federal form.

This testimony is the first real indication that Federal regulations are simply asking too much of small business men and women. Not only are Federal regulations complicated, they are contradictory, requiring firms to violate one regulation in order to comply with another.

Let us not forget one thing. For 200 years the key to our success as a nation has been freedom. Not just the traditional freedoms of worship and expression, but the freedom to succeed. The small businessman, the person with an idea—the risk-taker—has always been the motor force behind our economic development.

When excessive Federal redtape strangles the initiative of individual risk-takers it naturally stifles the development of new products. In fiscal 1975, EPA issued 2,800 new product registrations under the Federal Insecticide, Fungicide and Rodenticide Act. But in 1977, only 103 were issued. New product applications last year were only one-third of the number of applications made in 1975. Most significantly, in 1977 new product registrations were only 1 out of 17 applied for as opposed to 1 out of 3 in 1975.

What this means is that Federal redtape is destroying the major competitive advantage of American business in world markets—the capacity to develop new products which meet the needs of the world's population and improve the quality of life everywhere they are introduced.

Most small businessmen and most Americans support the efforts of their Government to clean up our air, to keep our water pure, and to improve the quality of life for all citizens. I support these goals. I have fought for them.

So, the rising tide of citizen indignation is not directed at the legitimate efforts of Government to clean up our environment and to improve worker health and safety. Rather, it is correctly directed at unwarranted, confusing, unreasonable regulations which strangle individual freedom and individual initiative.

The hearings which our subcommittee held last week did not yield an easy, simple remedy to the problem of excessive Federal regulation. That was to be expected because there is no easy answer to the problem. But redtape is a man-made phenomenon. Therefore, it can be controlled if only the men and women who make the laws and the men and women who execute them are dedicated to making Government rational, efficient, and effective. Mr. President, I intend to work unceasingly as one Member of Congress, toward those goals.

The confidence of the American people in Government is at a dangerously low ebb, partly because the American people are fed up with Government's tendency to continuously expand and intrude. Mr. President, if we in the Congress can turn this process around we will go along way toward restoring the people's faith in their Government. That is how important this issue is and that is why I intend to search for specific legislative remedies to the problem. I hope many of my colleagues will join me in that effort.●

GI BILL ADMINISTRATIVE PROVISIONS UPHELD

● Mr. CRANSTON. Mr. President, on March 20, 1978, the U.S. Supreme Court, on appeal from the U.S. District Court for the District of South Dakota, handed down a decision reversing the judgment of the lower court in the case of Max Cleland, Administrator of the Veterans Administration, et al. against National College of Business. At issue was the question whether the due process clause of the fifth amendment prohibits Congress from restricting the educational courses for which veterans' benefits are available under the GI bill without including identical course limitations in other Federal educational assistance programs. The Supreme Court sustained the provisions in question and ruled in favor of the VA.

The specific case involved the Veterans' Administration's implementation of the so-called 85–15 requirement and the 2-year rule, which are described in the decision.

Mr. President, so that Members may have an opportunity to review this Supreme Court decision in detail, the decision follows:

MAX CLELAND, ADMINISTRATOR OF THE VETERANS ADMINISTRATION, ET AL. v. NATIONAL COLLEGE OF BUSINESS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA

[No. 77–716. Decided March 20, 1978]

PER CURIAM.

The question presented is whether the Due Process Clause of the Fifth Amendment prohibits Congress from restricting the educational courses for which veterans' benefits are available under the GI Bill [1] without including identical course limitations in other federal educational assistance programs.

A veteran seeking educational assistance benefits must file an application with the Administrator of the Veterans Administration. Before approving the application, the Administrator must determine whether the veteran's proposed educational program satisfies various requirements, including the so-called 85–15 requirement and the two-year rule.

The 85–15 requirement requires the Administrator to disapprove an application if the veteran enrolls in a course in which more than 85 percent of the students "are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution, by the Veterans Administration . . . and/or by grants from any Federal agency." [2] The Administrator, however, may waive the requirement if he determines that it would be in the interest of both the veteran and the Federal Government.

The two-year rule requires the Administrator to disapprove the enrollment of an eligible veteran in a course that has been offered by a covered educational institution for less than two years. The rule applies to courses offered at branches and extensions of proprietary educational institutions located beyond the normal commuting distance of the institution.[3]

Appellee National College of Business is a proprietary educational institution which has extension programs in several States. Most of its courses have a veteran enrollment of 85 percent or more. Appellee is therefore affected by both the 85–15 requirement and the two-year rule.

Appellee brought this action in the

[1] The various provisions dealing with veterans' benefits are contained in Title 38 of the United States Code. 38 U.S.C. § 1651 *et seq.* relate specifically to the veterans' educational assistance program. While the term GI Bill is often used to describe veterans' benefits legislation generally, for purposes of this opinion it refers to legislation dealing specifically with veterans' educational assistance benefits.

[2] 38 U. S. C. § 1673(d), as amended by § 205 of Pub. L. 94–502. While this appeal was pending, the 85–15 requirement was amended in several respects. Sec. § 305(a) of the GI Bill Improvement Act of 1977, Pub. L. 95–202. However, the amendments have not made the requirement inapplicable to appellee's students.

[3] Sec. 38 U. S. C. § 1789, as amended by § 509 of Pub. L. 502, 90 Stat. 24051. The rule was recently amended by § 305(a) of the GI Bill Improvement Act of 1977, Pub. L. 95–202. The amendment authorizes the Administrator to waive the two-year rule if he determines that it would be in the interest of the veteran and the Federal Government. The Administrator, however, does not suggest that the rule will be waived with respect to appellee's students.

United States District Court for the District of South Dakota, challenging the constitutionality of the restrictions.[4] Appellee contended that the restrictions arbitrarily denied otherwise eligible veterans of educational benefits and denied veterans equal protection because they were not made applicable to persons whose educations were being subsidized under other federal educational assistance programs.[5] The District Court held the 85–15 requirement and the two-year rule unconstitutional and permanently enjoined their enforcement. We reverse.[6]

I

The course restrictions challenged by appellee evolved in response to problems experienced in the administration of earlier versions of the veterans' eduactional assistance program. When extension of the World War II GI Bill to veterans of the Korean War was under consideration by Congress in 1952, the House Select Committee to investigate Educational Training and Loan Guarantee Programs under the GI Bill studied the problems that had arisen under the earlier program. The Committee's work led to passage of the first version of the 85–15 requirement, which applied only to nonaccredited courses not leading to a college degree that were offered by proprietary institutions. Pub. L. 82–550, 66 Stat. 667.

"Congress was concerned about schools which developed courses specifically designed for those veterans with available Federal moneys to purchase such courses . . . . The ready availability of these funds obviously served as a strong incentive to some schools to enroll eligible veterans. The requirement of a minimum enrollment of students not wholly or partially subsidized by the Veterans' Administration was a way of protecting veterans by allowing the free market mechanism to operate.

"The price of the course was also required to respond to the general demands of the open market as well as to those with available Federal moneys to spend. A minimal number of nonveterans were required to find the course worthwhile and valuable or the payment of Federal funds to veterans who enrolled would not be authorized." S. Rep. No. 94–1243, 94th Cong., 2d Sess., 88 (1976).

These same considerations prompted extension of the requirement in 1974 to courses not leading to a standard college degree offered by *accredited* institutions. § 203 (3) of Pub. L. 93–508, 88 Stat. 1582. See also S. Rep. No. 94–1243, *supra*, at 88.

In 1976 the 85–15 requirement was further extended to courses leading to a standard college degree. The Veterans Administration had found increased recruiting by institutions within this category "directed exclusively at veterans." In recommending approval of the extension, the Senate Veterans' Affairs Committee agreed with the Veterans' Administration that "'if an institution of higher learning cannot attract sufficient nonveteran and nonsubsidized students to its programs, it presents a great potential for abuse of our GI educational programs.'" S. Rep. No. 94–1243, *supra*, at 89.

The Committee further noted that, in view of the magnitude of the expenditures under the GI Bill, it was essential "to limit those situations in which substantial abuse could occur." *Ibid.* Finally, the Committee emphasized that "the requirement that no more than 85 percent of the student body be in receipt of VA benefits is not onerous particularly given the fact that under today's GI Bill . . . veterans do not comprise a major portion of those attending institutions of higher learning . . ." *Ibid.*[7]

The two-year rule is also a product of Congress' judgment regarding potential abuses of the veterans' educational assistance program based upon experience with administration of earlier versions of the GI Bill. Thus, following World War II schools and courses developed "which were almost exclusively aimed at veterans eligible for GI bill payments." S. Rep. No. 94–1243, *supra*, at 128. In response, the first version of the rule was enacted. It barred the payment of benefits to veterans attending institutions in operation less than one year. Pub. L. 81–266, 63 Stat. 653. As with the 85–15 requirement, the rule "was a device intended by Congress to allow the free market mechanism to operate and weed out those institutions who could survive only by the heavy influx of Federal payments." S. Rep. No. 94–1243, *supra*, at 128.

Following the Korean War, Congress amended the rule to cover courses that had not been in operation for at least two years. Section 227 of the Korean Conflict GI Bill, Pub. L. 82–550, 66 Stat. 667. In its report accompanying the amendment, the House Veterans' Affairs Committee characterized the rule as "a real safeguard to assure sound training for veterans at reasonable cost by seasoned institutions" and observed that had the rule been in effect during the administration of the World War II GI Bill "considerable savings would have resulted and much better training would have resulted in many areas." H.R. Rep. No. 1943, 82d Cong., 2d Sess., 30 (1952).

In 1976, Congress again amended the two-year rule, making it applicable to, among other institutions, branches of private institutions such as appellee that are located beyond the normal commuting distance from the main institution. The considerations underlying the extended coverage are fully set forth in the report of the Senate Veterans' Affairs Committee accompanying the legislation. S. Rep. No. 94–1243, *supra*. There had been a "spectacular" rise in both the number of institutions establishing branch campuses and in the veteran enrollment at those extensions. These institutions were entering into "extensive recruiting contracts directed almost exclusively at veterans." *Id.*, at 129. In a report dealing with the problems generated by these developments, the Veterans Administration had stated:

"[A] number of instances have been brought to our attention which represent abuse of our educational programs. Some of these cases involved contracting between nonprofit schools and profit schools or organizations whereby courses designed by the latter are offered by the nonprofit, accredited school on a semester or quarter-hour basis. In others, there are arrangements between nonprofit, accredited schools and outside profit firms whereby the latter, for a percentage of the tuition payment, perform recruiting services primarily for the establishing of these branch locations for the school. These recruiting efforts are aimed almost exclusively at veterans." *Ibid.*[8]

In recommending adoption of the amendment, the Committee concluded that the situation presented "great potential for abuse and in several instances that potential appear[ed] to have been realized." *Id.*, at 130.

II

As the legislative history demonstrates, the 85–15 requirement and the two-year rule are valid exercises of Congress' power. Experience with administration of the veterans' educational assistance program since World War II revealed a need for legislation that would minimize the risk that veterans' benefits would be wasted on educational programs of little value. It was not irrational for Congress to conclude that restricting benefits to established courses that have attracted a substantial number of students whose educations are not being subsidized would be useful in accomplishing this objective and "prevent charlatans from grabbing the veteran's education money." Both restrictions are based upon the rational assumption that if "the free market mechanism [were allowed] to operate," it would "weed out those institutions who could survive only by the heavy influx of Federal payments." S. Rep. No. 94–1243, *supra*, at 128.

The otherwise reasonable restrictions are not made irrational by virtue of their absence from other federal educational assistance programs. They were imposed in direct response to problems experienced in the administration of this Country's GI bills. There is no indication that identical abuses have been encountered in other federal grant programs. In any event, the Constitution does not require Congress to detect and correct abuses in the administration of all related programs before acting to combat those experienced in one. For, "[e]vils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others. The prohibition of the Equal Protection

[4] Other district courts have upheld the challenged restrictions. See (e.g., *Fielder* v. *Cleland*. 433 F. Supp. 115 (ED Mich. 1977); *Rolle* v. *Cleland*, 435 F. Supp. 260 (R.I. 1977).

[5] Joining appellee as plaintiffs in the District Court were four veterans who were students or former students at the National College of Business. The court held they lacked standing because they had not demonstrated how they would be affected by the restrictions. The court, however, held that appellee, who would suffer serious economic harm from application of the restrictions to its students, had standing under the *jus tertii* doctrine to assert the constitutional claims of its students. Neither of the court's standing rulings are challenged in this Court.

[6] Appellee advanced several other theories of unconstitutionality in the District Court and reasserts two of them in this Court: (1) the restrictions violate substantive due process because they interfere with freedom of educational choice, and (2) they violate procedural due process because the affected veterans are not afforded a hearing on the question whether the requirements should be applied or waived. The District Court characterized these contentions as less meritorious than the equal protection claim. We agree. Neither raises a substantial constitutional question.

The purpose of the requirement is not disputed:

[7] The 1976 amendments also changed the computation base of the 85–15 requirement, for the first time including students subsidized under other federal assistance programs within the 85 percent calculation. This change, however, was recently modified by Congress to exclude from the 85 percent quota students receiving federal assistance from sources other than the Veterans' Administration, until such time as the Administrator has completed a study regarding the need for and feasibility of including them within the 85 percent computation. Section 305(a) of the GI Bill Improvement Act of 1977, Pub. L. 95–202. This change has no bearing on this case because appellee has a veteran enrollment of more than 85 percent.

[8] The Administrator amplified on these problems in testimony before Congress. See S. Rep. No. 94–1243, *supra*, at 129–130.

Clause [generally] goes no further . . . ." *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.

When tested by their rationality, therefore, the 85–15 requirement and the two-year rule are plainly proper exercises of Congress' authority. While agreeing that the restrictions were rationally related to legitimate legislative objectives, the District Court concluded that veterans' educational benefits approach "fundamental and personal rights" and therefore a more "elevated standard of review" was appropriate. Subjecting the 85–15 and two-year requirements to this heightened scrutiny, the court observed that they were not precisely tailored to prevent federal expenditures on courses of little value. Since some quality courses would be affected by the restrictions, the court held them unconstitutional.

The District Court's error was not its recognition of the importance of veterans' benefits but its failure to give appropriate deference to Congress' judgment as to how best to combat abuses that had arisen in the administration of those benefits. Legislative precision has never been constitutionally required in cases of this kind.[9]

"The basic principle that must govern an assessment of any constitutional challenge to a law providing for governmental payments of monetary benefits is well established. Governmental decisions to spend money to improve the general public welfare in one way and not another are 'not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment.' . . . In enacting legislation of this kind a government does not deny equal protection 'merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis" it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." ' *Dandridge* v. *Williams*, 397 U.S. 471, 485. *Mathews* v. *DeCastro*, 429 U.S. 181, 185.

Since it was rational for Congress to conclude that established courses with a substantial enrollment of nonsubsidized students were more likely to be quality courses, the 85–15 and two-year requirements satisfy "the constitutional test normally applied in cases like this." *Califano* v. *Jobst*, — U.S. —, —.

The judgment is reversed.

[9] Appellee contends that the challenged restrictions will completely deprive some veterans—those who live in areas where there are no programs which satisfy the two requirements—of veterans' educational assistance. While the restrictions on their face simply channel veterans toward courses which Congress has determined are more likely to be worthwhile, they may in fact operate to make benefits functionally unavailable to some veterans not living in close proximity to schools offering qualified programs and unwilling or unable to move to take advantage of the federal assistance. Nevertheless, the fact that Congress' judgment may deprive some veterans of the opportunity to take full advantage of the benefits made available to veterans by Congress is not a sufficient basis for greater judicial oversight of that judgment. As the Court noted in *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1, 35, "the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing . . . social and economic legislation."

MAX CLELAND, ADMINISTRATOR OF THE VETERANS ADMINISTRATION, ET AL *v.* NATIONAL COLLEGE OF BUSINESS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA

[No. 77–716. Decided March 20, 1978]

MR. JUSTICE MARSHALL.

I believe that substantial constitutional questions are presented by appellee's due process claims (See *ante*, n. 6), as well as by its equal protection claim. I would therefore note probable jurisdiction and set this case for oral argument.●

THE ROLE OF NAVAL FORCES IN SUPPORT OF THE NATIONAL STRATEGY

● Mr. TOWER. Mr. President, the Secretary of the Navy recently convened the annual current strategy forum at the Naval War College in Newport, R.I. This is a gathering of individuals from the Armed Forces, Government, industry, the media, academic institutions, and other parts of the private sector for the purpose of discussing issues relating to the maritime interests of the United States and the role of our naval forces in support of the national strategy.

Several distinguished speakers were given the opportunity to address the current strategy forum. Though I was unable to attend, the remarks offered by the two top civilian leaders of our Navy have been commended to me for the concise yet eloquent manner in which they address very timely issues concerning our future plans for the U.S. Navy.

I recently addressed the Senate on April 6, 1978, concerning my observations as to some of the current discussions affecting our future naval planning. In this same vein, I would like to commend to the attention of my colleagues the remarks delivered at the current strategy forum last month by the Honorable W. Graham Claytor, Jr., Secretary of the Navy, and the Honorable R. James Woolsey, Under Secretary of the Navy. I request that the text of their comments be printed in the RECORD.

The statements follow:

REMARKS BY HON. W. GRAHAM CLAYTOR, JR.

It is a great privilege and pleasure for me to be here at the Current Strategy Forum again this year. In my year as Secretary of the Navy, I have developed a very solid appreciation of the really important work that goes on all year in Newport. It is here that the Navy trains its leaders of the future. This Forum is a key part of their learning process. Just as important, the Forum seeks to inform visiting civilian leaders about major policy issues facing the naval service. We seek your opinions in our three days of discussions because we know that an informed, active, participating citizenry is this country's greatest reservoir of military strength.

Since I took office after a thirty year absence from the Navy, I've had a chance to visit our sailors, aviators, submariners and marines at various ships and installations around the world. It has been an inspiring experience. The men and women who are the heart of the naval service are a dedicated, professional collection of Americans—people with whom I am proud to serve. I have found that a sense of doing an important job and doing it well exists all across the fleet—from the flight deck of the NIMITZ in the Mediterranean to Marine Corps desert maneuvers at 29 Palms, California.

I can report at the outset of this Forum that our Navy-Marine Corps team is in good shape. You can be proud of it, as I am.

Yet, being a part of this team today is an extremely challenging assignment. That the Current Strategy Forum has chosen the theme "The Navy and National Strategy" is consistent with our concerns for the important problems facing not only the Navy but the United States as a whole. Our theme touches the two guiding precepts of the War College—advancing the professionalism of the naval officer community, and assessing the broader issues of naval strategy as it relates to national policy.

Much of your individual and collective work over the next several days will be centered around two recent studies. I hope these studies will have a major, long-term impact on American military posture.

The first of these, the Sea-Based Air Platform Study, was requested by Congress and was forwarded to Capitol Hill last month.

Its objective was to provide a thorough evaluation of the costs and combat effectiveness of aircraft capable ships at sea, both in the near and the long terms. A highly technical analysis, it looks at a number of platforms: from the nuclear powered aircraft carriers—designated CVN—to the prospective smaller Vertical and Short Take-Off and Landing (V/STOL support ship—VSS—to the existing surface ships that might be modified to take V/STOL aircraft.

The key finding of the Sea-Based Air Platform Assessment is that sea based tactical aviation will continue to play a major role in virtually all military scenarios. The study found that no single platform—from the recently commissioned CVN EISENHOWER, down to an air capable modification of the SPRUANCE class destroyer—is likely to be the best system in all cases. It did verify the potential advantages of increased numbers of less costly and less individually capable platforms. Furthermore, the study determined that while development of V/STOL aircraft will be costly and time consuming, they have potential advantages at sea due to their increased flight deck efficiency and dispersal capability.

My judgment is that the Sea-Based Air Platform Study provides a sound basis for the selection of additional sea-based air platforms. Simply put, we need to start building another carrier of some kind in the near future.

What kind to build is a matter of judgment. My personal view has been expressed many times to Congress. It is that we need more and better dispersed platforms for sea-based aviation in the future. We already have operating or building four nuclear-powered carriers. With the budget we see for Navy shipbuilding in the future, I think the next carrier authorized should be a medium sized carrier, conventionally powered, that is still large enough to operate all the aircraft in our current inventory. The Sea-Based Air Study indicates that we could build 3 of these for about the same cost as two *Nimitz* class CVNs; the saving of a billion dollars on one ship in our very tight shipbuilding budget seems compelling as a practical matter.

Admiral Holloway, our Chief of Naval Operations, has testified before Congress that he would prefer to have one more nuclear-powered carrier. To me, the difference is not a critical one; the key point to remember is that we need sea-based aviation in the future if we are to maintain maritime supremacy. As Secretary of the Navy, I will build with enthusiasm any kind of aircraft carrier authorized and directed to be built by law. I

hope your discussions at this Forum will address the question of the future of sea-based aviation.

In step with the technical evaluation made by the Sea-Based Air Study, a second more wide ranging work was carried out: The Naval Force Planning Study. This Study, which is the most important single project I have been associated with as Secretary of the Navy, had significant inputs from the Naval War College, and was directed by Professor Bing West of the Naval War College faculty. Therefore, it is very appropriate that I am able to discuss some aspects of the genesis, objectives, methodology and results of this Study—called SEAPLAN 2000—for the first time in public here today.

Early in the current administration, President Carter chartered a major study to assess the posture of military forces in this country.

While this was a "thinking effort" on the part of the various military staffs and not intended to be a policy making study, it became apparent as the effort progressed that there were serious differences of opinion about naval strategy. The most crucial differences arose over the perceived utility and requirement for sea-based air forces. To some of us, it appeared clear that any significant decrease in the strength of our aircraft carrier battle groups and other surface forces would seriously reduce the flexibility of America's leaders. It has been this country's experience that naval forces afloat provide the most immediate and direct response possible in the majority of situations likely to occur. Furthermore, naval forces have the ability to remain on station for extended periods of time, ready to take instant action, with virtually no requirement for supporting forces. This inherent capability is simply not available through other measures.

Yet studies have a way of setting things in concrete, especially in large organizations. Staffs grow defensive about programs, and tend to resist change after the problems have been thought through as of the moment. Thus it was felt that the very real possibility that our Navy might be called upon to maintain control of critical sea lanes over an extended time period needed further analysis. I personally was concerned that we not create the naval equivalent of the Maginot Line—in effect sizing our naval strength against a single scenario without regard for the uncertainty of the world in the years ahead.

Many of us in the Navy Department considered that a major naval force structure assessment was imperative. Last August Secretary of Defense Brown authorized the Navy Department to take the lead in a joint Navy-Marine Corps-Department of Defense Study.

This Naval Force Planning Study was completed and forwarded to the Secretary of Defense last Tuesday, March 20. The Study had two objectives. The first was to examine what the most probable range of tasks for naval forces is likely to be for the balance of this century. The second was to determine how well we would be able to perform these tasks with naval forces of different sizes.

The Study aimed at a top-down approach. To produce a credible report it was agreed that the methodology would center around determining the linkages between national interests and national policies, on the one hand, and U.S. naval force structures on the other. From there, it could be determined which combination of naval forces, force deployments and strategies best supports U.S. policy. The Study concludes with an analysis of options that the Secretary of Defense, the National Security Council, and the President can consider in making crucial decisions about the future of the Navy.

The study involved extensive and thorough analytical work, the results of which appear in numerous graphs, tables and summaries. To the uninitiated, these can appear both more definite and more conclusive than is really the case. One of the most frustrating things I have encountered in this job has been a tendency on the part of some staff people to use systems analysis as a cover for what is really subjective judgment. It is easy to argue against a personal opinion, but if it can be hidden behind hard numbers, an unsophisticated opponent can be overwhelmed. I am determined not to let what is essentially a helpful tool become an overriding force in driving decisions.

Professor West has included this caveat in our Study, and it is so well stated—and so important—that I would like to quote it to you. In discussing the Study's results and conclusions, he said:

". . . it is important to understand what they [that is, the results and conclusions of the Study] are and what they are not. Numbers have the unfortunate property of specificity, which in turn inflates the credibility of guesses. Like other studies, this report is replete with tables summarizing the results of hypothetical warfighting engagements. Based on these naval engagements, conclusions about naval programs are reached and some options developed. The models used are basically deterministic conditional probability sequences, using expected value inputs. While they have been checked by respected authorities, in the end these analyses are judgments. We have not fought the wars we are talking about."

Now, building a framework for programs extending into the twenty-first century is not a trivial task. Before becoming Secretary of the Navy, I gave very little thought to the year 2000 and beyond. But we must think about that time frame now, or our citizens of that era will judge us harshly, and with good reason. We cannot be the "now" generation or the "me" generation. We must, as Americans did in the past, make some tough decisions and some sacrifices to benefit those who follow us.

Seaplan 2000 tells me that planning naval forces is far more like getting ready for the Lewis and Clark expedition than it is like planning a Cook's Tour. In recent years it has become fashionable to try to design naval forces for one or two set-piece scenarios or specific missions, such as World War II's battle of the Atlantic revisited, or Vietnam, and to assume that if these scenarios can be met, everything else of interest can automatically be taken care of. This is Cook's Tour: tomorrow is Tuesday, so I'll be in Belgium. But the ships of the Navy we authorize today will deliver in the early or mid 1980's and spend nearly—or in some cases, more than—half their service life in the twenty-first century. We must plan a balanced force that is capable of a full range of possible naval missions and must keep one important thing in mind: we intend to follow a very old U.S. Navy tradition, and that is to go in harm's way. We must plan to have the greatest possible flexibility, as Lewis and Clark did—to take along whatever we might need for a whole range of unforeseen contingencies. It would be a mistake to do otherwise because we just don't understand the wars we haven't fought yet, especially the ones in the twenty-first century.

Rather than comparing force structures and capabilities with the conventional set of scenarios, the study group accordingly took a different tack and examined national policies with regard to geographic areas—for example, the Atlantic/Mediterranean/European area, and the Pacific/Indian Ocean Basin. The logic used in the examination was straightforward for any given region:

Examine our national security interests in the region.

Qualitatively set forth the contributions that naval forces make.

Establishing a measure of these contributions and the trends in naval participation.

Assign a dollar cost and a likelihood of success in meeting the policy with a certain force structure.

Using this approach, we felt that we could determine why one does or does not want certain kinds of forces. A reasonable force mix—and by this I mean an affordable and effective naval force structure—should be maintained under the only guidelines that really matter: national policy, the threat to be faced, and the contribution that the Navy can make to national policy in the face of that threat.

Addressing the broad spectrum of the overall maritime defense structure as it does, SEAPLAN 2000 provides a clear and compelling rationale for naval forces in terms of their contribution to our nation's defense. I derived a number of other valuable insights from the Study. Specifically, these included:

The ability of our naval forces to carry out their mission now and in the next 30 years is far more constrained than it has been for the past 30 years. The Navy faces a capable opponent at sea in the Soviet Navy. The Navy and Marine Corps will have to face these forces, as well as those of third countries, when they are called upon—not the forces of the past.

Also, it is evident that surface ships will become more, not less, survivable through the 1980's, largely through the introduction of the AEGIS anti-missile defense system and other new anti-ship missile defense and anti-submarine warfare systems that are the fruits of earlier developmental investments. Yet the Study also indicates that we must pursue actions now to counter the impressive potential air threat that will likely beset us in the 1990's.

In addition, the Study illustrates well the importance of having naval forces that are flexible and in balance for a wide range of demands. The value of maintaining an offensive option against the Soviets is evident, for it retains for the nation at least one means short of a nuclear exchange of carrying the war to them. An effective offensive threat will also help protect U.S. and allied sea lanes against an offensive directed at them, or against our friends and even our neighbors.

Finally, and of no less importance, the Study shows that naval forces permit the President to respond to crises with flexibility to the degree appropriate to our aims and policies. In coping with crisis situations around the world—which are deemed more likely than major war with the Soviets—the graduated presence or application of carrier and amphibious task forces is the best reassurance for our friends, and the best deterrence for would-be enemies. Weakness on our part may well invite aggression in the future, as it has in the case of other nations throughout history.

As the Sea-Based Air Platform Assessment did with respect to carriers, SEAPLAN 2000 provides a solid rationale which should be helpful in determining and justifying future shipbuilding and aircraft procurement plans. Coupled with the initiatives that have been underway to solve our claims problems, I am confident that we can both support our requests and manage them effectively when authorized. Indeed we must, because I believe we desperately need to maintain maritime superiority if this nation is to have the defense that it requires and deserves.

In conclusion, I think we are at a time of critical decisions about the role of naval forces in our future defense posture. I have tried to set the stage for your deliberations here by discussing the new studies that we believe give us assistance in making long range decisions. I welcome and encourage your thoughtful contributions to this national dialogue in the course of this Forum.

ADDRESS BY HON. R. JAMES WOOLSEY

Forty-three years ago the great economist John Maynard Keynes closed his General Theory with the following words:

". . . the ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back. I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas. Not, indeed, immediately, but after a certain interval; for in the field of economic and political philosophy there are not many who are influenced by new theories after they are twenty-five or thirty years of age, so that the ideas which civil servants and politicians and even agitators apply to current events are not likely to be the newest. But, soon or late, it is ideas, not vested interests, which are dangerous for good or evil."

Today I want you to consider with me, the implications that Keynes' principle—let's call it the principle of intellectual stagnation in the public service—has for naval forces, or at least for one conventional wisdom about naval forces. I say "one conventional wisdom" advisedly, because, if there is one thing that I've come to learn about naval forces in the last year, it's that the number of offices, institutions, and influential individuals in Washington with different, but firmly held, views about the proper future of the Navy is beginning to approach the number of ships in the fleet.

But the particular conventional wisdom about the Navy that I want to discuss, with Keynes' principle in mind, is a rather widely-held one: it is bottomed on two views. The first is an assumption about the future of technology It is that, due to projected improvements in anti-ship missiles and the difficulty of defending against them, surface ships over the next 20–30 years will become increasingly unable to survive at sea. The second basis of this particular conventional wisdom is a bit harder to describe. It is a set of views that I call quantitative policy analysis. It is the notion that military forces should be designed almost exclusively to yield favorable results from computer calculations of the outcomes of very specific military engagements, using complex models with many assumptions. The particular conventional wisdom produced by these views, as well as I can state it, runs something like this:

"Naval forces, particularly surface ships, are becoming increasingly obsolete. Ever since the Israeli destroyer, Eilat, was sunk in 1967 by a Soviet-made cruise missile, this trend has been clear and it becomes more so each year. Cruise missiles make surface ships increasingly vulnerable to attack by all sorts of platforms—submarines, other surface ships, and aircraft.

"The U.S. Navy has compounded this problem because it has become used to placing all its offensive power entirely in a single platform, the large-deck aircraft carrier. These ships are increasingly becoming so expensive that it is going to be difficult for the Navy to maintain very many of them, and they create the difficulty of having all of one's eggs in very few baskets.

"Vulnerability and few numbers mean that carriers and other surface ships could not prudently be risked in a major war in the future. This means that surface ships should primarily be used for specific purposes: showing the flag in peacetime and projecting power ashore in contingencies such as Korea or Vietnam, where they can operate from an ocean sanctuary against third world countries that lack the sophisticated naval forces of the Soviet Navy. But, for these peacetime and minor contingency purposes, the expense of operating carriers is unsupportably high. We could probably afford some reduction in large carriers and substitute, e.g., amphibious ships. Since many of them look large and impressive and roughly resemble carriers, they could be used for port visits and peacetime deployments.

"The Navy's main, and only vital, mission in a U.S.-Soviet War is to protect the sea lines of communication from the East Coast of the United States to Western Europe. A war in Europe would likely be over quite quickly since it would either turn nuclear or one or the other side would suffer significant defeat within the first thirty-odd days. Sealift might thus not be a particularly significant factor, but to hedge against the war lasting longer, some Navy for sea lane protection is necessary. This could primarily be done by land-based anti-submarine warfare aircraft such as the P–3, small surface ships such as frigates, and a few nuclear attack submarines. In a big war, any other mission for naval forces—such as conducting operations within range of Soviet land-based aircraft—is too dangerous to plan for, or at least too expensive to buy forces for."

Now, although I would not suggest to you that this particular conventional wisdom is wholly in error, nevertheless I believe it has some serious flaws for the reasons Keynes described. Let me turn first to its key technical judgment: that surface ships will become ever more vulnerable to anti-ship cruise missiles over the next two to three decades.

It is instructive to note that the people who lost the Eilat in 1967 have learned something. I have recently been on an Israeli patrol boat and reviewed their 100 percent successful tactics for avoiding hits by the large number of anti-ship missiles that were fired against them in the 1973 war. Suffice to say this is an area in which their, and our similar, advantages are far from irrelevant—e.g., skill with electronic countermeasures, innovative tactics, intelligent and well-trained crews, etc.

Moreover, even if a surface ship, particularly a large one, is hit by a conventionally-armed anti-ship missile, the probability of the ship being put out of action, much less sunk, is certainly not unity. Defending ships that can move and, in a conventional war, that can tolerate a small number of hits, is inherently an easier problem than perfectly defending a fixed land-based site in a strategic nuclear exchange—where the penalty for leakage is rather greater. It is true that, for a number of years in the 50's and 60's, we constructed ships in part under the assumption that any large-scale war would be nuclear and that therefore hardening or passive protection was not, ordinarily, worth the money. However, a new Sea-Based Air Platforms Assessment, done by the Navy at the request of Congress, indicates that substantial improvement in the survivability of carriers—large or small—is possible by constructing new ships with more armor and passive protection than has been used in recent years. Further, vertical and short takeoff and landing (V/STOL) aircraft significantly improve the capability of any carrier, of whatever size, to conduct its mission after suffering damage, because the aircraft can continue to operate even if the ship has been slowed (for that matter, if it is dead in the water) and even if the deck area, where catapults or arresting gear would normally be located, has been damaged.

More importantly, however, there are systems now coming into our naval forces which have been in development over the last decade and which will make very significant contributions toward reducing the number of missiles that might be able to penetrate—electronic warfare suits, the PHALANX Close-In-Weapon-System, and particularly the AEGIS area air defense system.

Further, we have either in the fleet, entering it soon, or in development, systems capable of destroying the platforms launching the incoming missiles so that we are not beaten by gradual attrition. The F–14 fighter and E–2C early warning aircraft give us a good capability today against aircraft launching anti-ship missiles, although that very difficult job is one on which we need to continue to work very hard in the future. Improvements in anti-submarine warfare forces—towed arrays, and others—make the job of engaging the missile-launching submarine a more reasonable enterprise than was the case a few years ago. And hostile surface ships can now be engaged by our carrier-based aircraft and soon by the HARPOON missile just coming into the fleet.

What about the problem of all our offensive eggs being locked into a few large carrier baskets? I believe there are two ways open to us for packing some of our offensive punch into a much larger number of platforms. They are not mutually exclusive. The first, of comparatively low cost, is to equip as large a number as possible of our combatant platforms with cruise missiles. I mentioned the HARPOON, for which the program is already under way to equip all surface combatants as well as a number of aircraft and submarines. Over the longer haul, our cruisers and destroyers could be equipped with the considerably longer range TOMAHAWK cruise missile as could our attack submarines—both for a conventional anti-surface-ship mission and for those conventional land-attack missions where it is possible to have a significant military impact by delivering only a relatively small number of very accurate conventional warhead weapons. This depends upon significant improvements in guidance for cruise missiles but it is by no means a far-fetched proposition.

The second way to spread out our offensive punch is to disperse our aviation eggs around in more baskets by developing V/STOL aircraft for deployment on small carriers and other air capable surface combatants. This may well prove expensive, but it is a road we should at least explore vigorously in research and development for a few years. We are going to have, even if we build no more of them, at least 12 large deck carriers in our naval forces virtually into the 21st century. The only investment required to ensure this is to conduct a set of very thorough overhauls, called the Service Life Extension Program, on the carriers, beginning in 1981. Because of this, any transition to V/STOL would not, and need not, be a sudden proposition. It is more akin to an evolving reliance on solar power in place of fossil fuels than it is akin to e.g., replacing one rifle with another.

"Well, all right," some of you may be saying. "Suppose surface ships are not becoming as vulnerable as the conventional wisdom might indicate, and suppose there are ways to spread our firepower on to more platforms than 12 large-deck carriers. You still haven't told me what you want to use the Navy for. Are you interested in power projection? Are you interested in sea control? You can't afford to do everything. Shouldn't we be concentrating, for example, on protecting the sea lines of communication in the event of a NATO war, using the most cost-effective systems possible? Tell me the scenario you want to operate in and I will help you design and size your force. I will help you discover 'how much is enough.' But the Navy has to get its act together and decide what war it wants to fight."

These sorts of questions, claims, and advice are the bread and butter of what I described earlier as "quantitative policy analysis": a method of decision-making that relies heavily, in the military field, on designing forces to cope with very specific scenarios, utilizing complex computer models dependent on numerous detailed assumptions. Since I'm going to spend the rest of my time this morning talking, in one way or another, about the limitations of such analysis, I want to try to be clear what I mean by it. Now some of you may be sitting there and saying "come on, if you mean systems analysis, just say so."

Well, I do and I don't. "Systems Analysis," the name of both the original office established in the Defense Department by Secretary McNamara and the decision-making methods it spawned throughout government, has become identified in many people's minds with a number of issues that I have no intention of addressing today. So, I'm not referring here to that office itself. Nor am I addressing the role of particular individuals who worked or work there. I used to work there myself and I have a high regard for many others who have, for those who have led it, and for those who lead it today. What I am describing is an admittedly rather single-minded attachment to a specific tool of decision-making: a single-mindedness I would attribute to no one all of the time, but to lots of us some of the time, and to some of us most of the time.

Now, one of the oldest and most honorable strains in the analytic discipline is the principle that one must always tell the client or decision-maker who asks the questions that set up the analysis, whether or not his questions are the right ones.

So it's in the spirit of suggesting that, essentially, "how much is enough" and its cousins may not be the right, or at least not the most important, questions that I want to proceed.

The first and most important reason such questions may well be the wrong, or at least not the major, ones that need to be asked has already been indicated by the Secretary of the Navy. Designing a Navy around specific scenarios requires one to look too far into the future to be realistic. Ships are platforms—more like capital investments than like specific weapons. Over 70% of the ships that will be in the fleet in the year 1990 already exist or have already been authorized. A carrier that we would authorize in the next year or two can well spend over half its service life in the 21st century. For an example, let's look at the year in which such a carrier (that would enter the fleet in the mid-80's) would just be entering middle age—that is, it would be coming out of its major service life extension overhaul and would be looking forward to another 15 years in the fleet. That would occur around the year 2010. Now, we have no better idea today what specific wars or crises we are going to have to deal with between now and 2010—32 years from now—than we had in 1946—32 years ago—about the crises of today. Who of you here foresaw in 1946, if you indeed had been born by then, that in 1978 our thinking about when and how we might need navy forces could be significantly influenced by, e.g., a commitment to Israel, the need to protect sea lines of communication to Persian Gulf oil, a split between a Communist China and the USSR, and U.S.-Soviet parity in strategic nuclear weapons? Do I need to point out that in 1946 the State of Israel did not exist, Persian Gulf oil was just being discovered, the PRC was just being born, and neither the U.S. nor the USSR had heard of an ICBM or an SLBM? What makes anyone even remotely confident that the national security problems of the early 21st century are any clearer to us today than the forces that drive naval planning in 1978 were clear in 1946?

It is neither lack of effort nor a temporary and remediable lack of willpower that leads to the Navy not being able to tell now just what sort of war it wants to fight in 30 years. As Secretary Claytor has said, assuming you can plan on such a basis is designing Cook's Tour: next month I'll be in Belgium and it will be March so I'll need a raincoat. Designing a Navy is much more like forming up the Lewis and Clark Expedition: we have to be prepared for a wide range of problems, so we have to design for flexibility.

How we can best do this is itself a massive subject. But three points are relevant. First, since ships are capital investments and last such a long time in peacetime, and since the pace of technological change for weapons and sensors—such as radars and sonars—is so rapid, we must design ships to be able to accommodate change and modernization readily. Carriers are inherently capable of doing this. As the suits of aircraft are changed the ship can thereby accommodate major alterations in missions. The carriers indeed have done this many times since World War II. Another way to promote flexibility is to build even small surface combatants to take some aircraft. Our destroyers and frigates took on important new capabilities when we put anti-submarine warfare helicopters aboard them a few years ago. They will evolve further as more advanced helicopters replace these in the 1980's. This interest in the flexibility provided by multiplying the number and types of platforms that can use aviation at sea is another key reason for our support for the development of V/STOL aircraft. A third way to make it easier for ships to accommodate change is to build surface ships in such a way that their weapons suits—guns, radars, missiles, etc.—can be changed far more readily and cheaply than is now possible as new weapons and sensors become available, almost as if one were changing modules. We are working hard on this promising concept, but there is still much to do.

In addition to the need to design a Navy for flexibility over a long period of time, there is another major reason why I would suggest rejecting the precise quantitative and scenario-dependent method of designing a Navy. It is that naval forces are particularly vital for dealing with the dynamic problem of the transition, a transition we want to prevent, from peace to war. Any specific scenario, whether it is protecting the sea lines of communication to Europe in the event of a NATO war, projecting power in a certain type of crisis in the third world in the absence of Soviet intervention, or any other, has to be a snapshot in time. One doesn't want to ask only the question convenient for quantitative policy analysis to answer: "what might things look like at a specific time"? but the much harder question: "what are the problems of going to or being forced from one position to another, and how can I control that process to avoid risk?" The President and his advisers need to know what sort of forces can best help them manage the perennial danger of crises escalating into war, and to manage them in such a way that the other side will know that at each step of the road we are in control. Unfortunately for the analyst, it is in the complexity of evolving and dynamic situations, of peace threatening to evolve into war, that naval forces are most relevant. That makes them messy to analyze in one- or two-mission or one- or two- scenario formats. Naval forces are highly relevant to this delicate transition from peace to war because they can do three things: (1) they can help maintain stability in peacetime through forward deployments and perceptions of their potential power if used, (2) they can help contain or manage crises as they evolve, and (3) they can help deter general war by being clearly better able to fight it than their foreseeable adversaries. These tasks are, in a very real sense, a seamless web. Let me walk through them briefly.

Naval forces can help maintain stability in peacetime by forward deployment. We maintain today two carrier task groups, battle groups we call them, in the Mediterranean, two in the Western Pacific, and several Marine amphibious units deployed in both areas as well. Since 1945, the U.S. has used such sea power as a means of affecting the behavior of decision-makers in other nations in peacetime. These forward deployments are intended to demonstrate U.S. interest and resolve, to reassure our allies, to deter our enemies, and to ensure quick response. So one important question in designing a Navy is, how do force structure decisions have an effect on these forward deployments? For the issue is not whether a permanent reduction in our naval forces would affect our forward deployment and therefore our foreign policy, but rather in what ways.

Another part of the picture of assessing the overall contribution of naval forces to peacetime stability is the perception of the Soviet-U.S. naval balance. It is not inevitable that the U.S. concede to the Soviets parity in all military capabilities. They do not enjoy it now. The forward strategy linking the U.S. to other continents requires use of the seas, and makes any perception that the Soviets could deny the U.S. control of the seas particularly damaging. Such perception is not warranted by the projected trends in technology, if we have the will and the skill, and the money, to proceed to deploy what has been developed.

Another major task that national decision-makers must face in the spectrum between peace and war is the containment or management of local crises. In some crises a President may wish to commit U.S. troops immediately to preempt certain potential moves by an adversary, to evacuate Americans in jeopardy, or to ferry supplies rapidly to a friend or ally. Naval forces aren't the only possible means. The quick response of airlift provides the President with a valuable tool, for example. But airlift has limitations and in a number of cases, naval forces may be preferred for good reason. For example, naval forces can be deployed to a crisis area without being committed to battle and without committing allies. Such demonstrations manifest both U.S. concern and capabilities. In over 200 crises, large and small, since 1945 in which the U.S. was involved, U.S. Navy and Marine forces were deliber-

ately employed in 177 cases, while U.S. land-based air or ground forces alone were demonstrated in fewer than 90 cases.

Naval forces may be the most acceptable form of military presence in crisis situations. They can convey, if the policy maker chooses, calculated ambiguity and calibrated response. Their presence does not irrevocably commit the United States to a given course of action. They do, however, seriously complicate the calculations of opposing parties. U.S. fighting forces can be assembled for action without using bases in other nations. Indeed naval forces help make us comparatively indifferent to the vicissitudes of other nations' policies about base rights, whether for us or for hostile countries, and Naval forces thus help make us more able to tolerate shifts in political winds without feeling our vital interests are injured. If a crisis is resolved satisfactorily, naval forces can be withdrawn with limited fanfare. In sum, naval forces provide a policy maker with important flexibility and a tool for orchestrating events.

To be able to successfully support U.S. policy in a crisis, our naval forces require several things. They must have the striking power to affect events ashore.

They must have local superiority over potential adversaries. The benefit of naval superiority is that it signals to the Soviets and others that their adventurism occurs against the backdrop of U.S. forces that are capable of fighting and winning, and both sides must know this. In a crisis we want it to be the other commander on the scene, not our own, who is forced to tell his superiors that he must back down or risk escalation.

There must be sufficient forces to permit coverage of different crisis areas, so that responding to a crisis in one area does not involve a risk of being unable to deal quickly with a new outbreak somewhere else. This does not imply that we must be everywhere all the time. It does mean that reductions in our force levels will increasingly constrain our credibility.

Most of all, we must always bear in mind the possibility that a crisis could escalate to actual fighting, with some losses to U.S. forces. Our forces are becoming more, rather than less, capable of responding to a sudden attack. Nevertheless, prudent planning requires that we recognize the possibility of some initial losses. We need to consider, in light of this, what total forces we need to maintain our position.

Continuing along the spectrum from peace to war, another major task for national decision makers is the deterrence of a major war. We must recognize that the deterrence of conflict will depend upon a credible warfighting capability. Maintaining such a capability is complex and difficult for a whole series of reasons, but two are salient. First, our Allies are overseas—many of the most important ones close to the borders of the Soviet Union. If there is effective sea denial, by both sides, we lose. We have to be able to use the seas to maintain our alliances and our security. Second, it is no longer the case that the threat to our use of the seas occurs only in the near-coastal waters of the Soviet Union. The increasingly-capable blue-water Soviet Navy, and particularly the long-range Backfire bomber going into the Soviet Naval Aviation forces, makes all the world's waters of interest a potential theatre of conflict. The Backfire, for example, can range from Soviet bases to the environs of the Azores in the Atlantic and Pearl Harbor in the Pacific. Should deterrence fail, we must be able to fight and win.

One of our most immediate concerns in deterrence and warfighting must be the defense of our vital sea lanes. No matter what the scenario—minimum warning or long warning; short war or extended war—we must be able to move large amounts of material by sea. This is usually viewed strictly in the context of the North Atlantic. But we cannot forget that we must continue to support Hawaii and our Western Pacific allies by sea, as well as ensure a continuing flow of vital overseas resources—particularly petroleum products—to ourselves and our allies to sustain our economy and industry.

Naval forces contribute to deterrence and to the ability to fight a global war by a clear demonstration of an ability to support allies or strategic friends on the flanks of the Soviet Union. Sea lane defense, by itself, does not protect flanks. NATO is a collective alliance, relying upon the commitment of all its members to the common defense. If any of these members doubted America's commitment or capability to support them, it could generate serious pressures on alliance cohesion.

Then, in a general U.S.-Soviet war our Naval forces must be capable of flexible options worldwide. A major conflict will almost certainly be conducted on a global scale. We must be able to destroy Soviet forces wherever we find them and complicate Soviet planning, forcing them into a defensive posture. Whether or not a national leader chose to exercise the option, the capability to conduct offensive operations against an enemy fleet is crucial in order for these forces to be useful to the nation. A predecessor of Jim Stockdale's as President of this War College, Alfred Thayer Mahan, hammers this point home throughout his famous "The Influence of Sea Power on History." An offensive capability, Mahan pointed out, was the central difference over the years between the British and French fleets, and the key to British success.

These needs for managing dynamic situations—for maintaining stability in peacetime, for providing the tools to manage crises, for deterring war by being able to fight it—require a range of types of naval forces. Managing stability, crises, and deterrence means being able to conduct military operations, where needed, one, under, above, and along the shores of 70% of the earth's surface. This is simply too complex a task to be accomplished by one or two specific types of platforms or systems.

I want to suggest a final reason—in addition to the need for flexibility over time and for balanced forces to help manage a dynamic reality—why it is unwise to design a Navy to prevail only in certain specific scenarios. This is, if anything, the most fundamental reason of all. It is that quantitative scenario-dependent analysis, used as a tool for designing and sizing naval forces, risks leading us into a fundamental misunderstanding of the nature of war. It is often said that such analysis focuses attention where it should be focused—at marginal changes. Now, at one level, concentrating on the margin—that is, on the costs and benefits of the next decision, not some overall historical average—is just common sense. Ignoring sunk costs is the first principle of most successful businessmen and all successful poker players. But a fixation on marginal change can be stultifying if it so narrows the analyst's imagination that he never moves his gaze from the bow-wave to the horizon. A focus on changes at the margin and on quantitative questions can too often produce an attitude that innovation is suspect and that the only changes of any interest are to buy several fewer of these or slightly increase the number of those—a sort of instinct for the capillaries.

Military breakthroughs don't come that way. They come by approaching things from a new perspective, by devising a different way, for example, to exploit the effect of mass or shock, a way to use surprise or concealment to accomplish what was previously accomplished by ponderous force, or a way to disperse and then concentrate for battle that confounds the enemy's planning. Quantitative scenario-specific analysis often misses this fundamental truth about military matters. It does not take each element, for example, of naval warfare—anti-air warfare, anti-surface warfare, anti-submarine warfare, and so on—and ask how in each type of combat we might most readily make a potential enemy's past investments in weapons worthless. Such analysis doesn't ask, "how can I exploit my advantages?" "How can I destroy the will of an enemy commander?" As the Chinese strategist Sun Tzu wrote long ago—the least desirable way to achieve victory is to destroy an enemy's cities; the next least desirable is to kill his soldiers; better is to destroy his alliances; but best of all is to destroy his plans and never have to fight at all. Only intellectual audacity permits this most humane type of victory, and intellectual audacity is not normally found at the margin.

I suppose another way to say it is that the reason why we should not become locked in to designing or sizing a Navy for one or two specific scenarios is because this capacity for asking the right question, this capacity for intellectual audacity, is not a talent that is foreign to totalitarian or aggressive societies. One needs only to recall Heinz Guderian's development of tank warfare and the blitzkrieg in Germany in the late 1930's to realize that we simply must not be the only one of two superpowers on this planet which is only asking, "how much is enough?" We must ask these many, many other questions too, or we risk ugly surprises. I want to close with a description of one example of such a surprise that occurred some time ago.

In the late 18th century, during the reevaluation that defeat always forces on a country's military establishment, French armorers discovered methods of casting cannon that improved accuracy and made artillery light enough to be pulled by horses rather than oxen. The implications of this development were not immediately clear. There was some experimenting, but most commanders used horse-drawn artillery as they had oxen-drawn—to make ponderous sorties from fixed forts and magazines and to fight in the rigid 18th century manner. Viewed in this context, horse-drawn artillery was a marginal improvement of sorts—I rather doubt that it was cost-effective. The development was only fully exploited during and after the French Revolution, in particular by a young Corsican artilleryman. Doubtless his success depended heavily on his own tactical genius and on the social effects of the French Revolution, which permitted the levee en masse—making possible the 19th century version of a human sea attack. But accurate horse-drawn artillery opened radical and unforeseen new possibilities of organization, mass, maneuver, and surprise that enabled his armies to shatter 18th Century concepts of warfare and the armies that practiced them. New units called "divisions" were formed under aggressive young commanders, and each was given its own artillery. Forts and magazines were bypassed, and the Alps crossed, in rapid marches; firepower was massed quickly to destroy opposing armies before they could concentrate on the battlefield. In other men's hands, a lighter cannon barrel had

been just a lighter cannon barrel. In his, it was a major element in the conquest of Europe.

So the risks of becoming rigid in our thinking about military forces—of designing forces to fight the way they've always fought, of concentrating only on how much is enough at the margin—are great. Together, we have to try, continually, to prove Keynes wrong, to show that we are not perpetually the slaves of vulnerability calculations of 1967 or analytical tools of 1963, that we can earn something after we're 25 or 30. The risks of doing otherwise are clear—we will learn, but much more painfully. For example, it took the rest of the European continent twenty years to learn enough from that artilleryman, turned Emperor, to defeat him. And, even then, as his ultimate conqueror said, it was a near-run thing.●

BUDGET OFFICE COST ESTIMATE TABLE ON S. 2493, INADVERTENTLY OMITTED FROM COMMITTEE REPORT

● Mr. CANNON. Mr. President, when the Committee Report, 59–631, was printed on the Air Transportation Regulatory Reform Act of 1978, a table prepared by the Congressional Budget Office showing the estimated costs of the bill for fiscal years 1979 through 1983 was inadvertently omitted. In that this table is an integral part of the CBO's cost estimate prepared for this legislation, I ask that the entire CBO cost estimate for S. 2493 be printed in the RECORD.

The material follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., January 31, 1978.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, Science, and Transportation, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Air Transportation Regulatory Reform Act of 1978.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Air Transportation Regulatory Reform Act of 1978.

3. Bill status: Staff working draft, dated January 16, 1978.

4. Bill purpose: The Air Transportation Regulatory Reform Act of 1978 amends the Federal Aviation Act of 1958 in order to attain an air transportation system in which competitive market forces play a greater role in determining the nature and price of air services. The bill makes a number of significant changes pertaining to the issuance of certificates of public covenience and necessity, procedures for the disposition of applications for such certificates, the filing and establishing of tariffs indicating rates, fares and charges for air transportation, foreign and domestic mail service, and consolidation, merger and acquisition of air carriers. The bill revises the powers and duties of the Civil Aeronautics Board (CAB) with respect to such aspects of air transportation regulation, and creates a new federal subsidy program to ensure adequate air service to communities which require but cannot otherwise obtain access to the national air transportation system. The effective date of most sections of the bill is January 1, 1979.

5. Cost estimate: The following are the estimated costs of this bill for fiscal years 1979 through 1983:

[By fiscal years; in millions of dollars]

	1979	1980	1981	1982	1983
CAB administrative costs	2	3	3	3	3
Subsidy program costs:					
Bill sec. 7	7	10	10	10	3
Bill sec. 13	0	2	3	2	1
Total	9	15	16	15	7

These costs fall within budget function 400.

The short-term costs of this bill are not representative of the long-term effects, since they fall within the transition period from the existing regulatory system to a substantially modified one. Thus, by fiscal year 1986, all of the above additional costs will no longer be incurred, and it is expected that a significant reduction in air carrier subsidies (estimated at $26 million) will be realized.

The bill also creates some potential liabilities for the government. It extends the loan guarantee program for aircraft purchases, and broadens the program to include newly certificated small carriers, which are likely to be less financially secure. As a result, the government could incur additional contingent liabilities of up to $500 million during the next several years.

In addition, the bill includes an entitlement provision, which guarantees government payments to certain airline employees who suffer income losses due to layoffs or bankruptcies attributable to this bill. However, it is highly unlikely that such payments will ever be necessary, and no cost for this provision is included in this estimate.

6. Basis for estimate: The major potential cost impacts of this bill are in the areas of CAB administrative activities, air carrier subsidies, employee protection, and aircraft loan guarantees.

CAB administrative costs.—The bill would affect the administrative operations of the CAB in a number of ways. It mandates expedited procedures for processing applications, complaints or petitions (Section 20), creates a new class of carriers that may be certificated by the Board (Section 14), requires reapproval of certain intercarrier agreements (Section 10), and establishes a new subsidy program (Section 13), to be administered concurrently with the existing program through 1985. In addition, the bill places responsibility upon the Board to ensure that essential air service is provided to all points authorized for service on July 1, 1978 (Section 13), and to implement procedures for automatic carrier entry into new markets (Section 5). All of these requirements will place additional administrative burdens on the Board, particularly during the initial implementation period. On the other hand, the automatic entry provisions (Section 5), once fully implemented, the increased faresetting flexibility allowed carriers (Section 18), and the removal of the requirement of Board approval for all intercarrier agreements (Section 10) will alleviate some of the CAB's current regulatory workload, though not immediately.

Based on a comparison between current CAB procedures and those mandated in the bill, and on a review of the Board's estimates of additional workload attributable to the bill, CBO projects that CAB administrative expenses during most of the transition period will be increased by 10 to 15 percent ($2-3 million) as a result of this bill. This increase stems primarily from the requirement to operate two concurrent subsidy programs through 1985, and from the initial costs of phasing in the new rate and route procedures. (It is possible that in the absence of this bill, the Board would seek to implement some of these provisions administratively. In that case, some of these costs could be incurred in any event.) By 1986, CAB salaries and expenses under this bill are likely to be at or below the level that would be necessary under current law.

Subsidy program.—The Civil Aeronautics Board currently provides subsidies to seven local service carriers under a class rate system, and to two small, recently certificated carriers (Air New England and Air Midwest) and three Alaskan carriers under individual rates. The bill would change the current level of subsidy payments in two ways. The first stems from Section 7 of the bill, which amends Section 406 of the Federal Aviation Act of 1958, revising the criteria for subsidy determination under the existing subsidy program. Presently, the Board calculates the subsidy rates for local service carriers based on the needs of routes eligible for subsidy, and then deducts an offset reflect profits on other portions of a carrier's system. Under the modified criteria in this bill, the CAB, in determining rates of compensation for air carriers for the first four years of the seven-year transition, would no longer be able to offset the costs of subsidized services by any carrier profits on unsubsidized routes. Instead, the Board will be required to consider only the cost of the subsidized service itself. This provision would be in force from the effective date of the bill (January 1, 1979) to January 1, 1983. At that time, the CAB would again be permitted to consider carrier revenue from unsubsidized services, until the present Section 406 subsidy program terminates on January 1, 1986.

The elimination of the offset from subsidy determination will increase the subsidy necessary to maintain existing levels of service, as mandated by the bill. Based on a review of historic subsidy payment levels, these additional costs are estimated to average approximately $10 million a year, beginning in January 1979 and phasing out early in fiscal year 1983.

The second major impact on the subsidy program results from Section 13 of the bill, which creates a new Section 419 of the Federal Aviation Act of 1958. This section creates a new subsidy program, including local air carriers certificated under Section 420. Under this program, the CAB is directed to insure that essential air service is provided, until January 1, 1989, to points which on January 1, 1979, were listed on a certificate issued under Section 401, regardless of whether authority to serve such points has been suspended by the Board. In addition, after January 1, 1983, any certificated carrier may apply to replace service subsidized pursuant to Section 406 with service eligible for compensation under the new program. The Board has compiled a list of 61 points most likely to require subsidy support under this section. A gradual phase-in was assumed, whereby approximately 12 new points would be added each year to this new subsidy program. The Board expects that during the phase-in of this new subsidy program 73 points currently receiving subsidized service by certificated carriers under Section 406 would be phased out of that program, resulting in decreased costs for the present subsidy program. Based on a review of CAB projections, the net effect of added costs under the new subsidy program and the savings under the present program is estimated as follows:

PROJECTED SHORT-TERM SUBSIDY COST OF NEW SMALL COMMUNITY SERVICE PROGRAM

Fiscal year	Points subsidized under sec. 419	Subsidy increase, sec. 419 (millions)	Points no longer subsidized under sec. 406	Subsidy reduction, sec. 406 (millions)	Net additional subsidy (millions)
1979	12	$2	16	$2	$0
1980	24	10	32	8	2
1981	36	14	43	11	3
1982	48	18	54	16	2
1983	60	19	64	18	1

It is expected that after the transition from the existing 406 program to the new 419 compensation is completed in 1986, a net overall savings in subsidy costs will be realized, resulting from greater use of smaller, more economical aircraft to serve small communities. A CAB small community task force has estimated that the net subsidy reduction in the first year after termination of the 406 program would be approximately $26 million.

Employee protection program.—Section 22 of the bill provides for government payments, under certain conditions, to employees of air carriers who lose their jobs or suffer a loss of compensation as the result of a bankruptcy or major contraction of an air carrier attributable to this act. In order to be covered by the provision, the air carrier must be certificated under Section 401, and the dislocation must involve a workforce reduction of at least 15 percent within a 12-month period and must occur within 10 years of the enactment of this bill. Furthermore, the major cause of the dislocation must be determined by the CAB to be the change in regulatory structure mandated by this act. Only persons who have been employed for at least 4 years by a carrier certificated under Section 401 are covered by this provision.

It is highly unlikely that any payments will be necessary under this provision, and therefore no cost has been included in this estimate. A dislocation of the required magnitude has been historically rare in the airline industry. While the change in the regulatory environment will result in some changes in the nature of the industry, there is no evidence that major dislocations will occur. Rather, the opportunity for greater pricing and service flexibility is likely to result in increases in airline traffic and in the number of airline jobs. Further, the carefully structured transition period should allow the existing carriers to adapt gradually to the new environment.

Although CBO does not anticipate payments under this provision, the potential government liability has been estimated for a sample case for carriers of three different sizes (large trunk, small trunk, and local service carrier), as shown in the table below.

POTENTIAL GOVERNMENT LIABILITY—WORK FORCE REDUCTION OF 20 PERCENT

Type of carrier	Total domestic employees	Total employees laid-off	Eligible employees laid-off	Estimated payments (millions)
Large trunk	35,000	7,000	3,500	$30
Small trunk	10,000	2,000	1,000	9
Local service	4,000	800	400	3

In each case, a 20 percent reduction is assumed in the number of employees. Based on actual data from a large trunk carrier, it is estimated that at least half of the employees losing their jobs in such a situation would not be eligible for coverage. The estimated payments are based on a full reimbursement of lost salary at an annual rate of $20,000 (less unemployment compensation) and an average payment period of 6 months. (The requirement that Section 401 carriers give first preference in hiring to affected employees is likely to keep the average payment period well below the 3-year maximum.) The estimate also includes payment of moving expenses ($3,000) for one-third of the affected employees. Based on these assumptions, the estimated cost to the government would range from $3 million for a local service carrier to $30 million for a large trunk.

Loan guarantee program.—The guarantee program for aircraft purchase loans created by Public Law 85-207 expired on September 7, 1977. Section 23 of this bill extends the program until September 7, 1982, increases the total amount of the loans of one carrier that can be guaranteed from $30 million to $100 million, and increases the maximum term of loans eligible for guarantee from 10 to 15 years. In addition, the bill would allow carriers newly certificated under Section 420 to qualify for loan guarantees. Presently there are commitments under this program totaling $213 million for 24 loans, covering 158 aircraft and 17 airlines. There have been no defaults experienced in the program to date, although the amounts guaranteed have become substantial only within the past few years. Guarantee fee receipts have exceeded FAA administrative costs by over $600,000 during the past 20 years. (Administrative costs are estimated to be $42,000 for the FAA in fiscal year 1978, compared to approximately $500,000 in guarantee fee receipts.) Thus, past experience would indicate that there is little likelihood of losses on these guarantees. The raising of the loan limit and the extension of eligibility to newly certificated carriers, which may be less financially secure than existing carriers, add additional elements of risk to the program; however, there is no basis for determining a likely default rate for the extended program. Any additional loan guarantees will also increase the amount of fees collected, and the Secretary of Transportation may adjust the fee to compensate for the additional risk. Consequently, no allowance for losses is included in this estimate. However, with the possibility of dozens of newly certificated small carriers seeking loan guarantees, the government could incur additional contingent liabilities of up to $500 million during the next several years.

Other potential cost or budget impacts.—The safety studies and reports to Congress required in Section 4 to be performed by the Secretary of Transportation fall within the current responsibilities of the Department of Transportation. It is estimated that no significant additional cost will be incurred in carrying out the purposes of this section.

Another less certain impact on the subsidy program results from Section 7 of the bill. This provision requires the CAB, in establishing subsidy levels under Section 406, to consider the need of each carrier for compensation sufficient to enable it to continue to provide air service of at least the same extent, character and quality as that provided during the year ending June 30, 1977. This would prevent the Board from decreasing the number of subsidy-eligible points, as it apparently intends to do in the absence of this legislation. The subsidy reductions anticipated by the Board (without new legislation) are estimated to be $6 million in fiscal year 1979, increasing to $15 million in fiscal year 1982, for a net subsidy reduction of $59 million over five years. If the bill prevents the Board from decreasing subsidy payments, the cost of the bill would include the amount of savings not realized. It is uncertain, however, whether or to what extent such subsidy reductions would be obtained if this bill is not passed. Therefore, these potential subsidy reductions are not included in the above estimate of the cost of this legislation.

The bill may also have an indirect impact on federal tax revenues. At present, the Airport and Airway Trust Fund receives revenues from taxes on aviation fuels, transportation by air and use of civil aircraft, and tires and tubes of the types used on aircraft. To the extent that the changes in the regulatory system stemming from this bill may affect traffic volume, there will be an effect on trust fund income. The FAA projects trust fund revenues under existing law to be $1.4 billion in fiscal year 1978 and rising to $1.9 billion by fiscal year 1983. Of these amounts, approximately 75 percent is estimated to be derived from the 8 percent excise tax on passenger fares. If, as is likely, the new entry provisions and increased fare flexibility result in increased traffic volumes and higher carrier revenues, federal tax income will also increase. While it is not possible to predict the changes in traffic volume that may result from implementation of this bill, an increase in passenger revenues of about 1 percent would produce additional tax revenue equal to the added federal costs projected for the first 5 years.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Patrick J. McCann (225-7760)

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.●

IOWANS TESTIFY ON BRIDGES

Mr. CULVER. Mr. President, on April 3 I chaired a hearing of the Senate Transportation Subcommittee at which several Iowans testified about my State's deficient bridge problems. The witnesses included Raymond Kassel, who is director of the Iowa Department of Transportation, and Dean Kleckner, president of the Iowa Farm Bureau Federation. In addition, four county engineers from Iowa, Clarence Perry of Lucas County, Wesley Smith of Hamilton County, Milton Johnson of Clayton County, and Charles Hales of Pottawattamie County, presented testimony.

The Federal Highway Administration places Iowa fifth among the 50 States according to the number of obsolete and defective bridges on the Federal highway system. In addition, Iowa may have the highest number of unsafe bridges on local roads in the Nation. To help rectify this growing problem, last year I introduced S. 394, the Bridge Replacement and Rehabilitation Act, which authorizes $600 million for this program and would also provide Federal assistance for bridges off the Federal system.

The seriousness of this critical problem was thoroughly explained by these witnesses. They talked about spans which threaten the lives of children riding in school buses and which seriously impede firetrucks and farm equipment. Their testimony further convinced me that funding for the special bridge replacement program must be increased significantly and must be made partially available for local, off-system structures.

Mr. President, I ask that the following excerpts from testimony given at the April 3 hearing be printed in the RECORD.

The excerpts follow:

TESTIMONY BY RAYMOND L. KASSEL, DIRECTOR, IOWA DEPT. OF TRANSPORTATION

The Iowa bridge problem has two aspects, one internal and the other associated with Iowa's navigable border rivers.

It is the normally abundant rainfall on the fertile soil that makes Iowa agriculture so tremendously productive, and at the same time demands an extensive road system with many bridges to serve both the land and industry. The 113,000-mile public road network requires more than 34,000 structures with a 12-foot span or greater. Why such an extensive network? Ninety-five percent of the State's land is in agricultural production. Each acre annually requires movement of more than 2 tons of produce and production supplies. This equates annually to the movement of nearly 600 tons of produce and production supplies to and from the typical farm.

In terms of importance to our national economy and balance of foreign exchange, export of Iowa agricultural products annually yield $2 billion with an additional $1.3 billion being earned from the export of Iowa industrial production.

A particularly difficult aspect of our problem, shared with our adjacent states, is associated with the border rivers. In effect, we have two "coasts" formed by the broad Mississippi and wide Missouri. Every day there are 278,000 trips to and from Iowa across these waterways. These rivers might as well be real "oceans" when we and our neighbors seek ways and means to replace the bridges.

The are now 31 border river bridges on the Arterial System. Nine are toll facilities not owned by the states and will be very expensive to replace. Structurally deficient bridges (those incapable of carrying a legal load or subject to other loading restrictions) now exist at Dubuque and Burlington. Functionally obsolete bridges (narrow or low) cross the Mississippi River at Keokuk, Lansing, Sabula, Davenport, and Ft. Madison; the Missouri River at Missouri Valley, Council Bluffs, Glenwood, and Sidney; and the Des Moines River at Keokuk. The problems at Keokuk, Davenport and Ft. Madison are compounded by growing river traffic because these bridges still open for barges. For example, the bridge at Keokuk has opened more than 2,500 times per year during the past five years, with a peak of more than 4,500 during the high water year of 1974. Each opening requires at least 15 minutes. The scope of replacement costs for the border bridges can be measured by the $35 million needed for the bridge at Dubuque and the 15 million for the bridge at Keokuk, our number 1 and 2 priorities. The scope of the border bridge problem is shown in Table 1 and is estimated to be as follows:

	Structurally deficient		Functionally obsolete	
	Number	millions	Number	Millions
Estimated replacement costs	[1] 2	$55	10	$165

[1] Dubuque and Burlington.

BRIDGES INSIDE THE STATE

Summary figures below show the estimated size of the "Interior" bridge problem. For reference, the typical annual bridge replacement expenditures are: state—$20 million, county—$22 milion and city—$4 million.

Jurisdiction	Miles	Total bridges (12 ft span)	Structurally deficient		Functionally obsolete	
			Number	Amount (millions)	Number	Amount (millions)
State	10,000	4,200	110	$43	1,110	$440
County	90,000	29,000	11,400	674	13,000	780
City	13,000	1,400	300	18	600	60
Total	113,000	34,600	11,810	735	14,700	1,280

TESTIMONY BY WESLEY D. SMITH, COUNTY ENGINEER, HAMILTON COUNTY, IOWA

Needs studies are performed in Iowa at certain intervals to determine the amount of money necessary over the ensuing 20 years to bring our highways and streets to a safe, efficient and economical level. At present, the total 20 years needs for all Iowa counties amounts to $7,280,000,000 or an average need of $364,000,000 per year. Our total available revenue, from *all* possible sources amounts to approximately $180,000,000 per year. In other words, we are able to fund only 50 percent of our needs.

We are falling farther behind every year and at an increasing rate. At present we are reconstructing 1 mile of road for every 3 miles that wear out.

The present bridge problem on the county level merely points out additional evidence that solutions to our situation are impossible with only state and county funding being used.

What the counties desperately need are large amounts of federal aid, much greater amounts than mentioned in S. 394, which are specifically earmarked for use on county highways. Further, the County funds must be available for use on both the FAS and off-system county highways. The necessity of this is pointed out dramatically by the recent mileage reduction in the FAS system. Iowa was cut from approx. 33,000 miles of FAS routes, down to 13,000 miles. A vast amount of our annual needs of $364,000,000 thus has shifted from FAS routes to off-system routes. The effect on our county bridge prob'em alone is dramatic.

We have a definition problem I would like to clear up before we start discussing bridge statistics. When the bridge survey was compiled from which the following numbers were obtained, the Iowa definition of a bridge was twelve feet span or greater. The Federal definition, and the current Iowa definition is 20 feet span or greater. As you can imagine, this difference in definition has quite an impact on both the total numbers of county bridges and on the number of deficient bridges in Iowa. However, it makes little difference to the travelling public, or to us for that matter, whether the posted structure we are approaching is between twelve feet and nineteen feet in span, or is twenty feet or greater. In either case the problem is there and something must be done about it. Please bear in mind the following figures all relate to bridge lengths of twelve feet or greater.

Prior to the FAS cutback, 2,772 of the 9,986 bridges on the FAS system were required to be posted at less than legal highway loads. (About 28%). We also had 8,598 of the 19,207 bridges on our off system roads that could not carry legal loads. (About 45%).

We now have 39.4 percent of the FAS mileage we did have. Therefore, an approximate total number of posted bridges on the FAS system would be 1,092. The approximate total number of posted bridges on the off-system has increased to 10,278. Therefore, at the present time approximately 10 percent of our posted bridges are on the FAS system and 90 percent are on the off-system. The total cost of replacing the posted bridges on the FAS system would be approximately $80,800,000 while the total cost on the off-system would be approximately $593,200,000. Our bridge needs alone are over $512,000,000 greater on the off-system than on FAS. This fact alone demonstrates the need for large amounts of federal aid direct to the counties for use on any county highway.

Combining the bridges on the FAS system and the off-system, we arrive at the total county bridge problem in Iowa. And we must look at it as a total problem. This is the way our people look at it. If a bridge is posted so they are blocked off between their field and farm, or between the farm and market, or if a school bus cannot reach their farm lane to pick up their children, the people couldn't care less whether the posted bridge is on one particular system of highway or another. We do have a total of 29,193 county bridges in Iowa most of which have been inspected and rated. We do have 11,370 county bridges which are, or will be posted, for less than a legal tandem axle truck loading. In other words, approximately 40 percent of all the county bridges in Iowa will be closed, or posted at ratings anywhere from 1 ton through 22 tons. 339 bridges will be closed or rehabilitated in some manner so they may carry more than a zero rating. We do have 4,490 county bridges a loaded school bus cannot cross. Others, a bus can cross if the children get out and walk across. The cost of replacing these 4,490 county bridges that prohibit a loaded school bus is approximately $300,000,000. The total cost to replace all posted county bridges is approximately $674,000,000.

The following table gives an indication of the extent and range of the county bridge problem:

Tons posted rating	Number of bridges	Estimated replacement cost, each category (millions)	Accumulated replacement cost (millions)
0 [1]	339	23.3	23.3
1 to 3 [1]	707	50.1	73.4
4 to 6 [1]	1,619	116.5	189.9
7 to 9 [1]	1,825	109.8	299.7
10 to 12	2,854	150.6	450.3
13 to 15	1,805	98.7	549.0
16 to 18	1,323	70.9	619.9
19 to 22	898	53.8	673.7

[1] School buses prohibited.

TESTIMONY BY CLARENCE C. PERRY, COUNTY ENGINEER, LUCAS COUNTY, IOWA

Today in Iowa we are facing what many have termed as a crises in bridge replacement. The crises has gained nation wide attention due to the Federal Bridge Inspection law. I would like to compliment the federal government for seeing the need for bridge inspections. It shouldn't be said that local governments were not inspecting bridges prior to the law. We have always inspected bridges but most people were making visual inspections. You have made us look at these bridges "in depth" using the FHWA criteria. These "in depth" inspections have revealed some startling facts. It has forced us to realize that our bridges are in worse shape than we expected. Nation wide more and more load limits are being posted. I feel the inspection law has been good for us; it has given us the tool to begin a long range comprehensive program of replacement. Through an "in depth" inspection we are able to program the critical bridges first.

The inspection procedure has carried over to the "off system" and has pointed out another startling fact. We have 9½ times more bridges posted for load on the off system then on the Federal Aid System. This fact would give rise for someone to say the counties have been negligent on the local roads. The fact of the matter is that the Federal Aid System was the most important network of roads in the county due to direct access to communities and heavier traffic counts. As a result the FAS system had a top priority and bridges were constructed on this system first. It was not the nominal amount of federal funds we receive that built the FAS

bridges. It was vast amounts of local funds as well as state funds that completed these structures. We feel it is now time for some federal funds to be spent on the off systems bridges. This is why we like Senate Bill 394. It guarantees the expenditure of at least 15 percent of the funds authorized to the state to be spent on bridges under county jurisdiction.

I would like to visit with you about my own county where I have personal experience. Lucas County is in southern Iowa and has a population of 10,163. Our primary product is agriculture with an emphasis on livestock. We have 647 miles of county highway and 253 bridges using a twelve foot length as the definition of a bridge. I might point out that when statewide information on bridges was compiled, Iowa was using a twelve foot length criteria. All my data is based on a minimum length of twelve feet. A total of 175 of our bridges rate less than legal load capacity. This is 69 percent of all our bridges. Breaking this down to FAS routes, 7 of 22 bridges or 32 percent are posted for load. The local system has 168 of 231 bridges or 73 percent that rate less than legal.

Lucas County has launched a bridge replacement program and 50 bridges have been replaced or vacated during the past five years.

We estimate it would cost 8¾ million dollars to replace those remaining bridges that rate less than legal, another 2¾ million dollars to replace those bridges that are obsolete due to width.

I would like to close by saying Lucas County has had experience with bridges collapsing. During the past 10 years, eight of our bridges have collapsed. I have had three bridges collapse during the time I have served as a County Engineer. I cannot describe to you the sinking feeling you experience when the first reports of these failures are received.

TESTIMONY BY CHARLES E. HALES, COUNTY ENGINEER, POTTAWATTAMIE COUNTY, IOWA

Pottawattamie County, Iowa, with 1400 miles of road and some 560 bridges, represents the largest figure in both categories of any county in Iowa. At the present time, we are essentially in full compliance with the National Bridge Inspection requirements. Under these inspection requirements, which I often refer to as "OSHA" applied to bridges, we post load limits according to physical condition. Pottawattamie County load limit signs start at 21 tons and range down to 4 tons. Any bridges less than 4 tons are closed immediately.

At the close of the first inspection compliance date of July 1, 1974, more than 90 percent of our structures were deficient. Technically, by definition, only those bridges with a 20 foot span or longer were examined. We do have many shorter spans, which are being replaced with steel culvert pipes.

Eighteen percent of all legally defined bridges were restricted to the lowest category of 4 tons. Four ton, of course, will accommodate only passenger cars and light vehicles. No school buses, no trucks, and very little farm machinery.

On July 1, 1976, two years later, the next compliance date for reinspection, the four ton limit number had increased from 18 percent to 21 percent. This was in the face of a "crisis" construction program plus making use of Revenue Sharing Funds. This indicates that our bridges are deteriorating at a faster rate than we can repair and rebuild under the present level of funding. Historically, Pottawattamie County has tried to be a self-sufficient county, evidenced by the fact that we have replaced 250 deficient bridges with new permanent, steel and concrete structures in the last five years, that's 50 bridges per year. For years now, we have levied the maximum local tax that Iowa law permits for county roads. In addition to that we allocated Federal Revenue funds in the amount of $400,000 in 1977 and $1,200,000 in 1978 for bridges. Six out of ten of our county bridges are still wooden structures and seven out of ten are posted with load limits. Our latest bridge need study in Pottawattamie County alone, based on 1975 dollars, amounted to $24,000,000. Today, that figure is probably close to $30,000,000. You are aware that in 1975 the Congress did not help our bridge problem when a law was enacted permitting states to set higher weight limits for trucks. This set the stage for the truck lobby to pressure the states; result, some 40 states have raised the weight limits to the federal standard of 20,000 lbs. per axle, 34,000 lbs. per 2-axle tandem and 80,000 lbs. maximum overall weight.

Iowa is not one of these 40 states. We along with our neighbor states of Illinois and Missouri are known as bridge states. No doubt, we will soon fall victim to the powerful truck lobby and our present position of being listed in the top 5 (five) in the United States with deficient bridges will be even more secure.

The present bridge problem on the county level points out the fact that we are not going to solve the situation without further federal help. Proposed federal legislation such as Congressman Harkin's "Bridge Safety Act of 1977" and Senator Culver's "Bridge Replacement and Rehabilitation Act of 1977" are steps in the right direction.

While many of the bridges in the agricultural area of the Midwest are not considered as high volume traffic structures, they do carry a very vital commodity, namely foodstuff. It has been pointed out that one American farmer now provides food for some 56 people. Twenty years ago, he fed only 23 people. Needless to say, in Iowa, the farmer and his demands on the rural road system receive an almost sacred priority, bridges are the weakest link.

Hundreds upon hundreds of these bridges are rotting wood and rusting steel, not only incapable of carrying a legal load, but also much too narrow for today's agricultural machinery. Exhibit "A" attached as a part of this testimony is a picture, not uncommon, of an Iowa farmer using a 320 horse power, four wheel drive farm tractor pulling a 54½ foot wide cultivator. Last summer I was called out into the county where two of our narrow, all wood bridges, about 1000 feet apart had the entire railing and posts missing from one side. There is little doubt in my mind but what this was a result of a frustrated farmer using a chain saw to redesign two of our not very valuable bridges to accommodate his wide equipment.

Most of you are probably aware of the dangers to our school children riding school buses over the bad bridges. Many of these buses are of the 72 passenger size. Again the economy has forced the schools in the same direction as the farmer and the trucker—bigger and bigger.

TESTIMONY BY MILTON L. JOHNSON, COUNTY ENGINEER, CLAYTON COUNTY, IOWA

There are some estimates out that I believe are conservative, that show the Federal Aid system having a bridge need of about 12.4 billion dollars and the Off System with a bridge need of 10.6 billion. Using the 10.6 billion for Off System and assuming that the 600 million dollar figure in Senator Culver's bill is used along with the 15 percent being designated for county use on Off System, then it would take some hundred and eighteen years to fulfill this need. Further, assuming that local government would fund two-thirds of this deficit, this would bring the time down to somewhere in the neighborhood of forty years and of course by that time the needs would have further compounded.

All of these figures are on the conservative side. First of all we know that the 10.6 billion dollar need in Off System is an old figure and that we have further inventories that show that this need is greater. Secondly, we are assuming that local government can finance two-thirds of this deficiency when in fact many local governments are at the statutory limit of their taxation and will come no where near meeting that need. Thirdly, we are assuming no inflation in projecting these figures. Fourthly, we are not addressing the problem of the bridges on the Federal Aid system that are under county jurisdiction.

What brought about this sudden crises? Actually the crises has not come about suddenly and many of us have been trying to do something about averting this for many years, however, we all know that the disastrous failure of the bridge in Ohio several years ago brought the bridge problem to national attention. There are a number of factors contributing to the present dilemma.

Many of the bridges were built in the late 1800's. These of course were built for horses and wagons. We've all seen pictures of some of these bridges after they collapsed under the load of a 6 to 8 ton steam engine and possibly a 4 to 5 ton threshing machine. Then during the 20's and 30's many new bridges were built and some of the 1800's vintage bridges were replaced to accommodate the new fangled machines called automobiles and the trucks which were grossing out at 6 to 7 tons.

Then in the 50's, 60's and 70's the railroads closed many branch lines forcing farmers to haul further, thus making larger trucks more practical. School consolidations were taking place also and school buses became more common and bigger up to the point that many of the present buses are at or near the maximum legal axle loads.

During this same period farming methods were rapidly changing also, with farms becoming larger and with more specialization causing large quantities of material such as fertilizers and feeds to be trucked to farms in larger and larger trucks and the farm products, grain, stock, milk, etc. being sent to the market also in large trucks.

All of this is coupled with the pressure of the federal government to increase the axle load of from 18,000 to 20,000 for single axles and 32,000 to 34,000 for tandems compounds the problem.

I believe that the situation that we have in Clayton County, Iowa, is fairly typical of many of the counties across the nation. In the last several years, many of the smaller deficient structures in Clayton County have been replaced with large diameter pipe culverts and some with short span bridges. This has enabled more of the bridges to be replaced than if we had concentrated our funds on one large structure. We have thus been able to remove the weight restrictions from more of the roads leaving a smaller number of posted bridges. This was done because of the shortage of money and inability to raise any more by taxation locally as we have been at the statutory taxing limit for many years. The Board of Supervisors and I felt that we could help more people with less money this way than any other way we could go.

What is happening now obviously is that the bridges that still need to be replaced are the bigger and more expensive ones, consequently we are able to replace fewer and fewer each year.

TESTIMONY BY DEAN KLECKNER, PRESIDENT, IOWA FARM BUREAU FEDERATION

Iowa farmers sell about $7.0 billion worth of crops and livestock annually—$3.0 billion in crops and $4.0 billion in livestock. These are the second largest farm marketings in the nation.

It is estimated that more than 90 percent of the sales of crops, livestock and livestock products in Iowa are moved by trucks to markets in Iowa and surrounding states. Truck transportation is vital to the movement of farm products to market and needed farm supplies to farms. Most of these movements require transporting these products over secondary roads in Iowa.

There is a serious problem generally in maintaining secondary roads in satisfactory condition and a critical problem with bridges.

Recent reports by the USDA's Statistical Reporting Service indicated more than three-fifths of all farm feeder roads are said to be deficient, while half the feeder roads in U.S. rural areas are thought to be unsuited to steady, heavy truck traffic. Yet rural areas not only keep producing more farm, forest and mine products, but also depend more and more on trucks to get these goods to market.

As of 1975, Iowa had almost 14,000 county bridges posted for less than legal loads. This amounts to 46 percent of all our bridges. Almost 4,500 county bridges will be posted for less than 8 tons. This means there will be 4,500 county bridges a school bus cannot cross. It would cost an estimated $300,000,000 to replace just those bridges impossible for school buses. It would cost an estimated $800,000,000 to replace all bridges so legal loads could be carried. No other jurisdiction has a bridge problem of this magnitude.

It is obvious by these projected cost estimates that Iowa will have extreme difficulty financing the bridge repair and replacement program needed. Iowa's gasoline tax is presently at 7 cents a gallon. Property taxes are about $1.50 per acre for secondary roads which is about as much as farmland can be expected to carry for local roads. For a 300 acre farm this means a $450 tax for county secondary roads.

In view of the local financing problems we have outlined, we would support an increase in authorization for the Special Bridge Replacement Program. This would make it possible for the federal government to contribute a larger share of funds to finance the bridge repair program. States are considering raising gasoline taxes and property valuations are increasing annually which will result in more state and county funds also. Additional funds from all three sources should enable the states to move ahead in correcting their bridge deficiencies.

We also support the requirement that not less than 15 percent of such funds be used for work on bridges under the sole jurisdiction of counties. A large majority of the bridge deficiencies are on the secondary roads not included in the federal secondary system.

STATEMENT ON THE PANAMA CANAL TREATY

Mr. GOLDWATER. Mr. President, I believe it was a treaty poorly conceived, poorly negotiated and consummated in a manner, in my opinion, that is not going to help Panama. It will help a lot of bankers who loaned Panama money, but it will not help them to raise the funds necessary to keep the canal open.

It flaunts the Constitution and the so-called leadership clause added to this treaty clearly does not alter the DeConcini reservation one bit. It makes a joke of this treaty.

It is my opinion that within 5 years of turning the canal over to the Republic of Panama the United States will be running the canal again or it will not be running at all. There is no question, in my mind, but that the Panamanians can operate the canal, but operating it and running it from a business standpoint are two different matters, and I doubt that the instability the Government of Panama has always shown will permit the businesslike operation of the canal. Following are a few brief opinions of mine, after having listened to, and participated in this debate for such a long time. Therefore, I ask that these opinions be printed at this point in my remarks.

The opinions follow:

OPINIONS

1. Cost to the U.S. Public.

a. Secretary of State Vance himself conceded in a statement to Congress, dated February 10th, that giving up the Panama Canal will cost U.S. taxpayers hundreds of millions of dollars. The total appropriation over 21 years will be approximately $350 million, according to Secretary Vance.

The cost of the new treaty to be funded by the Treasury includes relocation of defense installations and an early retirement program for Panama Canal enterprise employees.

b. In addition, the Carter Administration will recommend that the Treasury stop collecting annual interest payments from the Canal Company, which are currently averaging $18 to $20 million. The total loss to the Treasury from this proposal, which would not be incurred if the treaty is not ratified, has been estimated by the General Accounting Office at $505 million.

c. There also is the loss to the American public of the value of property given to Panama. The State Department's own estimate of replacement value is $9.8 billion, including the Canal itself, the Company, and military assets.

d. A separate economic and military aid package to Panama of $345 million is planned by the Administration. Although not required by the Treaty, this aid package is clearly in connection with it. If Panama, which already pays 37 percent of its total income in order to service large foreign debts, should fail to repay these loans or guarantees, the taxpayer could become liable to make good the losses.

e. Toll increases, which are needed to cover new payments to Panama required by the Treaty, may add up to $1.2 billion in costs borne by U.S. consumers and shippers during the life of the Treaty.

f. Although the Treaty calls for several new payments to Panama out of Canal operating revenues, rather than from the Treasury, it appears Congress would have to make up operating deficits should they occur. This follows from the fact that the Panama Canal Commission, which is obligated by the Treaty to make the payments, is in actual fact, an agency of the United States. Thus, the obligations of the Commission are in effect the obligations of the United States. Moreover, the United States Government is required by the Treaty to turn the Canal over to Panama debt-free in the year 2000.

2. Usurpation of Legislative Powers

The primary trouble with the State Department position is that they fail to observe the distinction between making a treaty and implementing a treaty. It really is quite simple.

The Constitution sets up the President with the Senate as the treaty-making authority. The President negotiates treaties with foreign powers and ratifies them after receiving the advice and consent of the Senate. Congress cannot do this. Congress, as a separate entity, cannot enter into agreements with a foreign nation. Thus it takes a treaty to make an agreement with another country.

However, when that treaty is a contract to perform a specified act, which falls within one of the press powers delegated to Congress, then it is Congress who must perform that act. In other words, a treaty which touches on legislative power needs implementing legislation to carry it out, either in the form of prior authorization or subsequent enactment of authority.

Otherwise where is the end to the treaty power? For example, Congress can declare war. Does this mean a treaty alone can put the nation in a war upon the occurrence of a specified condition, without any subsequent voice in the entire Congress? Senators who supported the War Powers Act as a means of securing a role for Congress in going to war might ponder that question.

Congress has power to provide for coinage and currency. Does this mean a treaty 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? The Senators from tobacco-producing States might ask themselves whether it would be Constitutional for a treaty to by-pass any role of the House of Representatives if that treaty, in the name of international health, should outlaw the export of tobacco.

Congress has the power to establish courts and to make exceptions to the appellate jurisdiction of the Supreme Court. Does this mean a treaty alone can create international courts having jurisdiction over our citizens in certain situations, a court which is free of review of our own Supreme Court?

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

Whatever the State Department may have discovered in the way of claimed precedents, it is the Constitution that is at issue, not precedents.

And, the Constitution is clear. As Historian Arthur Bestor concluded recently in his deep study of this specific issue, the power to dispose of the territory or property belonging to the United States is "a power that the framers expected to be exercised by act of Congress, according to the legislative procedure minutely specified in the Constitution."

ADMINISTRATION POLICY THREATENS URBAN FLOODING PROGRAMS, INCLUDING CHICAGO'S "DEEP TUNNEL"

Mr. PERCY. Mr. President, after consulting with the White House Office of Management and Budget, the Army Corps of Engineers has prepared, and shortly expects to announce, a policy change that could significantly impair the economic well-being, the esthetics, and the public health of many of our Nation's older cities.

Over 600 towns and cities throughout the Nation are presently served, in part, by outmoded combined sewer systems. Major affected cities include Philadelphia, New York, Boston, and Providence in the North; Charleston and Wheeling, W. Va., Greenville, Miss., and Atlanta in the South; Chicago, St. Louis, and Milwaukee in the Midwest; and Sacramento, San Francisco, and Santa Barbara in the Far West. Because most of our Nation's largest cities were designed in the 1800's, sanitary waste from households is combined with stormwater runoff in a single sewer system, rather than being separated as in more modern systems.

The magnitude of the Nation's sewer crisis is increasingly being recognized by America's urban experts. A recent article in the New York Times stated:

A rash of recent failures in (subterranean facilities), which had been neglected for decades as cities struggled to deal with an overwhelming social and financial burden, has focused attention on the threat that they represent and raised the prospect of new demands on the Federal treasury by municipalities around the nation.

The Joint Economic Committee, made up of distinguished Senators and Representatives from every sector of this Nation, recently issued a report stating that neglect of urban facilities "appears to be the single greatest problem facing our Nation's cities."

The economic deterioration of America's great commercial and cultural centers will likely be the most critical domestic issue of the 1980's. It makes no sense to pour billions of dollars into urban mass transit systems, housing rehabilitation, industrial relocation, or any other desperately needed urban development program if the very infrastructures of our cities are literally crumbling beneath our feet.

The shortcomings of inadequate sewer systems are chillingly revealed by the present plight of Chicago. As metropolitan Chicago has urbanized over the past several decades, thousands of acres of suburban meadows and parklands have been paved over with roads, parking lots, businesses, schools, houses, apartment complexes, and other hard surfaces. Rainwater that normally would have harmlessly seeped into natural greenbelts now runs off roadways, rooftops, commercial plazas, and recreational blacktops and flows into the combined sewer system.

The sewers of metropolitan Chicago were never designed to handle the enormous runoff from 377 square miles of highly developed urban sprawl. When summer rains hit, Chicago-area residents brace for the onslaught of severe flash floodwaters.

As many as 100 times a year—once every 4 days—rainstorms overload the metropolitan Chicago sewer systems, causing the raw sewage from nearly one million residents to spew from some 640 sewer overflow points along Chicago waterways. During most of these storms, water pressure becomes so intense in local sewer systems that raw sanitary sewage and stormwater runoff are forced into hundreds of thousands of residential basements. Millions of gallons of rain water flood local streets and viaducts, slowing traffic and intracity commerce.

During the most severe of these storms, the Chicago River locks must be opened to Lake Michigan to prevent devastating overbank flooding. Such backflows into Lake Michigan of toxic wastes and sewer discharges create a serious environmental and public health hazard, since millions of residents receive their drinking water from the lake. Beaches must be closed to bathers until the wastes are fully diluted, and additional chemicals must be added to the drinking water in order to keep it safe. The Army Corps of Engineers, in a statement before the House Appropriations Committee, estimated annual flood damages at over $470 million for the Chicago metropolitan area.

It has been estimated that some 800,000 homes are plagued by basement backups. Nearly a million homeowners and their families must bear the financial, environmental, and social burden of having billions of gallons of raw sewage and filth-ridden highway runoff forced into their homes.

Thousands upon thousands of family hours are spent bailing out workshops, dens, and laundry rooms. Carpets are ruined; furniture is destroyed. Precious family documents are swamped in basement safes and files. And for weeks after the cleanup process is completed, residual odors from the untreated sludge permeate the entire household.

Mr. President, many of the 53 local Chicago communities most affected by urban flooding have taken bold and innovative measures to deal with the flooding problem. For two decades, some of our Nation's most respected engineers and urban planners have attempted to devise an urban flood and pollution control plan for the areas of Chicago served by combined sewer systems. In 1972 a task force made up of hydraulic experts, State and local officials, and others recommended to the Governor of Illinois the massive tunnel and reservoir project (TARP) for Chicago.

In 1974 the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation requested the Corps of Engineers to study the Federal interest in TARP. The Office of Management and Budget (OMB) asked the Environmental Protection Agency (EPA) to determine which parts of the project would qualify for water pollution control funds under Public Law 92–500, the Water Pollution Control Act Amendments of 1972.

The joint efforts of the Metropolitan Sanitary District of Greater Chicago (MSDGC) and the task force established by the Governor of Illinois, in conjunction with Congress, the OMB, the Corps, and EPA, led to the 1975 TARP plan that is presently under construction.

TARP is divided into two parts. Phase I, the pollution control phase, consists of 110 miles of 18- to 30-foot diameter tunnels bored 150 to 290 feet below the ground. These deep tunnels will be connected to the 640 overflow points along the Chicago waterways by a series of dropshafts. The "first flush," or the first quarter inch of rainfall that would normally spew into local rivers and canals will be drained off into the deep tunnels. The tunnels will act as both a reservoir and a conveyor so that this highly polluted first flush can be detained until local treatment plants can process the sewage during a nonstorm period.

Phase I TARP is expected to reduce the Chicago pollutant load on local waterways by 85 percent. It will reduce the number of times that the locks to Lake Michigan have to be opened from an average of once a year to about once every 7 years. Phase I, which is now well under construction, is expected to cost $1.9 billion, with 75 percent of those funds coming from EPA under Public Law 92–500.

Phase II TARP is the flood control phase, and would have the greatest economic impact on Chicago. As presently designed, it would consist of 20 additional miles of deep tunnels and four reservoirs. The increased carrying and storage capacity brought about by phase II would make the TARP system capable of "bottling" the rainfall of the largest Chicago-area storm period on record.

If phase II were completed, Chicago and 52 suburban communities could immediately begin upgrading their combined sewer systems. With the conveyance and storage capacity offered by phase II, localities could be confident that sewer improvements would provide immediate relief to local homeowners, motorists, and commerical property owners. Without phase II, sewer upgrading is virtually meaningless, just as it would be senseless to build a six lane highway down a dead end street: local sewer improvements can relieve localized flooding only if endline capacity is sufficient to carry off the floodwaters.

For now, the village of Morton Grove, among others, has suffered the deep frustration of installing expensive modern sewer systems in much of the community, only to have its system back up, because the MSD sewer main is too charged with combined wastewater. Manholes literally become fountainheads for sewage as back pressures reach critical intensity.

Mr. President, when the MSDGC first began construction of TARP, many engineers and public officials from across the United States were carefully assessing the project as a national model for our Nation's older cities. The MSDGC has had some of the finest engineers and urban policymakers in this country working on this project. Under the outstanding leadership of President Nicholas Melas, MSDGC consulted dozens of State and Federal agencies in designing what was and still is considered the most ambitious and innovative public works project in our Nation's history. The EPA committed itself to funding 75 percent of the cost of the pollution control phase (phase I), and it was understood that the corps would fund 100 percent of the cost of phase II, presently estimated at about $900 million.

The new OMB-corps draft policy statement, however, seriously threatens the future of any federally assisted flood control plan for Chicago. Indeed, it jeopardizes the future of flood control plans for every American city with a combined sewer system.

Flood control and pollution control are intimately linked problems for any city with a combined sewer system. Yet, the new OMB-corps policy states that—

Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works.

Such a policy position, so carefully designed by OMB and the corps, places our urban policymakers in a no-win position. Faced with an inseparable flood-pollution crisis, in effect, planners are told

they can either design a pollution-control program that will be assisted by EPA, or they can design a flood-control plan for which corps assistance is available. If they try to solve the twin problems simultaneously, the Federal Government turns its back.

Mr. President, if Federal assistance is not forthcoming for Chicago, which suffers serious economic hardship from flooding, then Chicago cannot ameliorate its flooding crisis. But Chicago is not alone in this dilemma. The vicious cycle—from outmoded sewer systems to urban flight to economic depression—cannot be broken without Federal assistance. Left to fend for themselves, our cities are fighting a hopeless cause.

Several communities and organizations in the Chicago area have designed and put into effect certain immediate, small-scale means of providing relief for the millions of area homeowners who suffer from basement flooding. Some aggressively innovative communities, including Lincolnwood, Skokie, Lansing, Evanston, and several others, have tried interim stopgap measures. Some are disconnecting direct rooftop-to-sewer downspouts to encourage stormwater percolation through the soil to natural groundwater aquifers. Others are inserting rubber and concrete flow constrictors in catch basins to detain water on streets rather than forcing it into basements.

The TARP impacts project (TIP), a highly respected coalition of Chicago-area university professors, urban planning experts, and community groups, is working on a study of progressive small-scale means to deal with the urban flooding dilemma. I have been very favorably impressed by the sincere, professional efforts of Nancy Philippi, the very capable director of TIP, and her organization. A leading public spokesman for TIP, Prof. Stanley Hallett of Northwestern University, has had probably the most positive individual role in the TARP debates to date. Dr. Hallett has courageously faced up to those who would rather build miraculous engineering monuments than design efficient, cost-effective means for solving Chicago's flooding problem.

The Better Government Association (BGA) of Chicago, under the spirited and constructive direction of Mr. Terrence Brunner, has also played a vital role in the debate surrounding TARP. When it became evident that the long-term TARP construction project would not bring flooding relief until the 1990's, BGA responsibly called for some form of immediate relief. BGA insisted that TARP be reviewed once again to be absolutely certain that the most efficient, cost-effective means be used to relieve local flooding.

The combined efforts of BGA, TIP, MSDGC, the 53 communities, and so many other local organizations, demonstrate the concern over the flooding issue of Metropolitan Chicago citizens. Area residents have undertaken all they can possibly do on their own. It is time for the Federal Government to extend its technical, financial, and moral support for one of the Nation's oldest, yet most progressive cities as it endeavors to seek out both immediate and long-range alternatives to its inadequate wastewater management system.

The entire Illinois congressional delegation, at a meeting this past week arranged by Representative DAN ROSTENKOWSKI, went on record in support of $1 million in funding for a design study by the corps to develop a viable flood control plan for Metroplitan Chicago. I am personally contacting the Department of Housing and Urban Development, the corps, the Environmental Protection Agency, and the Economic Development Administration in the Department of Commerce to assist localities with their peculiar wastewater management problems. Aggressive measures must be taken on all fronts by the Federal Government, for Chicago is not alone in its urban flooding problems. Urban flooding and pollution control is a matter of national concern. Federal officials should take progressive, preventative measures now, before we witness a further deterioration of public health, the environment and personal and public property—to the point of irreversible damage—in so many cities across the Nation.

I am particularly concerned that the Federal effort focus on small-scale, inexpensive technologies to relieve flooding and pollution. Progressive, innovative ideas—not truckloads of hard-earned taxpayer dollars—will save America's cities. We should focus on domestic jobs and economic development, not gargantuan, energy-intensive projects that principally benefit foreign oil producers.

Source control technologies are probably the most cost-effective means available for curbing flooding and pollution, according to a major EPA publication. These technologies encourage rainwater to filter through soil to groundwater supplies or detain urban runoff in reservoirs until the sewer system and treatment plants can handle the storm load. Some alternative means of controlling runoff, in addition to those already being used in Chicago, include:

1. Ponding on vacant urban land and in parks;

2. Greenbelts located on cleared-off areas of the central city so that runoff would drain into the groundwater supplies. Such greenbelts increase land values, beautify the environment, raise the level of groundwater supplies which suffer severe depletion from urban development, and create jobs, for instance, for ground maintenance crews.

3. Berms and swales. These are slight mounds and depressions around residential and park areas intended to prevent stormwaters from running off lots and entering storm-sewer systems.

4. Rooftop reservoirs. Building code regulations in some areas of Chicago already require that flat-roofed structures be able to support at least six inches of standing water. Flow regulators could be installed on downspouts to retain water on rooftops during storms and release the accumulation slowly after the storm has subsided. Reinforcing older buildings for rooftop detention could be a very promising technique.

5. Parking lot reservoirs. This technique is presently used in Canada and France and is being tested in Denver and St. Louis. Truck parking lots are being built with six- to eight-inch dams around the perimeters. This level of water has no adverse effects on the trucks because water-sensitive portions are far above the water level. Stormwater is detained in the parking lot resrevoir until storms subside. The water is then released slowly into the sewer system.

6. Porous pavement. EPA is presently conducting tests on porous pavement to determine its feasibility for use in urban roadways, sidewalks, and parking lots. Preliminary tests reportedly show that stability, durability, and freeze-thaw characteristics are positive, and that costs may not significantly exceed those of conventional surfaces. This pavement has been shown to allow over 70 inches of water per hour to percolate through. Clogging, due to fine street particles, may prove to be a problem, but regular street cleaning could eliminate the clogging problem.

7. Plaza ponding. Large shopping centers or office building plazas can install depressed sodded areas. These could be aesthetically attractive for fair weather enjoyment. During a storm, these depressed areas would fill with water that would slowly seep into the planted area after the storm. This technique is presently in use in Denver and elsewhere.

8. Conservation in the home. For cities like Chicago with a combined sewer system, reducing the amount of water that enters from residential units during storms can reduce much of the sewer overload problems. Putting bricks in toilets and flow regulators on showers, I understand, was very effective in the San Francisco Bay area in 1977 in reducing water consumption. So-called "flushless" toilets are currently on the market and many firms are investing funds to improve that technology. Other techniques are being devised to recycle water from wash basins and showers into toilets and to re-use detergent water from clothes washers and dishwashing machines.

In addition to source control technologies, improved maintenance of existing facilities may provide relief. For example, periodic street sweeping and vacuuming could reduce the amount of street debris that reaches storm sewers and clogs them, or in some way reduces their optimal flow. Periodic flushing during nonstorm periods can help increase the capacity of storm sewers by eliminating clogs.

Outlet solutions could improve stormwater management. Outlet waterways could be dredged to lower the normal water level and thereby increase the peak load capacity.

Secondary small-scale solutions to basement flooding should also be investigated. These might include:

1. Backflow regulators. Small one-way regulators might be installed in basement drains to prevent backflow into basements. Cost, including installation, is probably under $25 per unit.

2. Basement bladders. During a backflow, the bladder unfolds and fills with sewer water After the storm, the homeowner simply presses the water back into the drain and folds the bladder into place.

3. Widespread use of sump pumps to control and limit basement flooding.

The national scope of the urban sewer crisis, in my own view, warrants a comprehensive review by Congress Office of Technology Assessment. OTA was established by Congress in 1972 to research promising advanced technology to deal with complex national problems. The Director of OTA is Dr. Russell Peterson, whose incomparable credentials and outstanding character has easily won

Congress admiration and respect. At his direction, an impressive cadre of professional engineers could offer much-needed technical assistance to urban planners around the country.

I am hopeful that OTA will recognize the national impact of the sewer crisis and will assist our efforts in rehabilitating America's cities.

Mr. President, I ask unanimous consent that documents relating to the urban flood and pollution control debate in Chicago be printed in the RECORD. I also ask unanimous consent that an article appearing in the New York Times, dated April 9, 1978, be inserted. The Times article only begins to illustrate the immense scope of America's urban sewer crisis.

Many American cities anxiously await the outcome of the Chicago TARP debate. The actions that Congress and the administration take now will affect the future of the Nation's greatest urban centers.

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

[From the New York Times, Apr. 9, 1978]

BENEATH THE STREETS, OLD CITIES CRUMBLE AND DECAY

(By John Herbers)

America's large, old cities are facing a hidden and largely ignored problem under their streets—an uncharted maze of aging water mains, sewer lines and other subterranean facilities that have deteriorated to the point where they threaten public health and safety.

A rash of recent failures in such systems, which had been neglected for decades as cities struggled to deal with an overwhelming social and financial burden, has focused attention on the threat that they represent and raised the prospect of new demands on the Federal treasury by municipalities around the nation.

Boston is losing half its fresh water through leaky pipes at a cost of $7 million a year. New York and other cities have had serious water main breaks. Inadequate sewers in San Francisco resulted in 80 overflow incidents last year in which raw sewage was flushed into the bay in violation of Federal law.

Ground water seeps into the sanitary sewers of Baltimore, overloading treatment facilities. A few months ago, a small Philadelphia boy drowned in an underpass where the storm sewers were not sufficient to handle the runoff.

Many billions of dollars would be required to update the antiquated network of pipes, cables, tunnels and manholes that strain to support an increasingly technological society.

The Joint Economic Committee of Congress, noting a decline in capital expenditures for such urban networks as streets and bridges, said in a recent report that the neglect "appears to be the single greatest problem facing our nation's cities." The new urban policy announced last month by President Carter, which called for more "targeting" of Federal funds into the central cities, was based in part on the emerging realization that new outlays are needed to rebuild the urban underground.

However, the extent of the need is not yet known nationally because many cities do not know what is in the complex of wires, pipes, cables, tunnels, and conduits under their busiest arteries or exactly where that complex is. The original plans have been lost in some cases and have grown inaccurate in others as facilities were expanded haphazardly. The condition of some systems becomes known only when trouble bubbles to the surface.

To assess the problem nationally, the Department of Housing and Urban Development has commissioned the Urban Institute in Washington to conduct an 18-month study and to report its findings as it proceeds.

CITIES ON "TIME BOMBS"

George E. Peterson, director of finances for the institute and the head of its study, said that the extremes range from East St. Louis, Ill., where the state took over the dilapidated city infrastructure, to Dallas, where computers are used to find failures before they happen. In between, he said, are a lot of cities sitting on "a time bomb."

A spot check of some large and intermediate cities around the country by The New York Times disclosed that the trouble has been building for a long time. In most of the nation's larger cities, sewer and water lines were laid in the 19th century or early in the 20th century, and some of them had a life expectancy of 50 to 75 years.

In the 1930's, when modernization should have started, the Depression struck. In the 1940's there was World War II. In the 1950's the cities began developing financial trouble as the white middle-class started moving to the suburbs. In the 1960's the demands were for solutions to social problems, and in this decade the emphasis has been on the employment of the poor and on public works projects usually unrelated to the infrastructure.

The extent of the neglect is suggested in a report issued last year by the Twentieth Century Fund for the City of New York, where facilities both above and below ground have reached a critical stage. For example, the report said that in addition to extensive work needed on streets and bridges, the city had 1,000 miles of deteriorating sewers that should be replaced over 20 years. It suggested that 1,500 miles of new sewers be built at a cost of $310 million a year. The list of problems with other facilities was similar.

WATER MAINS

Many cities have cast iron water mains that have been weakened over the years by electrolysis or by acid in the soil. Boston, which began laying iron water mains in the 1840's, has a system that carries 150 million gallons of water a day, but loses 78 million gallons a day through leakage. Charles Scales, chairman of the water and sewer commission, said that the entire system should have been replaced, "ideally, yesterday." But because of its financial situation the city can replace only 10 miles, or about one percent of the 1,100-mile system each year.

Houston, a newer city where pipes were laid after the turn of the century, is better off. It loses only 20 to 30 percent of its purified water, but that still totals more than 70 million gallons a day. And because it is low and flat, Houston has received about 3,600 water-damage complaints this year—complaints that leaks have destroyed lawns, undermined sidewalks and caused driveways to cave in.

"In this neighborhood, if there isn't a leak somewhere, we wonder," said Stanley Gafner, who lives in a middle class section of southwestern Houston.

Then there are the spectacular breaks, such as the one that occurred last January at 63d Street and First Avenue in New York City, closing the Franklin D. Roosevelt Drive. In Cleveland, a similar break in a February snowstorm left an area of several blocks of the city isolated for several days.

SEWERS

San Francisco, like a number of other cities, has a combined sewage system—one pipe for both rainwater and human waste. In a storm the flow can grow to 50 times the normal rate. S. Myron Tatarian, director of public works, said that when there is heavy rain, water and raw sewage pour directly into the ocean and bay, bypassing even primary treatment.

"This city ignored changing technology for 30 years," he said. "Bacteria levels in the bay are enormous."

San Francisco is building a system of conduits to hold the sewage in heavy rains and is planning more treatment plants; but in Providence, R.I., which also has a combined system, there is another kind of difficulty and no solution in sight. In recent years low-lying areas of the city have been flooding after every rainstorm and the city is unable even to clean the sewers to obtain maximum flow.

"It would take 10 years to clean up all the sewers in the city," said Joseph Vileno, an official in the Mayor's office.

SEWERS CANNOT HANDLE RUNOFF

Baltimore has had flooding, too, because its storm sewers, which serve the entire metropolitan area, cannot handle the runoff that has resulted from extensive development in the suburbs, according to Frank Kuchta, director of public works. It is a problem common to many cities that supply their suburbs with water and sewage disposal.

"When those sewers were built," said Philadelphia's Water Commissioner, Carmen Guarino, "you didn't have all the blacktop all over. Now, there's no place for the water to permeate. It all winds up in the sewers, and we haven't kept pace."

Deterioration of the sewer lines is an additional difficulty. In Boston, the main interceptor, where the pipes meet, has collapsed four times since 1961. There has been a gaping hole more than 20 feet wide in Massachusetts Avenue since the last collapse, in October.

THE MAZE

More than money is involved in correcting the difficulties. Major disruptions of urban life would be required to repair some of the decay, partly because of underground congestion.

Only one major city, Memphis, is reported to be attempting to keep in one place maps of all its underground facilities. In the oldest cities it would be impossible because of what Charles Borruso of New England Telephone Company in Boston called "the morass of congestion."

"A guy couldn't crawl through there," he said. "If you took all the dirt out, it would look like a set of monkey bars."

GROUND X-RAY MACHINE NEEDED

Theodore Andriotes, head of the bureau of operations for Baltimore, said, "I often thought if someone would invent a ground X-ray machine so we could see what all we have down there, he would clean up."

Under New York and Boston there are abandoned pipes and cables from the last century. In some places, steam pipes that heat up nearby telephone cables and cause trouble. In many manholes, there is not enough room for cables to expand and contract. In Pittsburgh, contractors on a new office building had to weave the foundation around an unused railroad tunnel and an underground spur of the long abandoned Pennsylvania Barge Canal. In Boston, there are sealed off subway tunnels, including a circuitous one known as the Burma Road.

FEDERAL AID

Not all cities are overburdened by troubles underground. Dallas, in addition to using its computerized system to forecast failures, has established a regular replacement and maintenance program. Such cities as Chicago, Detroit and Dayton, Ohio, which have multiple social problems above ground, have reasonably efficient infrastructures. But over-all, Federal and local officials say, replacement and repair are not moving fast enough.

"Out of sight, out of mind," said Mr. Guarino of Philadelphia.

Most Federal aid has gone for other purposes. Since 1972, the Environmental Protection Agency has spent more than $17 billion on sewage treatment plants but little to repair or replace the lines leading to the plants.

AGENCY PUSHES FOR IMPROVEMENTS

The agency is using leverage to push the cities into financing their own improve-

ments. For example, it has been holding up the financing for a plant in the southeastern section of Philadelphia until the city agrees to provide sewer lines that would end the infiltration of ground water, which requires additional capacity at the treatment plant. The city says it would take 10 years to make the requested repairs on its sewers, and the dispute has not been resolved.

President Carter's new urban policy is designed to provide some help. It calls for redirecting some funds from rural and suburban areas to help cities with their infrastructure. But at best, this would be only a fraction of what is needed, and the city officials are looking for help.

"Unless significant additional amounts of state and Federal aid can be obtained," said David Rossman, the former New York City budget director who headed the Twentieth Century Fund study, "the city faces a decade of serious deterioration in its vital physical support systems."

DEPARTMENT OF THE ARMY, OFFICE OF THE CHIEF OF ENGINEERS

[Regulation No. 1165-2-21 Supersedes ER 1165-2-21]

WATER RESOURCES POLICIES AND AUTHORITIES: FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

(Excerpts)

1. Purpose. This regulation provides policies and guidance for Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authorities and storm sewer systems to be accomplished by local interests.

4. Definitions.

c. "Storm sewer systems" are the facilities in urban areas designed to collect and convey runoff from rainfall or snowmelt in the urban area to natural water courses or to previously modified natural waterways. They include storm drains, inlets, manholes, pipes, culverts, conduits, sewers and sewer appurtenances, on-site storage and detention basins, curbs and gutters, and other small drainageways that remove or help to manage runoff in urban areas. Storm sewer systems are designed to solve storm drainage problems, which are typified by excessive accumulation of runoff in depressions; overland sheet flow resulting from rapid snowmelt or rainfall; and excessive accumulation of water at the facilities listed in this paragraph because of their limited capacity.

6. General Policy:

a. Satisfactory resolution of water damage problems in urban areas often involves cooperation between local non-Federal interests and the Federal flood control agencies. In urban or urbanizing areas, provision of a basic drainage system to collect and convey the local runoff to a stream is a non-Federal responsibility. This regulation should not be interpreted to extend the flood damage reduction program into a system of pipes traditionally recognized as storm drainage systems. Flood damage reduction works generally address discharges that represent a serious threat to life and property. The decision criteria outlined below therefore exclude from consideration under flood control authorities small streams and ditches with carrying capacities typical of storm sewer pipes. Location of political boundaries will not be used as a basis for specifying project responsibility. Project responsibilities can be specified as follows:

(1) Flood damage reduction works, as defined in this regulation, may be accomplished by the Corps of Engineers.

(2) Construction of storm sewer systems and components thereof will be a non-Federal responsibility. Non-Federal interests have a responsibility to design storm sewer systems so that residual damages are reduced to an acceptable level.

(b) Consideration will be given to the objectives and requirements of Executive Order 11988 (reference 3a) and the general guidelines therefor by the U.S. Water Resources Council (reference 3b).

7. Decision Criteria for Participation:

(a) Flood control. Water damage problems associated with natural streams or modified natural waterways may be addressed under the flood control authorities downstream from the point where the flood discharge is greater than 800 cubic feet per second for the 10-percent flood (one chance in ten of being equalled or exceeded in any given year) under conditions expected to prevail during the period of analysis. Drainage areas of less than 1.5 square miles shall be assumed to lack adequate discharge to meet the above criterion. Flood damage reduction works must conform to the definition in paragraph 4b and must be justified based on Corps of Engineers evaluation procedures in use at the time the evaluation is made.

(b) Storm sewer system. Water damage problems not consistent with the above criteria for flood control will be considered to be a part of local storm drainage to be addressed as part of the consideration of an adequate storm sewer system. The purpose of this system is to collect and convey to a natural stream or modified natural waterway the runoff from rainfall or snowmelt in the urbanized area.

(c) Man-made conveyance structures:

(1) Man-made conveyance structures will be assumed to be a part of storm sewer systems except when: (a) A natural stream has been or is to be conveyed in the man-made structure; or (b) The man-made structure is a cost-effective alternative to improvement of a natural stream for flood damage reduction purposes or is an environmentally preferable and economically justified alternative. Water damages associated with inadequate carrying capacity of man-made structures should be designated as a flood problem or a local drainage problem in a manner consistent with the structure's classification as flood damage reduction works or a part of a storm sewer system.

(2) Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works. Flows discharged into a natural or previously modified natural waterway for the purpose of conveying the water away from the urbanized area will be assumed to be a part of the flow thereof regardless of quality characteristics.

[The Metropolitan Sanitary District of Greater Chicago]

PROGRESS REPORT FOR THE TUNNEL AND RESERVOIR PLAN

(Part I: The tunnel and reservoir plan)

THE PROBLEM

Like every other urban center in the country, Chicago long has faced two increasingly serious and closely related problems: pollution of the waterways, and flooding. As the population grows and construction expands, more wastewater is produced while at the same time absorbent ground surfaces are covered over, forcing great quantities of stormwater to run off into sewers and streams. The result is often flooding in areas with *separated* sanitary and storm sewer lines, and flooding and pollution in older areas where rainwater is collected in *combined* sewers. Combined sewers collect both household, commercial and industrial wastes as well as stormwater runoff.

The Metropolitan Sanitary District's large interceptor sewers connect into local sanitary and combined sewer systems and carry wastewater to the District's sewage treatment plants for purification before it is discharged into the waterways. However, heavy rains flowing into these local sewers now exceed by many times their designed capacity. Consequently, in separate sewered areas, rainwater which cannot enter the filled sewers floods highway underpasses, streets, and low-lying ground surfaces.

In the 375 square miles of the combined sewer area, which includes Chicago and 53 neighboring communities, the problem is more complicated. Local sewers in this area were designed to relieve overloading by bypassing interceptors and disgorging their mixture of stormwater and raw sewage directly into the waterways at 640 overflow points. These overflows pollute waterways and cause water levels to rise. The mixture can cause flooding and can back up from filled sewers into basements.

During especially heavy storms, even the swollen rivers must be relieved. At such times, the controlling locks on the Chicago and Calumet Rivers and the North Shore Channel may be opened, allowing polluted water to pour into Lake Michigan. Beaches may be closed and the area's drinking water supply could be threatened.

The Metropolitan Sanitary District of Greater Chicago (MSDGC) serves an area of 860 square miles, consisting of the City of Chicago and about 120 surrounding municipalities. It services a population of 5.5 million and an industrial complex with service demands for the equivalent of another 5.5 million population.

The District is responsible for: (1) collecting, treating and disposing of the wastewater generated within its boundaries; (2) protecting the waterways from pollution; (3) maintaining waterways that carry stormflow; and (4) maintaining waterways for navigation.

The District's major treatment plants—West-Southwest, Calumet and North Side—for decades have been providing primary and secondary treatment of wastewater, yielding an effluent with 90 percent of the impurities removed. Recently, chlorination has been added as a final step before treated water is released to the waterways. The newer plants—John E. Egan, Hanover Park, Lemont and O'Hare—provide tertiary treatment, producing an effluent of 99 percent purity. Tertiary facilities or their equivalent will be added to the older plants in coming years.

Industrial wastes which cannot be treated normally at the plants must be pre-treated by the dischargers. Pollution control officers monitor industrial discharges to make sure no pollutants are entering the waterways or sewer system, and they are empowered to issue citations to violators.

Flood control is being provided to separate sewered areas through the Chicago Metropolitan Area Floodwater Management Plan, co-sponsored by the District and the U.S. Soil Conservation Service. Flood retention reservoirs are being constructed which will divert and hold stormflow until it can be released safely to the waterways. This plan is expected to eliminate 90 percent of the flooding in separate sewered areas and save $6 million in flood damages annually.

THE LAW: P.L. 92-500

The Federal Water Pollution Control Act Amendments of 1972—commonly called The Clean Water Act—mandated the restoration of the nation's waterways to a "swimmable, fishable" condition by 1983. The Law's objective, as stated, was to "restore and maintain the chemical, physical and biological integrity of the Nation's waterways."

In order to comply with Federal law, the District adopted its Facilities Plan in 1975. The Plan encompasses the upgrading of the treatment plants, construction of new plants, floodwater retention facilities in the separate sewered areas, new methods of sludge disposal, and the introduction of instream aeration to raise the levels of dissolved oxygen in the waterways.

But a large part of the Facilities Plan is TARP.

THE TUNNEL AND RESERVOIR PLAN [TARP]

How it works

The Tunnel and Reservoir Plan is a complex of tunnels, drop shafts, connecting structures and reservoirs that will minimize the pollution from combined sewer overflows and drastically reduce flooding in the combined sewer area. Overflows of mixed sewage and rainwater will be intercepted and dropped into tunnels carved out of solid rock 200 to 300 feet below ground. The tunnels will convey the flow to reservoirs. There it will be held until the storm has passed. Later, when treatment plants can accept it, the wastewater will be pumped to them for treatment and released into the waterways as purified water.

TARP is divided into four systems paralleling major waterways: Mainstream, Des Plaines, Upper DesPlaines and Calumet. The whole project will consist of 125 miles of tunnels, 256 drop shafts, 645 near-surface connecting structures, 4 pumping stations, and 3 reservoirs with a storage capacity of 126,000 acre-feet.

The Mainstream System extends from the southwest suburb of McCook along the Sanitary and Ship Canal, past the Chicago Loop and up along the north branch of the Chicago River and North Shore Channel to Wilmette. A major branch of the tunnel reaches northwest along the North Branch to Niles and Morton Grove.

The DesPlaines System follows the DesPlaines River from the Northwest suburbs to McCook.

The flow from both of these systems will be treated at the West-Southwest Plant.

The Upper DesPlaines System serves the O'Hare Basin of the DesPlaines River. Its flow will be treated at the O'Hare Plant.

The Calumet System follows the Calumet-Sag Channel in the southeastern section of the area. The Calumet Plant will treat the flow from this tunnel system.

The tunnels range in diameter from 10 to 36 feet. Flows in them will be pumped to the reservoirs, which inturn will be agitated constantly by aeration pumps to prevent odors. Solids which settle to the bottom will be removed from time to time and disposed of as fertilizer.

TARP will be constructed in two phases. Phase I consists of most of the tunnels and deals with eliminating pollution of the waterways by combined sewer overflows. Construction has begun on Phase I, which will intercept about 80 percent of the pollution caused by overflows on the combined sewer area. Phase I is eligible for federal assistance and, in fact, 75 percent of its $1.7 billion cost will be paid for by grants from the U.S. Environmental Protection Agency (USEPA).

Phase II consists of more tunnels (principally another tunnel extending from McCook to the junction of the North Branch and North Shore Channel) and all the reservoirs and is meant to control flooding. It will capture all of the remaining stormwater in the area. Expected to cost about $800 million, it is not now eligible for pollution control grants. The District hopes to interest the U.S. Army Corps of Engineers in 100 percent funding and construction of this part of TARP. Congress has passed favorable legislation to enable the Corps to proceed, but has not yet budgeted funds.

The benefits

As a result of TARP's implementation, the quality of area waterways will be greatly improved, Lake Michigan will be saved from pollution by swollen rivers, and flooding will be significantly reduced. The recreational potential of the waterways will be enhanced, as will property values.

Moreover, in 1972 a Technical Advisory Committee of engineers representing local, state and federal governments recommended TARP as the most cost effective way to meet federal water quality standards. TARP will save an estimated $300 million in local sewer improvements. By regulating flows, it will make possible more efficient use of wastewater treatment plants, eliminating the need for an estimated $1 billion in plant expansion. And with the elimination of flooding and subsequent flood damages, the Army Corps of Engineers concluded after its examination of the Plan that TARP would yield $1.57 in benefits for every $1.00 spent.

Finally, the Corps projects that with the improved quality of area waterways, less water would have to be diverted from Lake Michigan to dilute the flow of previously polluted waterways. The Lake water then could be made available to municipalities that need it, without increasing the rate of diversion.

PART II: PROGRESS REPORT

TARP is the largest tunneling program in the history of the metropolitan Chicago area. During 1975 and 1976, the Metropolitan Sanitary District of Greater Chicago awarded 4 contracts for 17.63 miles of rock tunnels ranging in diameter from 9 feet to 30 feet and having a total bid price of $122,945,694.

Between July 1, 1977 and December 1, 1977, the District awarded 4 additional contracts for 22.41 miles of rock tunnel ranging in diameter from 9 feet to 35 feet and having a total bid price of $372,572,895.

In addition, the District awarded eight connecting structure contracts totalling $17,216,980 in bid price. This brings the total value of TARP contracts under construction since 1975 to $512,735,569.

In the remainder of the period from December 2, 1977 through 1978, the District will advertise contracts for rock tunnels, connecting structures and pumping stations having an estimated construction cost of approximately $668 million.

In *the Mainstream Tunnel System*, the northern most Addison-to-Wilmette Tunnel and the southerly 59th-to-Central-Avenue segment are under construction. USEPA grants have been received and the bidding process is underway for the four remaining tunnel and shaft contracts between Central Avenue and Addison Street and for the 31 contracts for the shallow connecting structures between Damen Avenue and Addison Street. To place the 59th-to-Wilmette Mainstream System into operation, additional grants are needed for the Mainstream Dewatering Pumping Station, and the 59th-to-Damen and Addison-to-Wilmette connecting structures. This latter contract also includes the concrete lining of the drop shafts. Grants are anticipated to be received in 1978, depending upon additional appropriations by Congress.

The grant application for the North Branch Tunnel has been submitted but it is not likely that sufficient funds will be available to the USEPA to fund this contract in 1978. This 1st phase system could be operational in 1983, with the necessary funding.

The Mainstream Reservoir and the 2nd Phase Mainstream Tunnel are 2nd phase work with funding through the Corps of Engineers. Although the Corps has prepared a favorable report and Congress has passed favorable legislation, no action is now being taken by the Corps since no appropriations have been included in their operating budget.

The DesPlaines Tunnel System will connect with the Mainstream System Pumping Station and Reservoir and is part of the 1st phase tunnel system. Plans for the major part of the tunnels have been completed and construction grant applications made. No grants for this system are anticipated to be received in 1978.

The Upper DesPlaines Tunnel System provides for relief of the existing intercepting sewers serving the O'Hare Basin and transporting daily dry weather sewage to the O'Hare Water Reclamation Plant now under construction. The tunnels also provide for capture of the combined sewer overflows now discharging to Weller Creek and Feehansville Ditch. The tunnels themselves have sufficient storage volume to capture the runoff from the smaller storms and the first flush of the larger storms. The net effect is to reduce the number of overflows from 100 to 10 and reduce the pollution load to the area's waterways by 92%.

The collection/storage tunnel system and the treatment plant are scheduled to be in operation by June 1979. These construction contracts are funded by the USEPA. The Upper DesPlains Reservoir which is needed to provide storage for the remainder of the pollution discharges to the waterways and primarily to provide the outlet for flood waters is not now funded by grants and is a 2nd phase facility to be funded as a flood control project through the Corps of Engineers.

The first tunnel of the *Calumet System* along the Calumet-Sag Channel is under construction. This tunnel was selected first since it provides much needed relief for the existing interceptors which services the City of Chicago and the westerly and southwesterly areas of the Calumet Basin. Plans have been prepared and grant applications made for the connecting structures and the Calumet Pumping Station needed to place this tunnel into operation. Grants are anticipated in 1978. The Calumet Plant Expansion is also needed in order that additional flow can be treated.

Plans have been prepared for the remainder of the 1st phase Calumet Tunnels and construction grant applications have been submitted. It is not anticipated that grants will be received in 1978 and there may not be sufficient funds available to the USEPA to construct these tunnels for some years to come. Once construction begins, it will take approximately five years for construction and placing the system into operation.

The 2nd phase Calumet Tunnel and the Reservoir are part of Phase II with construction through the Corps of Engineers. The O'Brien Pumping Station is listed as part of Phase I but grant funding for preparation of plans has not been received. This pumping station is needed to eliminate overflows to the Calumet River on the Lake side of the O'Brien Locks and to provide an outlet for additional sewers and growth.

In summary, approximately 40 miles of tunnels totalling $513 million are under construction as of December 1, 1977. Grants have been received for 8 additional miles totalling $213 million. Construction grant applications have been submitted to the EPA for additional 1st phase tunnels totaling 56 miles and $1.1 billion. Congress is considering legislation that would authorize additional funds for the USEPA. Funding for the Corps to continue work on the 2nd phase system is also needed.

APPENDIX

Combined sewer overflow: average overflow event every fourth day

Rainfall, 0.33 inches.
Run-off, 0.11 inches.
Average rate, 4140 M.G.D.
Hydraulic equivalent, 11,400,000 people.
Organic equivalent, 3,900,000 people.
Overflow duration, 15 hours.

(From the Chicago Tribune, Feb. 19, 1978)

DEEP TUNNEL DRAINS BILLIONS, STILL FALLS SHORT

(By Ray Moseley and Chuck Neubauer)

Chicago's multibillion-dollar Deep Tunnel —called the most expensive public works project ever devised—apparently will not achieve the flood control and pollution goals for which it was designed.

Intended to eliminate flooding of basements and streets and to clean up polluted

Chicago waterways, the project has run into funding problems and probably never will be completed.

If this is the case, the Deep Tunnel will not reduce pollution enough to meet federal clean water standards, and it will not solve the problem for which it was originally conceived—the basement flooding that plagues thousands of Chicago area homeowners.

The part that will be completed will cost at least $3 billion and principally will achieve two things: It will reduce drastically the amount of raw sewage entering the Chicago waterways, and it will clean up a 75-mile stretch of the Illinois River about 50 miles southwest of Chicago that is now polluted by Chicago's sewage.

Chicago-area residents, whose sewer taxes will go up nearly 52 per cent over the next 12 years to pay for the tunnel, will derive these modest advantages from the project. A more pleasant environment for picnicking and boating along the Chicago waterways; some limited fishing in the waterways; and swimming and fishing in a short stretch of the Illinois River.

These are the major conclusions of a month-long examination of Deep Tunnel by The Tribune and the Better Government Association. Federal and state officials, Metropolitan Sanitary District commissioners and engineers, and other sources familiar with the project were interviewed.

The Deep Tunnel—known formally as the Tunnel and Reservoir Plan (TARP)—involves construction of 132 miles of tunnels more than 200 feet underground to trap rainwater and sewage so that it can be processed in treatment plants before it is released into the waterways.

Begun in 1975, the first phase of the project—and the only part likely to be built—deals with pollution control and is scheduled for completion in 1980. The second phase concerns flood control.

The Chicago Metropolitan Sanitary District, which conceived the project, continues to hail it as one of the engineering wonders of the world, the largest public works project in American history, and a model for other cities with similar problems.

But the sanitary district's chances of getting the necessary federal funding for the flood-control part of the project now appear to be virtually nil, with both the Carter administration and Congress reluctant to finance it.

Opposition to the project in Chicago also is growing, with some citizens complaining that blasting is damaging their homes, others objecting to rising costs, and some contending that cheaper alternatives are available. One outspoken critic, architect Harry Weese, who has experience in underground work as designer of the Washington D.C., subway, calls Deep Tunnel "a single-purpose project by single-minded people who are very good at getting every cent of federal money possible for the most useless thing in the world."

The Tribune and BGA examination has produced the following findings:

After completion of the current phase of the project, the Chicago waterways will still be too polluted for human contact and will not support most fish life. But most of the solid waste will be eliminated and odors will be reduced.

Most homeowners whose basements flood after a rainstorm will continue to face the same problem.

The project could pollute underground water sources that help provide the area's drinking water.

Contrary to the expectations of most suburban officials, virtually no funding is available for an estimated $1.4 billion worth of sewer upgrading in 52 communities outside Chicago. Without this work, the suburbs will not be able to take full advantage of Deep Tunnel.

Costs of the project have more than doubled in six years and may go higher still. The project originally was projected to cost $1.2 billion and the sanitary district last May increased that to $2.6 billion. The congressional General Accounting Office, which includes the cost of upgrading suburban sewers and other related work in its estimate, puts the price at $7.3 billion. The work that actually will be done, if only the first phase of the Deep Tunnel and related work are carried out, will cost $3 billion.

Sanitary district taxes will go up 51.7 per cent between now and 1990 to pay for it. The current tax rate of 58 cents per $100 of assessed property value will rise 2.5 cents annually starting next year, pushing taxes on a home assessed at $10,000 from $58 to $88 a year.

Deep Tunnel was conceived by the sanitary district as the answer to flooding and pollution problems caused by the fact that sewer lines in the area are not adequate to cope with heavy rains.

The lines carry both sewage and storm water runoff, and on about 100 days out of every year the sewers back up and dump raw sewage and storm water into the Chicago, Calumet, and Des Plaines rivers and the Sanitary and Ship Canal.

Sometimes even these waterways are inadequate to contain the runoff; 21 times in the past 30 years, sewage has backed up into Lake Michigan, forcing the temporary closing of beaches.

Under the sanitary district's plan, storm water and sewage will flow into the tunnels. From there it will be pumped into three huge underground reservoirs, then pumped into treatment plants, cleaned up, and released gradually into the waterways.

If completed, the project would enable the sanitary district to eliminate basement flooding problems and to meet federal clean water standards. The district hoped to achieve this by having the federal government pay most of the bills.

But the Office of Management and Budget [OMB] in Washington has so far stymied that plan. It decreed that the project would be divided into two segments—Phase 1, involving construction of a network of 110 miles of tunnels under Chicago and some suburbs, for pollution control; and Phase 2, involving construction of the three reservoirs and 22 more miles of tunnels, for flood control.

At the federal level, Phase I was assigned to the Environmental Protection Agency, which pays 75 per cent of the cost of pollution control projects. Phase 2 was assigned to the Army Corps of Engineers, which pays 100 per cent of the cost of flood control work it undertakes.

OMB's division of the project is somewhat arbitrary, because the full pollution control benefits of the project cannot be achieved without Phase 2. For example, without the reservoirs there will continue to be 10 overflows a year of raw sewage into the waterways, and overflows into Lake Michigan on the average of four times every 26 years.

Phase 1 is being funded, but Congress and OMB have blocked any money for Phase 2. The General Accounting Office, in a recent report highly critical of TARP, concluded that future financing of Phase 2 is doubtful.

In 1976 Congress authorized the Corps of Engineers to begin a study of the project, but it did not appropriate the $10 million to 12 million needed to carry it out.

This year, OMB declined to include this money in President Carter's budget, making it highly unlikely the money will be voted this year. Every year of delay means that costs go up, increasing the prospect that Phase 2 never will be built.

One reason for the Carter administration's evident lack of enthusiasm is that TARP has implications far beyond Chicago alone. If TARP is completed, federal officials are aware that there will be heavy pressure from other cities with similar problems to get federal money for more TARPs.

In fact, Milwaukee and San Francisco already are working on TARP projects. Some federal officials have estimated that TARPs in all cities with problems similar to Chicago's could cost $200 billion.

Thus TARP represents a classic contradiction in federal policies. On the one hand, the government has ordered the cities to meet its standard for clean water. On the other hand, it declines to give them the money with which to do it on the ground that the cost is too high.

Many critics argue that there are two fundamental mistakes underlying this dilemma:

Congress set unrealistic standards in decreeing that all of the nation's waterways be made fishable and swimmable by 1985 without considering the costs involved and without considering whether such a standard makes sense for every waterway.

The Chicago Metropolitan Sanitary District, which has a history of doing things on a big scale, opted for a big, expensive engineering solution without seriously considering the feasibility of cheaper and less spectacular technology that might achieve the same ends.

Concerning the federal water standards, Chicago architect Weese observed that these were based on recommendations made in 1972 by the President's Advisory Committee on Environmental Quality, headed by Laurence Rockefeller.

"David Rockefeller bankrupted lower Manhattan with his World Trade Center," Weese said. "Nelson Rockefeller bankrupted the State of New York with his policies as governor. And Laurence is going to bankrupt the country with these water standards."

Fortune magazine has estimated the cost of meeting the standards could hit $670 billion, especially if other cities adopt the TARP scheme. "It's hard to escape the conclusion that there's got to be a better way," Fortune said.

A state official called the congressional goal of fishable and swimmable waters everywhere "a load of nonsense" and said, "Who would want to swim in the Chicago waterways? The barges would run them down. And if these waters were fishable, how many would want to fish there?"

Joanne H. Alter, one of the nine sanitary district commissioners, called last week for a temporary halt to TARP. She has had apparent difficulty in deciding where she stands.

In an earlier interview with The Tribune for this article, she said, "I have accepted this approach [TARP] and I support it. Do you want clean water any less because it costs more?"

She said TARP would have "great recreational benefits" because it would make possible canoeing on the North Branch of the Chicago River.

Several days later, she phoned a Tribune reporter and said, "It's too expensive and we should reassess it." She gave no reason for her change of mind, but later issued a public statement urging a moratorium on the project pending a review of federal financing and possible alternatives to TARP.

In the interview with The Tribune, she said the project still would be valid even if the flood-control portion is not carried out. But in her public statement she cited the lack of federal financing for flood control as one reason why a review is needed.

Other persons who have studied the project expressed more decided views.

One was Vinton Bacon, who originally introduced the idea of Deep Tunnel when he was general superintendent of the sanitary district in 1962–70. Now a professor of civil engineering at the University of Wisconsin

in Milwaukee, Bacon said the project is of questionable value if only Phase 1 is built.

"Unless the tunnels and reservoirs are both built, you don't have a solution," he said. "The two parts have got to go together."

Bacon said Deep Tunnel was conceived primarily as a flood-control project. "We saw the antipollution effect as a side benefit that made the project even more worthwhile, but the flood storage had to be there to make the whole thing work," he said.

Bacon said he would still support the project if the reservoirs could somehow be funded. But he saw no prospect of that and said he was "broken-hearted" over the way things have gone.

"They [the sanitary district] have priced themselves out of the market by waiting too long," he said. "Inflation has drowned them."

A key state official said he has "serious reservations" as to whether Deep Tunnel is worth the money it will cost. He asked that his name not be used, saying he did not want to get into a public feud with other agencies that would expose him to attack and possibly cost him his job.

He suggested the project might be stopped once the "mainstream" tunnel section has been completed. So far about $500 million has been funded for the main tunnels and another $347 million will be needed to complete this section, he said.

His proposal would exclude tunnels under the Calumet and Des Plaines rivers that have not yet been funded. But he said the main tunnel section alone would provide all the pollution benefits that can be obtained from Phase 1.

Jacob D. Dumelle, chairman of the Illinois Pollution Control Board, said it was uncertain if TARP would meet the board's water standards if only Phase 1 is completed.

"You are going to still have some sewage overflows into the waterways," he said.

If only Phase 1 is built and water standards are not met, he said, the board may have to lower its standards.

Weese, one of the city's best-known architects, suggested that the main tunnels be completed and used as an underground water reservoir. But he said the rest of the project should be canceled.

Among other things, he argues from his experience in building the Washington subway that the sanitary district will not be able to prevent seepage of sewage from the tunnels into the water-bearing strata of rock that contributes to the area's drinking water supply.

The district plans to deal with this problem by grouting—that is, patching over cracks in the rock with cement. "Well, we put leak-proof grouted systems in the Washington subway, and they leak like hell," Weese said. "They will leak in the tunnels too."

Stanley Hallett of Northwestern University's Center for Urban Affairs goes beyond many critics and says TARP should be stopped now before any more money is spent.

"If you're going down the wrong road, the faster you turn around the better," he said. He described TARP as "just old, outmoded technology" and "an engineering and chemical response to a biological problem."

Hallett, Weese, and other critics attack TARP on the ground that it is a capital-intensive project which contributes few jobs to the Chicago area and that it seeks to get rid of sewage wastes rather than making use of them.

Hallett said "surprising" amounts of methane—natural gas—can be extracted from sewage and it also can be used for fertilizers.

He is one of a number of persons from Northwestern and various civic groups who have formed the TARP Impacts Project. They are looking at alternatives to TARP which they believe were not seriously considered by the sanitary district, and within the next month, they say, they will issue a series of reports spelling out the details.

Hallett said the proposals would involve small- and medium-scale technology that would be less expensive than TARP and would focus on "ways to improve the environment in city neighborhoods rather than just digging holes under them."

He declined to discuss the proposals, but his group is known to be considering such projects as water-retention systems atop office buildings, green belts in the western part of the city that would enable some rainwater to be absorbed into the ground rather than running off into sewers, and small ponds that also would absorb rainwater and serve a recreational purpose.

At sanitary district offices at 100 E. Erie St., President Nicholas Melas and other officials strongly defend TARP and contend that such alternatives either would not do the job alone, would-be too costly, or are already being implemented in part.

"There is a whole bunch of academic solutions to the problem," said Frank Dalton, the engineer in charge of TARP. "But when the professors talk about them, they never factor in the costs."

At a meeting with Tribune reporters, district officials seemed to be unable to agree among themselves on what TARP would achieve if only Phase 1 is built.

Dalton said federal water quality standards would be met if Phase 1 is completed, sewage treatment plants are expanded, and in-stream aeration is carried out. In-stream aeration—an "egg beater," in the words of one expert—is a system of stirring up polluted waters to get oxygen back into the water so fish and plants can survive there.

But Bart T. Lynam, general superintendent of the district, said these projects together will "do nothing" for aquatic life in the waterways. "You are not going to fish in there because of Phase 1," he said.

Lynam said Phase 1 would eliminate 75 to 85 per cent of the raw sewage in the waterways. Other officials estimated 90 per cent.

George Alexander, director of the Chicago office of the federal Environmental Protection Agency, and Michael Mauzy, acting director of the Illinois EPA, agreed that the projects mentioned by Dalton would bring the waters up only to secondary contact standards.

This means they would be suitable for boating but not safe for human contact—such as swimming.

Alexander described this as a "tremendous improvement." He said rough fish, such as catfish, would be able to live in the waters, and "smells and unsightly objects" would be eliminated. He also said the project would make downstream waters now polluted by Chicago sewage fishable and swimmable.

Mauzy said the additional swimmable and fishable waters would be in a 75-mile stretch below the point where the Kankakee and Des Plaines rivers join to form the Illinois River, about 50 miles southwest of Chicago.

WHO PAYS? FIFTY-TWO TOWNS, UNITED STATES AT ODDS

Fifty-two communities in the Chicago area must improve their sewers to relieve pollution problems and take full advantage of the Metropolitan Sanitary District's Deep Tunnel project. But no one has told them where they are to get the $1.4 billion required to do it.

Most of the suburbs cannot raise the money from their own resources. But a survey of suburban officials by The Tribune found that some aren't particularly worried because they assume the federal government will pay most of the costs.

The federal Environmental Protection Agency, however, said it will fund only a fraction of the cost. Although much of the sewer upgrading is related to flood control, which is usually handled by the Army Corps of Engineers, the corps said it is "not authorized by law to fund sewer upgrading."

The sanitary district, which made the $1.4 billion cost estimate, is aware of the lack of federal funding. But suburban officials said the district has told them nothing, and few of them have bothered to find out on their own.

"Judging from the reactions I see from a lot of mayors, they just don't understand the problem," one state official said.

The 52 communities have combined sewer systems—that is, sewers that carry both sewage and stormwater runoff. Under the federal Clean Water Act, Congress has mandated them to improve their sewer systems to eliminate overflows of raw sewage into the Chicago waterways during rainstorms.

The Deep Tunnel is intended to do part of the job for them. But for their own part, the suburbs must put in larger sewer lines to handle a heavier flow of rainwater and sewage than present sewers can accommodate. This will not merely eliminate overflows into the waterways, but will help to eliminate basement flooding if the second phase of Deep Tunnel is built.

The federal EPA said it would pay 75 percent of the cost of planning studies by the suburbs and of the cost of hookups to the Deep Tunnel system. But for design and construction work, the agency will pay only for the portion that it determines is needed to check pollution.

"What we anticipate in many instances is that flood control and urban land runoff will be the major part of what they do," an EPA official said. "My guess is that we would therefore fund only a small portion of these costs."

The Illinois EPA has $215 million still unspent from a 1970 bond issue of $750 million, and acting Director Michael Mauzy said this money is potentially available for local sewer upgrading.

"But it won't go far," he said. "The prospect of all the upgrading being carried out is remote. But I would like to think that the federal government eventually will fund this. It may well be that the matter will have to be adjudicated."

Mauzy said one of more suburban communities might bring suit to try to compel federal funding.

Both he and sanitary district officials said it was incongruous that the federal EPA should consider sewage in waterways as pollution but not sewage in basements.

Some suburban officials contacted by The Tribune were unaware that federal funding for the sewer upgrading is in doubt. Others said they were not far enough along with the planning to know what the funding situation is. In fact, few of the communities have applied for or obtained federal EPA grants for the initial planning studies.

Several suburban official said the sanitary district has told them nothing about the funding problems.

"We're being left in the dark," said Maywood Village President James Parrilli, "and I hear the same thing from other mayors."

"There undoubtedy will be federal funding," said Evanston City Engineer Joseph Yi. "There has to be federal funding available because the municipalities can't do it themselves."

He said sewer upgrading in Evanston will cost $45 million.

Wilmette Village Manager Stan Kennedy said he assumed the federal government will fund part of the costs the suburbs are facing.

"The Federal government made mandatory the upgrading sewers," he said. "If they refuse to pay for it, they've got a big problem on their hands in this country."

Rhett Bilek, administrative assistant to Brookfield Mayor Phillip Hollinger, said sewer work there will cost $4 million to $5 million and, thought federal funding "will come to pass."

Richard Nuzzo, Elmwood Park village manager, said he expects to get federal funding of all phases of sewer upgrading work.

"It depends on how serious the government is about the problem," he said. "I think they will find the funds."

But Park Ridge City Manager Herman C. Spahr said he has talked to EPA officials and "I have no reason to think federal money will be available."

He said sewer upgrading in Park Ridge may cost $16 million. "I don't know where the money is coming from," he said.

Ald. Dick Ward of Des Plaines said, "There are no foreseeable funds for the reservoirs [the second phase of Deep Tunnel] and no money to upgrade the sewer systems."

He said the sanitary district has gotten most of the federal money available for pollution control and the municipalities "have not gotten in line" for the funding.

The suburbs, he said, will have to "wait years" to get funds for sewer upgrading.

TESTIMONY BEFORE THE SUBCOMMITTEE ON PUBLIC WORKS, COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, U.S. CONGRESS, APRIL 12, 1978

My name is Nancy Philippi and I am speaking for the Tarp Impacts Projects, a group of Chicago professionals and community representatives concerned about the public interest implications of the Metropolitan Sanitary District of Greater Chicago's Tunnel and Reservoir Plan (TARP).

I am here today to ask you to postpone any funding action on the Phase I design memorandum stage of the Chicagoland Underflow Plan (also known as the Tunnel and Reservoir Plan) until the Congressional authorization has been broadened to direct the Corps of Engineers to address the problem of Chicagoland storm sewer backup without bias in favor of the Underflow Plan promulgated by the Flood Control Coordinating Committee in 1972. It is in violation of the best interests of the Chicago metropolitan area, as well as with the traditional planning process of the U.S. Corps of Engineers, that this massive, ill-conceived and expensive project be thrust upon the federal government for implementation.

We believe that the Corps itself recognizes the adverse implications of the wording of the current authorization. In an August 1977 communication from General Robert L. Moore of the North Central Division he describes the cost increases that the pollution abatement portion of the project, presently funded by USEPA, has experienced, and urges:

"2. In view of the above, it is considered that the Corps planning on the authorized project should be in the nature of a "reformation" type Phase I GDM instead of an "affirmation" type Phase I GDM. Such reformation would consider new alternatives in addition to review of alternatives previously considered by the MSDGC. The scope of work would include a verification of previous engineering studies and designs, a detailed review of hydrologic, hydraulic and economic studies, alternative designs for reservoir sites, and alternative proposals in lieu of tunnels (flood control) and reservoirs"

Colonel Tilford Creel responded:

"concur that report should be of the reformation type and of the scope outlined in paragraph 2 of basic letter"

We likewise, concur with General Moore and Colonel Creel and believe that anything short of the scope of work described by General Moore would be a mistake. We further believe that the wording of the current authorization unequivocably restricts the Corps activity to developing the engineering and design of the old preplanned reservoirs. Section 108 of the Conference Report supplementing the Water Resources Development Act of 1976 states very simply:

"The Secretary of the Army, acting through the Chief of Engineers, is authorized to undertake the Phase I design memorandum stage of advanced engineering and design of the Chicagoland Underflow Plan project for flood control and other purposes . . ."

There is no possible way that such wording could be comfortably adapted to a "reformulation" type study, and it is unreasonable to expect the Corps to make such an attempt without the clear support of Congress. Congress should, therefore, modify the authorization wording to more consistently reflect the "reformation" intent of the Corps.

We at "TIP" have several reasons for taking this position:

1. Costs of the project have indeed escalated beyond reasonable expectations. Not only have the construction costs of the pollution abatement tunnels increased by more than 25% in the period of one year, but also the costs of the overall project, including all associated components necessary to secure the benefits, have been estimated recently in a report by the U.S. General Accounting Office to exceed seven billion dollars and, according to Colonel Creel in testimony before Congress in 1976, these costs can reasonably be expected to double by the time the project is completed.

2. It is doubtful whether all the flood control purposes of the reservoirs in the Underflow Plan could ever be achieved, since a substantial portion of the reservoir storage is assigned to receive flows from 53 Chicago metropolitan communities in the combined sewer area that will be unable to finance the sewer upgrading necessary to take advantage of that storage capacity.

3. There are serious negative impacts of the proposed TARP that we believe have not been given proper attention in the published Environmental Impact Statements, the most significant of which is the potential for exfiltration of polluted waters into important groundwater aquifers adjacent to certain segments of the system.

4. The TARP project, designed in the early 70's inappropriately depends heavily upon energy consumption and generates comparatively few jobs: operations and maintenance costs, estimated in 1977 by the MSDGC to be $13.6 million annually, are ⅔ energy and ⅓ manpower costs.

5. The planning process of the Flood Control Coordinating Committee concentrated almost exclusively on the technologies of underground conveyance and storage systems and gave little attention to surface retention, preventive and corrective strategies, which we believe could and should be incorporated into the Corps planning process.

These, we believe, are serious deficiencies in the present TARP plan, deficiencies which could be perhaps overcome by the formulation, by the Corps, of a more comprehensive, cost effective and environmentally appropriate solution to the urban flooding problems of the Chicago metropolitan area.

STATEMENT BY J. TERRENCE BRUNNER, EXECUTIVE DIRECTOR OF THE BETTER GOVERNMENT ASSOCIATION, FEBRUARY 20, 1978

Nine months ago the BGA launched a detailed investigation of the Metropolitan Sanitary District's $7.3 billion "Deep Tunnel" project, the most expensive public works program in the nation. The project is enmeshed in a confusing tangle of federal, state and local regulations—but one thing is clear, "Deep Tunnel" promises to be a political, financial and environmental fiasco.

This morning, the BGA and Chicago Tribune revealed that the primary beneficiaries of "Deep Tunnel" are politically connected contractors. The Sanitary District has already awarded $70 million in non-bid consulting work for the project. Former public officials such as Ben Sosewitz (who was MSD's General Superintendent), Earl Deutsch (a former MSD Commissioner), and former U.S. Attorney Thomas Foran have benefitted from this non-bid consulting work.

Since 1975, other "Deep Tunnel" contractors have contributed more than $150,000 to various political campaigns, including the campaign of MSD president Nicholas Melas.

It is now well-known that "Deep Tunnel" is a financial disaster. Costs have escalated from $1.6 billion estimated by the Sanitary District in 1972 to $7.3 billion, now projected by the Government Accounting Office (GAO).

What will Chicago area residents receive in return? Pollution in the area's rivers will be reduced but, according to GAO, they will remain unsafe for human contact.

The Sanitary District has sold "Deep Tunnel" as the answer to the problem of basement flooding. Yet there is no federal commitment to fund the flood control portion of the program.

And despite this massive expenditure of $7 billion, "Deep Tunnel" will create fewer than 1,000 new jobs.

The project itself may be environmentally unsafe. Experts contend that seepage from the tunnel could pollute the water table, Chicago areas' underground source of drinking water.

Unfortunately, the Sanitary District's decision to build Deep Tunnel has important national implications. The project has been promoted as a model for the nation. But if cities with sanitation problems similar to Chicago's adopted the "Deep Tunnel" approach, it could cost the country over $600 billion.

The costs are so high that the nation's commitment to reduce water pollution could be jeopardized.

Therefore, the BGA recommends:

Futher construction of Deep Tunnel should be halted.

The U.S. Environmental Protection Agency should thoroughly review the project and carefully consider less expensive, more realistic alternatives.

Congressional hearings on "Deep Tunnel" should be held. Citizens from the Chicago area should have the opportunity to appear and participate in developing alternatives to the Deep Tunnel project.

POLLUTION AND FLOOD CONTROL PROGRAM: METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO

We believe that the assertion that the Metropolitan Sanitary District of Greater Chicago (MSDGC) pollution and flood control program is too expensive to complete, and that even if completed the goals for which the program was designed will not be achieved, does not accurately portray what the facts are.

With respect to the assertion that the Metropolitan Sanitary District of Greater Chicago's pollution and flood control program cost understates cost according to an analysis made oy the General Accounting Office of the United States, the MSDGC states that the analysis is faulty and, after reviewing the figures, The Civic Federation agrees. The GAO addresses its analysis to the tunnel and reservior plan (TARP) but includes also plant expansion and improvement costs. GAO's analysis is also unclear as to whether their cost analysis covers the entire 10-year capital improvement program from 1972 through 1982. Their cost analysis includes $1,431 million for upgrading local sewers which the MSDGC has not included in its program cost since it is not responsible for this cost. They have assisted local cities and villages and have estimated what they believe the cost will be to these municipalities. Furthermore, the GAO has included $1,728 million for interest cost of capital in the construction program presumably for the 10-year period. As far as we are aware, interest cost on the use of capital has never entered into the costing of capital improvement programs either for the State government or local governments. It has been used extensively in the cost-benefit studies of Corps of Engineers capital improvement programs. After deleting these two costs, $3,156 million

from $7,326 million, the total GAO estimated cost of the MSDGC program is $4,170 million. The MSDGC's estimate of cost from 1972 through 1982 is approximately $4,900 million.

The criticism that the MSDGC's contract bids are much higher than District estimates implies that the bids should have been lower. This criticism seems to be refuted by a statement attributed to Mr. Mauzy, acting director of the Illinois Environmental Protection Agency, that the cost of MSDGC contracts appears to be "not that much out of line with pollution projects elsewhere in the state." There is an informal system of checks and balances on contract cost by virtue of the requirement that the State and Federal governments must first approve MSDGC contracts before payment is made. Also, the limited number of construction firms available to bid on contracts of this nature could be the reason for a large spread between estimated cost and bids.

The MSDGC does not have the technical staff to design and draw up the large volume of construction plans necessary to letting contracts out for bid. Much of this work has had to be let on contract to engineering companies where the supply and demand situation has also resulted in increased cost. The MSDGC does use its engineers and technical staff in the field to inspect construction work.

The Civic Federation has followed the planning for cleaning up pollution and flood control from 1965 to the present time. In November, 1967, our comments on the 1968 MSDGC budget was that the "Deep Tunnel Plan" was tremendously expensive. We reminded the District that flood control, which was a factor in the solution of the problem, was primarily a State responsibility and, therefore, there should be State participation in funding the construction program. We recommend also that appropriations for construction should be limited to those improvements relating to sewage treatment plants and intercepting sewers that would be necessary regardless of which pollution and flood control plan might eventually be adopted. There had been little or no discussion of the best plan, but only of individual plans. It was our opinion that if construction work was started on the basis of the deep tunnel plan, the Distirct would be too committed to it to change.

In 1968, the Governor of Illinois appointed a Flood Control Coordinating Committee to examine the alternative plans to meet the basic criteria for:

(1) Prevention of backflow to Lake Michigan for all storms of record, and

(2) To meet the applicable waterway standards established by the State Pollution Control Board and the MSDGC.

On January 1, 1972, the Technical Advisory Committee which was given the task of evaluating the many alternative solutions to determine the most economical method of meeting the basic criteria, reported a plan to the Flood Control Coordinating Committee which was referred to as the "Chicago Underflow Plan." This plan was a composite of the several alternatives that had been proposed. It was unanimously accepted by the Coordinating Committee as it was less costly and it would be more environmentally acceptable to the community than any of the other plans.

The Chicago Underflow Plan consisted of 120 miles of conveyance tunnels intercepting 640 sewer overflow points in the 375 square mile area served by the combined sewers. Combined sewer overflow water, it was anticipated, would remain in storage for up to 50 days for the largest storm periods of record. The water from most of the storms could be handled in from 2 to 10 days. The detailed explanation of the development of the Chicago Underflow Plan for the Chicagoland area is contained in the 111-page summary of technical reports dated August, 1972. It covered all of the considerations and safeguards that might arise. The Flood Control Coordinating Committee and Technical Advisory Committee participants are shown on page 5.

Funding of the pollution and flood control program involves allocation of funds from local, state and federal sources. This includes 75 percent participation by the Federal government in the pollution control aspects of the program. The tunnel and reservoir portion (TARP) of the whole program is divided into Phase I which includes pollution control construction and Phase II, the flood control portion of TARP. In addition to funding 75 percent of the pollution cost of Phase I, it is expected that 100 percent of the cost of Phase II will be covered by the U.S. Corps of Engineers. The State of Illinois' participation is expected to cover 75 percent of the cost of drawing up plans and specifications. This funding will come from a $750 million State antipollution bond issue. The MSGDC's funding will be from the $380 million general obligation bonds authorized by the State Legislature plus additional bonds that they may issue without referendum.

We question whether the MSDGC could halt its pollution and flood control program as requested by opponents to the program without approval from the Illinois EPA and United States EPA. The District would have to have an extension beyond 1982 or the District would be subject to a fine of $10,000 for every day after 1982 and possible imprisonment of officials in the District responsible for violations of the United States Water Pollution Control Act as amended in 1977.

WASHINGTON, D.C.,
March 9, 1978.

Hon. ELMER B. STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR MR. STAATS: As a follow-up to the proposed GAO draft report on "Chicago's Acquisition of a Tunnel and Reservoir System: Status and Problems To Be Resolved," I would like to request your staff to undertake such further research as is necessary to enable it to report back to me on:

Where interior flooding is most concentrated in the area affected by the proposed Metropolitan Sanitary District of Chicago Tunnel and Reservoir Project (TARP). I would like to have identified, as precisely as possible, the geographic boundaries of each of the most severely-affected areas.

Those streets, expressways, and viaducts that most frequently have experienced flooding in the affected TARP area.

The frequency of flooding incidents in the most severely affected areas during the last 20 years; the amount of damage sustained; and the number of persons injured or killed.

An analysis of the small-scale technology available to solve Chicago's flooding problems in lieu of completion of Phase II, the flood control segment, of TARP.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

EDUCATION DAY, U.S.A.

Mr. MATHIAS. Mr. President, on April 13, 1978 the Senate passed H.J. Res. 770, authorizing the President to issue a proclamation designating today as "Education Day, U.S.A." As a Marylander, I am particularly happy to observe Education Day, U.S.A. because the State of Maryland has been in the vanguard of American education since colonial times.

During the colonial period there were few public schools. More often schools were private with strict admission policies. Only a few schools were philanthropic, established to educate the poor.

In colonial Maryland the practice of supporting education for the poor was highly regarded. In Baltimore, for example, the Benevolent Society for the Education of the Female Poor pioneered in the field of women's education.

Maryland's approach to paying for education began with a tax on banks, soon expanded to include property levies which produced revenue for schooling the poor. King William's School, founded in Annapolis in 1696, was the first free public school to use these tax funds.

Today, between 35 and 37 percent of Maryland's total general fund money is expended for education.

Maryland has also been in the forefront of the development of the university concept. While other States were still formulating plans for State universities, the University of Maryland opened the doors of its college of medicine in 1808. The law school was founded only 15 years later. The first dental college in the United States was established in Maryland in 1840, and the first full-time pharmacy professorship was established in 1844 at the Maryland College of Pharmacy. This later became part of the University of Maryland. The School of Hygiene and Public Health at Johns Hopkins was founded in 1916. It was the first of its kind in the world. This school continues to enjoy an unsurpassed international reputation.

Enrollment in postsecondary education has grown dramatically. Total public and private enrollment in Maryland institutions more than doubled between 1964 and 1974, from 84,237 to 186,670 students.

These numerous accomplishments speak for the State of Maryland's contributions in the realm of education. I am proud to salute Maryland as I underscore the merit of Education Day, U.S.A.

"HOLOCAUST" STIRS PAINFUL MEMORIES OF GENOCIDE

Mr. PROXMIRE. Mr. President, this past week an excellent show has been on TV depicting the emotional and physical horrors which were visited upon the Jews in Nazi Germany during World War II. It is especially shocking to realize that this atrocity occurred just a little over 3 decades ago. We conceive of ourselves as living in a modern world, and yet our grip on civilization sometimes seems so tenuous.

On April 16, an article appeared in the Washington Post entitled "A Time to Remember the Holocaust." The article relates some of the memories of those who survived the holocaust, and I found it to be a very moving and vivid portrayal of life in Nazi Germany. I may not agree with all of the conclusions reached in the article, but the article certainly serves as an excellent reminder of how terrible a crime genocide truly is.

I hope that the Senate will not continue to delay. The Genocide Convention was written after the "holocaust" in Nazi Germany for the express purpose of try-

ing to insure that genocide would never happen again. This treaty makes the commission of genocide an international crime, and 82 countries have ratified its provisions. For reasons which have been shown again and again to be groundless, a few opponents of this noble treaty have worked to block its passage. Perhaps those Senators will be stirred by the "Holocaust" program, and will finally realize the urgent need which exists for the Convention. I urge the Senate to ratify the Genocide Convention as soon as possible. I also ask unanimous consent that the Post article appear in full immediately following my remarks.

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

A TIME TO REMEMBER THE HOLOCAUST

(By Myra MacPherson and Rob Warden)

SKOKIE, Ill.—When the first shot of Buchenwald flashed on the TV screen, David murmured with savage irony, "my *dear* camp."

And then the memories began to tumble out.

"My older brother died at the start. We were five days without food. We were locked up in tents, we couldn't look out. On the fifth day of the fast he passed away.

"One day the SS man promised a loaf of bread to an inmate who could find a mouse alive. One man caught a mouse. The SS man injected it with gasoline. The mouse died. And from that day on he made himself a picnic.

"Every day he picked five Jews, injected gasoline into their bloodstream. And they died.

"This went on for quite a long time."

David was sitting in a comfortable pine-paneled den where he and another camp survivor and some friends were watching the first night of the NBC miniseries "Holocaust."

He had spent the afternoon at a large ecumenical worship rally in this heavily Jewish Chicago suburban community where the Nazi party is attempting to win the right to march.

In fact David asked that his last name not be used because he fears Nazi reprisals against his family.

David, now 55, was 17 when he was taken into Buchenwald in 1939. Liberated in 1945, he weighed 62 pounds. He now weighs 155 pounds and stands 5 feet 7. Both his mother and his father and a sister and a younger brother went to the gas chambers at Treblinka. Two sisters survived.

Another survivor sitting in the Skokie den, Erna Gans, spoke up bitterly at one point in the show. "When the SS officer in the film says that there were only 36 deaths as the result of one raid on the Jews, and that 'the foreign press will not make a fuss over that' [Gans pointed to the TV set] See? That is the crux of the matter. No one spoke up."

Gans' blue eyes were expressionless as she recited her litany of death.

Gans, who was 16 in 1939, remembers "walking the streets," posing as a non-Jew, "because it was safer than staying at home." One day as she returned home, she noticed a truck full of prisoners. In it were her mother and her little brother. "I went toward it—but my mother motioned that I should not come close. I never saw them again. Later, my father and I were put in camps, I was the only one who survived." Afterwards she went back to her home town, hoping she could find someone she knew.

"But they were all gone . . . all gone."

Last night watching the re-creation of that bygone era, both Gans and David praised the show.

"It will show the world you cannot be silent," said Gans.

"It's magnificent," said David. "It's nothing but the truth."

Earlier yesterday Abe Fraiman and Mark Weinberg shivered in the brilliant but chilling 39-degree sunlight as they haltingly sang the unfamiliar words of a Christian psalm. The Jeannie Gump, a Catholic mother of 12, listened while the Jews around her sang in Hebrew as the cantor's voice wafted over the high-school football field in this middle American village-suburb of Chicago.

They and 2,700 other Christians and Jews huddled together, all wearing yellow Star-of-David armbands—the sign of persecution that the Nazis forced Jews to wear in World War II—yesterday at the first of 100 solidarity worship rallies that will be held across the country. These services are dedicated to the memory of the Holocaust, when 6 million Jews were exterminated by the Nazis in World War II. The rallies all began in Skokie by concerned citizens as a response to a threatened march here by a Chicago Nazi group that planned to wear swastikas and storm trooper uniforms.

For Fraiman and Weinberg, just the mention of the Nazi party brings angry tears. They pull up the sleeves of their jackets, unbutton their shirt cuffs, roll up the sleeves and point to the numbers tatooed on their arms—indelible reminders of their years at Auschwitz, the worst death camp of all, where 1 million to 2 million Jews were exterminated.

Last night, after the rally, Fraiman and Weinberg—like most of the estimated 7,000 concentration-camp survivors who have clustered together to live in Skokie, watched the first of the four-part series, "Holocaust."

"It is painful—but it has to be watched," said Fraiman. "This is to remind the Americans. The new generation doesn't know anything about it. When we survivors are gone our children shouldn't be living in fear that this can happen again."

From a distance, huddled with blankets in the stadium, the crowd could have been enjoying the innocent pleasure of a football rally. But then the words came and the tears coursed down many cheeks as they heard a rabbi quote from the concentration-camp memories, "A Selection From Night," by Elie Wiesel. "The three necks were placed at the same moment within nooses. 'Long live liberty,' cried the two adults . . . but the child was silent. Three chairs toppled over. Total silence throughout the camp . . . the two adults were no longer alive, but the third rope was still moving. The body was so light, the child was still alive. For nearly half an hour he struggled between life and death."

Fraiman, now 57, said, "I was 29 when they took me to Auschwitz. I lost two children. They took away from me a daughter 8 years and a son 11 years old They make the sign with the thumb—this group goes left, this group goes right. My son and daughter went to one side, I never saw them again. It is too hard to talk," he said, and could not finish.

As painful as the memories are, holocaust survivors in this village, spurred by the recent anti-Semitic actions of a small band of Nazi, insist that it is their duty to remind the world. Skokie has nine synagogues and one of the largest clusters of Jews in the country—an estimated 40,000 out of a population of 70,000. They migrated here by the thousands in the 1950s because Skokie was a new suburb that provided reasonably priced housing for those Jews who wanted to leave Chicago's congested West Side.

Said one Buchenwald survivor, "It's not a conscious decision (that so many survivors were living in Skokie). We just wanted to be very close to each other. We were all living together in one neighborhood in Chicago and when we started to move out we started to move out together."

More than a year ago the Nazi party decided to target Skokie because the Martin Luther King Jr. movement had won the right to hold open-housing marches on the southwest side of Chicago where the Nazis have their headquarters.

In a nationally publicized controversy over whether the Nazis have the right to march in Skokie they were represented by the American Civil Liberties Union. This action resulted in a loss of 30 percent of the Illinois division of the ACLU membership.

In recent weeks both state and federal courts have upheld the right of the Nazis to march in Skokie in their storm trooper uniforms with swastika armbands. The Nazis will hold the march on June 25 unless the lower courts are reversed, which is considered unlikely. This incenses Skokie's Jews. "The Swastika is the symbol of genocide. We are all for freedom but this is disabusing freedom when they say they have the right to march through our streets and say 'we want to kill you,'" said a Buchenwald survivor. He asked that his name not be used because of obscene anti-Semitic phone calls his wife received after one published interview.

For those at yesterday's rally the Nazi party threat in one way seemed to be a blessing as Rabbi Neil Brief of the Niles Township Jewish Congregation said, "This gathering shows the spirit of Skokie responding to the First Amendment values of freedom of religions and freedom to be free of fear—and not saying that freedom of speech is absolute and separate from those other freedoms.

"This shows that we are one people under God," said Skokie village president Albert J. Smith. Mrs. Stephanie Jaye, a "born-again" Christian, said as she pulled on her Star-of-David armband, "I think this has brought about better understanding; the Nazis have brought us together because they have to be stopped."

For the young, who stood about wearing blue jeans and braces, there was some bewilderment about what it all meant. The Skokie high school plans to run lectures on the "Holocaust" series this week. And one man who has already given lectures in high school is Mark Weinberg. The words tumble fast as he says, "I tell them my story so that they will know a little bit about a very real and terrible history. They arrested me in 1943. They beat me up. I hang myself but they got me well. Then the Gestapo took me again. I was beaten very badly. They wanted to know who sabotaged the train.

"I was in 16 camps and jails, Auschwitz, Buchenwald . . . In the last summer, they brought in the Hungarian Jews; they killed between 12,000 and 15,000 daily. The gas chamber was huge. Then they dug three big holes and they piled it—corpses, wood, corpses, wood. Children. Women. One officer made this one woman disrobe and then he shot her," said Weinberg, pointing to the back of his neck. "The child was on the ground. They shoot the child. The shooting was better. In a gas chamber it took from three to 15 minutes to die."

Then Weinberg walked across the football field, arm-in-arm with another survivor friend.

Across the way high-school students laughed and shouted as they played football.

Last night in nearby Evanston Titus Trevor, a 56-year-old Polish-born engineer, once imprisoned at Auschwitz, watched "Holocaust" in his book-lined apartment. He showed little emotion, at one point shrugging, "You don't guide your life by what happened so long ago."

But Trevor said that his experience at Auschwitz had made him a pacifist and an atheist. A Polish Roman Catholic arrested in Warsaw during the 1943 ghetto uprising. he said that he had been devout and had prayed regularly when first imprisoned.

But he said the experience contradicted everything he's been taught about religion. "A hair can't fall from your head unless it is God's will, and here whole families were

going to death. I saw whole families being systematically murdered, and whatever I had learned about God, didn't make sense anymore."

For years after he was liberated he said, he was frightened every time he saw a uniformed policeman—even in the United States. "Once you are broken, that carries on for a long time, and you have no self assurance."

RECESS UNTIL 11:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess until the hour of 11:30 tomorrow morning.

The motion was agreed to; and at 6:16 p.m. the Senate recessed until tomorrow, Wednesday, April 19, 1978, at 11:30 a.m.

EXTENSIONS OF REMARKS

HOUSE ACTION ON BEHALF OF FORMER WESTERN FLIGHT ENGINEERS

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 1978

● Mr. ANDERSON of California. Mr. Speaker, today the House will consider my bill for the relief of 123 former flight engineers of Western Airlines. House Resolution 83 seeks to refer H.R. 1394 and all accompanying papers to the U.S. Court of Claims for recommendations.

I urge the Members of the House to read my attached letter to Chairman GEORGE DANIELSON and to support House Resolution 83:

OCTOBER 13, 1977.

Hon. GEORGE E. DANIELSON,
Chairman, Administrative Law and Governmental Relations Subcommittee, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: I thank you for allowing me this opportunity to submit my views on H.R. 1394 and H. Res. 83, two bills that I have introduced for the relief of Western Airlines employees.

I introduced these two bills on the first day of this session of Congress. Last session, I introduced two other bills for the same purpose (H.R. 9027 and H. Res. 662). I have been very interested in this matter for many years now and in fact have in my files correspondence dated as early as 1974.

In 1961, Western Airlines discharged 123 flight engineers who did not return to work after going on strike in protest against a National Mediation Board ruling which was viewed as a threat to their jobs. The flight engineers of six other airlines had struck their employees at the same time and were later reinstated, but Western has refused since 1961 to rehire its discharged flight engineers.

I sponsored this legislation mentioned earlier since all other avenues of recourse have been exhausted. I believe that the dispute extends back to the changes during the late 1950's and early 1960's.

As chairman of our aviation subcommittee, I feel that I can speak to this aspect of the problem with some degree of knowledge. This time period was marked by a trend to replace non-pilot trained flight engineers with pilot-qualified engineers in jet aircraft crews. Under pressure from the pilot's union, Western Airlines, in January 1961, announced a policy requiring all flight engineers on jet aircraft to possess pilot qualifications and instrument ratings, effective July 1, 1961. The Western flight engineers reluctantly agreed to take the flight training even though they feared their jobs to be threatened.

In February 1961, the National Mediation Board, issued a ruling which triggered a national strike of flight engineers. The Board was empowered by section 2, Ninth, of the Railway Labor Act, 45 U.S.C. 152(9), to resolve disputes among the employees of an air carrier as to who are the representatives of the employees. The Air Lines Pilots Association (ALPA) and the Flight Engineers Association (FEA) had contended for the right to represent the flight engineers employed by United Air Lines. The Board's report pointed out the necessity, in the operation of up-to-date aircraft carrying many persons, of each person in the cockpit being able to do the work of every other person in the cockpit in an emergency, including the piloting of the aircraft. The Board concluded that all persons in the cockpit constituted one "craft or class" for representation under the Act.

Until 1961, flight engineers were treated as a "class;" the pilots were considered a separate "class." The Board's ruling would have forced all of the engineers and pilots at an airline to vote for a single representative. Since pilots outnumbered engineers substantially, the flight engineers feared that they would be swallowed up by a larger pilots union which represented the interest of pilots more than engineers.

To the flight engineers, the ruling appeared to doom their jobs, their craft, and their union. In reaction, the flight engineers on seven airlines, including Western, walked off their jobs on February 17, 1961. Western requested their flight engineers to return to work at the regular scheduled time; a total of 123 who refused to return were discharged.

It is for these 123 discharged flight engineeds that H.R. 1384 and H. Res. 83 is intended.

Even though President Kennedy on February 21, 1961 issued an Executive Order establishing a Commission to examine the controversy and the Secretary of Labor secured the assurances that the effected carriers would not be disciplined if they returned to work, Western Airlines still refused to rehire its discharged employees. This made the other flight engineers reluctant to return to work unless the Western engineers were included.

Possibly because of this action by President Kennedy and Labor Secretary Goldberg, no grievances were filed by the engineers in accordance with their collective bargaining agreement within the seven day time limit provided in that agreement.

On October 30, 1961, the Secretary of Labor appointed Professor Feinsinger to investigate the dispute and to make a report.

Issued four years later, this report stated:

Despite Western's claim to the contrary, the strike caused it no more difficulties than the strike on the other six airlines to the carriers involved. Yes . . . of the seven airlines involved, only Western refused to honor the request of the Secretary of Labor to reinstate the striking flight engineers. Had all the seven struck airlines acted as did Western, the strike might have been prolonged considerably, causing grave inconvenience to the traveling public. As it was, only Western ignored the Secretary of Labor's request to maintain or restore the status quo. As a result of Western's recalcitrance, however, and the reluctance of the other FEIA chapters to abandon their colleagues on Western, the strike on the six other airlines was prolonged for several days during the Government's unsuccessful attempts to persuade Western to change its position, thus causing not only grave inconvenience to the traveling public but serious financial loss to the other carriers involved.

In brief, Western's refusal to reinstate the flight engineers, pending a study of the underlying problem by a Presidential Commission, causing grave hardship on the families of the discharged employees, was not consistent with the overriding public interest in uninterrupted service on the nation's airlines, nor with standards of conduct observed by American employees generally in similar situations.

Professor Feinsinger recommended that, the cases of the 123 flight engineers be reviewed individually to determine if any were unable to meet the company's deadline because of special circumstances, that a preferential hiring list be established for the engineers in the order of their seniority, and that representatives of the company and union meet to implement his recommendations.

Western Airlines rejected these recommendations and has consistently refused to reinstate or rehire the flight engineers. On September 14, 1971, the Assistant Secretary of Labor informed the flight engineers, on behalf of the White House, that the dispute was considered a closed matter.

This background information brings us to the two pending bills before the committee. Though the constitutional authority for the enactment of private claim bills by the Congress rests upon the power to pay the debts of the United States, this power is not restricted to the payment of those obligations which are legally binding on the government, but also extends to the creation of such obligations in recognition of claims that are merely moral or honorary.

In fact the United States Supreme Court, in *Pope* v. *United States,* 323 U.S. 1,9 (1944), said:

It is conceded that indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term 'debts' includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual.

The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law.

The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. To no other branch of the government than Congress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. Their recognition depends solely upon Congress, and whether it will recognize